

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 13TH DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.15190 OF 2020(GM-CPC)

BETWEEN:

M/S JSW STEEL LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT AND
HAVING ITS REGISTERED OFFICE AT
JINDAL MANSION, 5A,
DR G DESHMUKH MARG,
MUMBAI-400026.
AND ITS REGIONAL OFFICE AT U-607,
6TH FLOOR, EAST WING,
RAHEJA TOWERS, M G ROAD,
BANGALORE-560001.
REPRESENTED BY ITS
AUTHORISED REPRESENTATIVE,
SRI MANI MANUEL.

... PETITIONER

(BY SRI. K G RAGHAVAN, ADVOCATE A/W
SMT. ANURADHA S R, ADVOCATE))

AND:

MYSORE MINERALS LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT AND
HAVING ITS REGISTERED
OFFICE AT NO.39, M G ROAD,
BANGALORE-560001.
REPRESENTED BY ITS MANAGING DIRECTOR.

...RESPONDENT

(BY SRI. SRINIVAS RAGHAVAN, ADVOCATE FOR
SRI. LOMESH KIRAN, ADVOCATE FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF
THE CONSTITUTION OF INDIA PRAYING TO CALL FOR
RECORDS IN O.S.NO.7213/2012 ON THE FILE OF THE CIVIL
JUDGE, BENGALURU AND QUASH THE ORDER DATED

10.11.2020 PASSED ON I.A.NO.4 IN O.S.NO.7213/2012 ANNEXURE-A AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner being the plaintiff in a money suit in Com.O.S.No.7213/2012 is at the door steps of the Writ Court for assailing the order dated 10.11.2020 a copy whereof is at Annexure-A whereby the learned LXXXII Addl. City Civil Judge, Bengaluru, having allowed respondent-defendant's application in I.A.No.IV filed u/o VI Rule 17 r/w Sec. 151 of CPC, 1908 has accorded leave to amend the Written Statement for incorporating a Counterclaim therein; the respondent having entered caveat through it's counsel, opposes the Writ Petition.

2. Material Facts:

Petitioner company filed the subject suit on 5.10.2012 for a money decree in a sum of Rs.270,11,91,123/- ; respondent-company resisted the suit by filing the Written Statement on 17.04.2013; long thereafter i.e., on 29.07.2016, it filed the Application in I.A.No.IV u/o VI Rule 17 r/w section 151 of CPC, 1908 seeking leave to introduce the Counterclaim in the Written

Statement by way of amendment; the Counterclaim by way of damages is in a sum of Rs.1172.79 crores, with interest at the rate of 18% per annum; apparently, it is founded on the fact matrix which is substantially anterior to the institution of the suit; this was objected to by the petitioner *inter alia* on the ground of bar of limitation and delay & latches; however, court below sanctioned the amendment, which is now put in challenge, in this petition.

3. Contentions of the parties:

(a) The pith & substance of petitioner's challenge is that: a Counterclaim cannot be made by way of amendment of Written Statement after the expiry of statutory period of limitation; a counterclaim is nothing but a 'deemed suit' for all practical purposes and therefore is bound by the same limitation period which a money suit is; apparently, suit, if were to be filed on the cause of action on which the respondent's Counterclaim is founded, it would have failed because of the expiry of limitation period; petitioner's counsel banks upon certain decisions in support of this stand.

(b) Respondent, *per contra*, contends in justification of the impugned order and the reasons on which it is structured; essentially respondent presses into service three factors viz., (i) '*doctrine of relation back*' whereby amendments become retrospective in effect from the date of filing of the pleadings concerned; (ii) unassailability of the discretionary order granting leave to amend the Written Statement, & (iii) the foundational facts supporting the Counterclaim being already pleaded in the Written Statement; it's counsel too relies upon certain decisions for substantiating this stand.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

A. As to filing of counterclaim, stage for:

The question whether a Counterclaim can be filed separately after the filing of the Written Statement or can be introduced by way of amendment to the already filed Written Statement, subject to compliance of requisites and save with all just exceptions, is no longer *res integra* vide

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AGNIHOTRI & OTHERS, (2020) 2 SCC 394; what factors enter the decision making process, *in re* an Application for amendment, have been broadly stated by the Apex Court at paragraph 21 of the said decision, as under:

“21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim 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 counterclaim 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 counterclaim, which is pegged till the issues are framed. The court in such case have the discretion to entertain filing of the counterclaim, 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.”

