

ITEM NO.41

COURT NO.4

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 23599/2018

(Arising out of impugned final judgment and order dated 01-05-2018 in CR No. 253/2009 passed by the High Court Of Judicature At Allahabad)

ASHOK KUMAR KALRA

Petitioner(s)

VERSUS

WING CDR SURENDRA AGNIHOTRI & ORS.

Respondent(s)

Date : 08-01-2020 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. K.K. Tyagi, Adv.
Mr. Iftexhar Ahmed, Adv.
Mr. Sarvam Ritam Khare, AOR

For Respondent(s) Mr. Dinesh Dwivedi, Sr. Adv.
Mr. Syed Hasan Isfahani, Adv.
Mr. Rohit Kumar Singh, AOR
Mr. Krishnam Mishra, Adv.
Mr. Nishant Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard the learned counsel appearing for the parties.

Application for deleting the names of respondent Nos. 3 & 4 for the array of parties is allowed.

We have gone through the judgment of the three-Judge Bench in Ashok Kumar Kalra vs. Wing Cdr. Surendra Agnihotri & Ors., 2019

(16) Scale 544, in particular, para 20 which states as follows:-

"20. We sum up our findings, that Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant

to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- i. Period of delay.
- ii. Prescribed limitation period for the cause of action pleaded.
- iii. Reason for the delay.
- iv. Defendant's assertion of his right.
- v. Similarity of cause of action between the main suit and the counterclaim.
- vi. Cost of fresh litigation.
- vii. Injustice and abuse of process.
- viii. Prejudice to the opposite party.
- ix. and facts and circumstances of each case.
- x. In any case, not after framing of the issues."

Given the fact that on the facts of the present case, a counter-claim was filed after the issues were framed, the said counter-claim cannot be filed as per the law laid down by this judgment. Consequently, the Special Leave Petition is dismissed. However, it will be open for the petitioner to file a fresh suit based on the cause of action in the counter-claim if it is otherwise permissible in law.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
COURT MASTER (SH)

(NISHA TRIPATHI)
BRANCH OFFICER