B. As to two questions of significance:

The prime questions however, that fall for consideration of this Court are a bit different from the one

discussed in the preceding paragraph (A) above, and they are phrased as under:

(i) *whether leave to incorporate the time- barred Counterclaim by way of amendment to the Written Statement can be granted u/o VI Rule 17 of CPC, 1908 ... ? and*

(ii) *whether Court granting leave to amend the Written Statement for taking up a Counterclaim can relax the period of limitation prescribed for filing the same, by invoking the doctrine of relation back ... ?*

C. As to what the apex court said in Kalra Case:

Even the first of the above questions having been largely answered in KALRA *supra*, does not much detain the Court; the concurring view of one of the three judges (Mohan M Shantangoudar, J.) comprising the Bench are succinctly expressed at paragraphs 30 & 31 as follows:

“30. It is clear that Rule 6-A(1) only places a limitation on the time within which the cause of action for a counterclaim must arise. Besides this limitation, there is no explicit guidance in Rule 6-A(1) as to the time within which the counterclaim itself must be filed. In this respect, Rule 6-A(4) provides that a counterclaim is governed by the rules applicable to plaints. It is well established that a plaint must be presented within the period prescribed under the Limitation Act, 1963 (hereinafter “the Limitation Act”). For counterclaims as well, the period within which they must be filed can be inferred from Section 3(2)(b)(ii) of the Limitation Act, 1963..:

This provision mandates that in order to determine the limitation period applicable to a

counterclaim, it must be treated as a separate suit, which is deemed to have been instituted on the date on which it is made in the court. Thus, evidently, in consonance with the provisions of Order 8 Rule 6-A(4), the Limitation Act also treats a counterclaim like a plaint. This means that much like a plaint, the limitation for filing a counterclaim also depends on the nature of the claim and is accordingly governed by the period of limitation stipulated in the Limitation Act.

31. From the foregoing discussion, it is clear that a counterclaim can be filed if two conditions are met: first, its cause of action complies with Order 8 Rule 6-A(1); and second, it is filed within the period specified under the Limitation Act ”

(underlining is mine)

D. As to whether observation of one of the judges becomes ratio of the Bench:

(a) Learned Sr. Advocate Mr.Srinivas Raghavan representing the respondent contends that what is stated above is the view of merely one of the three judges comprising the said Bench of the Apex Court and therefore, needs to be examined as to whether it has precedential value; he highlights what is in the brackets as “(partly supplementing and partly dissenting)” appearing immediately below para 22 of the reported decision in KALRA supra; Mr.K.G. Raghavan appearing for the petitioner at once points out that it is only the comment of the editor of the law report and not of the judge himself,

and therefore, one shall not be swayed away, thereby; it is true that such editorial comments are insignificant and at times, misleading, in ascertaining the ratio of judgments, especially when the Bench is made up of plural judges, and

(b) The *ratio decidendi* of a judgment needs to be mined by employing standard techniques such as Wambaugh's Test, Dr. Goodheart's Method, Dr. Upendra Baxi's Method or the like vide Rupert Cross's 'PRECEDENT IN ENGLISH LAW' – 3rd Edn. at pages 53 & 66; ordinarily, when one of the plural Judges comprising the Bench of a constitutional court makes a normative statement on the basis of the same fact matrix which other partner judges too consider relevant, such statement needs to be treated as the law laid down by the Bench as a monolith, and not as a fractured opinion, unless the partner judges observe something that has the effect of diminishing its precedential force; in Kalra Case *supra* the Bench comprised of three judges, and there is a set of two judgments; one is rendered by two judges and the other separate judgment is rendered by one judge; a careful perusal of both the judgments shows that what is stated

by one of the judges in his separate judgment, is not inconsistent with what is stated by the other two judges in common; the third judge has given a wider exposition of law stated by the other two by superadding the reasons; there is nothing in the two member judgment with which the other judgment stands in repugnancy.

E. Flawed method of law-reporting and its inherent dangers:

It is high time that some strict norms are laid down for regulating the mode and method of law reporting; there are several agencies in the country which have their own uncertain and varying ways of reporting the judgments of constitutional courts; the pattern of law report does not match with that of the original judgment on record; the paragraphs in the reported judgments at times do not match with the paragraphs in the original; not rarely, even paraphrasing of some parts of original judgments by the law reporting agency, is also noticed when rulings are cited by the lawyers; all this puts both Bar and the Bench to some avoidable difficulty in ascertaining the law laid down and its scope; there is a lurking risk of the editorial notes that are interjected in the body of judgments reported,

being inadvertently construed as part of the ratio; this is not a happy thing to happen; much deliberation in this regard is not needed.

F. As to ‘bar of limitation’ vs. ‘delay & latches’:

(a) The concept of “bar of limitation” on the one hand and the idea of “delay & latches” on the other by their very nature, are different from each other, although their successful invocation may arguably serve the same purpose in a litigation; the former absolutely bars the recourse to remedy; and the later may deny the remedy in the proceedings in question, the right to remedy being kept open for pursuit in other proceedings; prescription of period of limitation for claiming legal remedies is normally the prerogative of the legislature, whereas, the ground of ‘delay & latches’ is a matter of discretion inhering the Courts; this discretion needs to be exercised in accordance with the rules of reason & justice, is beside the point; the right to remedy ordinarily commits legal suicide if the limitation period prescribed therefor lapses; no court/authority has discretion to entertain the claim for it’s grant; Sec.3(1) of the Limitation Act, 1963 dictates

their rejection at the threshold, regardless of the contention from the other side.

(b) The delayed making of a Counterclaim by way of amendment of Written Statement is one thing and the making of a time barred Counterclaim by way of such amendments, is another; in treating the former, the court has discretion in the sense that it may grant leave to amend the Written Statement or refuse; in other words, a Written Statement can be amended even belatedly, for introducing a Counterclaim therein with the leave of court, provided that leave to amend is sought for within the statutory period of limitation; for that purpose, a Counterclaim shall be treated to be a suit by fiction of law; however, leave may be denied *inter alia* on the ground of 'delay & latches', even if the period of limitation has not expired; in such event, defendant may bring a separate suit; this is one scenario.

(c) The other scenario is: where a time barred Counterclaim is sought to be introduced by amendment to the Written Statement; in such a case, no leave can ever be granted; Court has no discretion to entertain such a claim; in such matters, there is no discretion to disobey

the mandate of law, namely, Sec.3(1) r/w 3(2)(b)(ii) of the Limitation Act; a time-barred Counterclaim cannot be made even if there is no 'delay & latches' in moving the application for amendment of pleadings; to put it shortly, time-barred claims cannot be the subject matter of pleadings or their amendments; a careful perusal of the Written Statement and the subject amendment application filed by the respondent, leaves no manner of doubt that the Counterclaim in question is hopelessly time-barred and a right not to be Counterclaimed has accrued to the petitioner-plaintiff.

G. As to amendment of pleadings & doctrine of relation back:

(a) The contention of Mr. Srinivas Raghavan, learned Sr. Advocate appearing for the respondent that once leave is accorded by the court under Order VI Rule 17 of the Code, the amendment dates back to the filing of the Written Statement by virtue of '*doctrine of relation back*', cannot be countenanced; true it is, ordinarily once pleadings are amended, such amendments date back to the point of filing of the original pleadings of the party concerned, unless the court granting leave to amend,

otherwise directs in its discretion; this doctrine arguably is of common law kind, is not as sacrosanct as to transcend statute; the doctrines of law and the legal maxims being elderly to the statute law, concise & conceive a fundamental rule or principle that regulates the conduct of individuals in an organized society, is true; in a sense they capsule the genius of mankind, earned through the ages of experience; they are important for the purpose of explicit as well as implicit mode of understanding the same; however, they are susceptible to legislative process, unless they by their very nature are of very high sanctity & significance like the “*doctrine of basic structure*” in our constitutional jurisprudence.

(b) **T.M.Cooley**, a great American jurist of yester century, in his magnum opus “**A TREATISE ON THE CONSTITUTIONAL LIMITATIONS**” 1st Edn. -1868, Boston: Little, Brown & Co., at page 170 opines that legal maxims should “*yield to considerations of policy and expediency... with the law making power, in the absence of any definite constitutional provisions so embodying the maxim as to make it a limitation upon legislative authority; ...a maxim is subject to such exceptions as the legislative*

power of the State shall see fit to make, and when made, it must be presumed that the public interest, convenience and protection are subserved thereby...” These observations equally apply to the doctrine of the kind passionately pleaded on behalf of the respondent; in England, the “*doctrine of Crown Immunity*” has been greatly diminished by the passing of Crown Proceedings Act, 1947; similarly in India, the “*doctrine of common employment*” has been done away with *inter alia* by enacting the Employees Compensation Act, 1923.

(c) The provisions of Sec.3(1) r/w 3(2)(b)(ii) of the Limitation Act, 1963 by necessary implication exclude the invocation of the “*doctrine of relation back*”, while treating an amendment application u/o VI Rule 17 of the Code for introducing a Counterclaim to the Written Statement; the said doctrine does not come to the rescue of the respondent because of mandatory prescription of a specific limitation period by the Act, 1963 for the filing of a suit which, as rightly argued by Mr. K.G.Raghavan, governs the filing of a Counterclaim since it is deemed to be a suit by fiction of law; an argument to the contrary cannot be countenanced without manhandling the text of the

provisions enacted in 1963 Act and in CPC, which the Apex Court has treated in Kalra Case, *supra*; after all, law of limitation being a statute of repose, cannot be lost sight of.

H. As to statutory limitation period and its extension by Courts:

(a) What is ordinarily prescribed as inflexible limitation period by the competent legislative organ of the State (Parliament) for pursuing legal remedies, such as by suit or Counterclaim, cannot be elongated by the judicial organ, in the absence of statutory enablement by invoking some doctrine of law or maxim; had the said period been prescribed by the courts, arguably courts could extend the same, which is not the case here; it is not the case of the respondent that because of legal disability such as minority, lunacy or detention, certain period brooked as delay merits discount while computing or reckoning the period of limitation; the Legislature may provide for condonation of delay in filing the suit or Counterclaim if it so chooses and that in some circumstances, it has done so, is again beside the point since such a concession is

not statutorily extended to the suit and consequently to the Counterclaim.

(b) Limitation bars the remedy:

(a) The respondent's contention that he has already laid the foundation for the filing of Counterclaim in the original Written Statement itself, pales into insignificance since what the law of limitation bars is the remedy and not the grounds on which it is founded; in other words, even if the respondent had taken up all the grounds in his Written Statement as filed originally, a prayer for counter decree cannot be belatedly superadded once the same becomes time-barred; counsel relies on the decision of Kerala High Court in **SABHARI SYNDICATE Vs. CATHOLIC SYRIAN BANKING LIMITED, ILR 2001 (2) KER 33**, wherein para 9 reads as under:

"9. The next contention raised by the respondent is that the counter claim attempted to be made by the petitioner is barred by limitation and therefore it cannot be allowed. As already note the petitioner has contended that in the written statement originally filed by them there is factual foundation with regard to the counter claim and since the claim made in the written statement is vague and not specific they sought to amend the written statement by making the claim specific...Therefore, according to the petitioner, in the interests of justice the amendment of the written statement should be allowed even if it is found that the counter claim made by them is barred by time on the date when the application

was moved to amend the written statement. It is not disputed that the general rule is that the courts will decline to allow the amendment of the pleading when fresh suit on the amended claim will be barred by limitation on the date of application seeking amendment of the pleadings. But it is well settled that where the amendment does not constitute a new or additional cause of action or raises any new case but only elaborates or elucidates the facts already on record the amendment can be allowed under O. VIII R. 6A even after the expiry of the statutory period of limitation.”

(b) The reliance on the aforesaid decision is not profitable to the respondent because: the observations show that there was already a vague prayer for Counterclaim in the Written Statement filed by the defendant therein and the amendment sought was only anticipatory of what was already claimed; secondly, the amendment sought for was not on a fresh or new cause of action unlike in the case at hand; thirdly, this decision cannot be construed to lay down a law contrary to what has been stated by the Apex Court in Kalra Case into which case of the parties herein strictly fits.

I. As to discretionary orders and challenge in supervisory writ jurisdiction:

The vehement contention of learned Sr. Advocate Mr. Srinivas Raghavan that, discretion having been

exercised by the learned trial judge, the impugned order granting leave to amend the pleadings has been made and therefore, Writ Courts exercising a limited supervisory jurisdiction constitutionally vested under article 227 do not interfere, is bit difficult to countenance; the discretion to amend the pleadings for making a substantive claim is one thing and the power to elongate the period of limitation prescribed by law, is another, as already discussed above; when court had no discretion to disobey the mandate of law namely, Section 3(i) r/w 3(2)(b)(ii) of the Limitation Act, 1963, and therefore, it could not have granted leave to make a Counterclaim by amending the Written Statement, there is an error of great magnitude apparent on the file of the record and therefore, the Writ Court is bound to interfere to set the same at naught.

In the above circumstances, this Writ Petition is entitled to succeed and accordingly it does; a Writ of Certiorari issues quashing the impugned order; the subject application of the respondent seeking leave to amend the Written Statement for introducing the Counterclaim is dismissed.

All other contentions of the parties having been kept open, learned Judge of the court below is requested to try & dispose off the suit within an outer limit of one year, and report compliance to the Registrar General of this Court.

Costs made easy.

**Sd/-
JUDGE**

Snb/