

HIGH COURT OF MADHYA PRADESH: JABALPUR

No. C/1716...../ Jabalpur, dated 25/02/2025
III-2-6/2025

To,

The Principal District and Sessions Judge(s),
All in the State (M.P.)

Subject:- Compliance of directions of Hon'ble High Court of Madhya Pradesh, Jabalpur Order dated 14.02.2025 passed in M.P. No. 288/2025 in the case of Narendra Kumar Rawat Vs. Surendra Kumar Rawat & Ors.

Sir/Madam,

Please find enclosed herewith a copy of the Order passed by Honourable High Court of Madhya Pradesh, Jabalpur dated 14.02.2025 in **M.P. No. 288/2025**, (*Narendra Kumar Rawat Vs. Surrender Kumar Rawat & Ors.*).


As directed, I request you to bring the same into the knowledge of all the Judicial Officers under your kind control for information, compliance and necessary action.

Encl:- As above.


RITURAJ SINGH CHOUHAN
REGISTRAR District Establishment

Endt. No. 1717...../ Jabalpur, dated 25/02/2025
III-2-6/2025

Copy forwarded to Registrar (J-I) for information and appropriate action.


RITURAJ SINGH CHOUHAN
REGISTRAR District Establishment



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 14th OF FEBRUARY, 2025

MISC. PETITION No. 288 of 2025

NARENDRA KUMAR RAWAT

Versus

SURENDRA KUMAR RAWAT AND OTHERS

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Appearance:

*Shri Siddharth Gulatee - Senior Advocate with Shri Sudhir Kumar Sharma -
Advocate for the petitioner.*
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ORDER

After arguing at length, learned counsel for the petitioner prays for withdrawal of this miscellaneous petition with liberty to file appropriate application before Trial Court at the appropriate stage of pending suit, after obtaining certified copies of the record/documents relating to mutation of defendants.

2. Prayer being reasonable is accepted and this misc. petition is permitted to be **withdrawn** and is hereby **disposed off** with the aforesaid liberty.

3. It is made clear that this Court has not expressed any opinion on merits and demerits of the case.

4. Misc. application(s), pending if any, shall stand closed.

5. It is necessary to mention here that long back on 28.08.2021, this Court had, in CR 400/2021 (Mazid Beg vs. Smt. Subhashini Pandey and others) reported in 2023 Supreme (Online) (MP) 10347 = ILR 2024 MP *12 = 2023:MPHC-JBP:40231, in relation to the practice being adopted by some



counsels and courts, made observations about correct procedure to be adopted while trying the civil suit/counter claim, but it is seen that no care is being taken by the counsels or the courts. For ready reference, relevant extract of the order in Mazid Beg (*supra*) is as under:-

“7. Undisputedly, after death of original plaintiff- Mazid Beg, his legal representatives were substituted in the plaint and under order of this Court, the name of applicant - Arkey Investment Pvt. Ltd. was also added as one of the plaintiffs. By way of application under Order 7 Rule 11 CPC, the plaintiffs have raised objection to the effect that because of non-substitution of legal representatives of plaintiff- Mazid Beg and non-impleadment of Arkey Investment Pvt. Ltd. in the counter-claim, the same has abated.

8. In the case of Organic Insulations Vs. Indian Rayon Corporation Ltd. (2003) 9 SCC 187 (supra), Hon'ble Supreme Court has held as under:

“3. Coming to the provisions of Order 8 Rule 6-A, although sub-rule (4) says that the counter-claim will be treated as a plaint, under sub-rule (2), such counter-claim has the same effect as a cross-suit so as to enable the court to pronounce a final judgment in the same suit, both on the original suit and on the counter-claim. As the substitution has been made by the plaintiff in the suit, the legal heirs of the plaintiff will have full opportunity to defend the counter-claim as both the suit and the counter-claim will be tried in the same proceeding and therefore, no prejudice would be caused to the legal heirs of the plaintiff in the counter-claim. We, therefore, find that the contention of the learned counsel for the appellants has no force.”

9. In view of the aforesaid decision in the case of Organic Insulations (supra) and further in view of the provisions contained under Order 8 Rule 6-A to G of CPC, in my considered opinion, after making substitution/addition in the plaint, there is no need to substitute/add the legal representatives of plaintiff or defendant or additionally added parties, in the counter-claim also.

10. In addition to the aforesaid it is pertinent to mention here that Rule 6A of CPC does not say as to who shall be parties to the counter claim, however it can be filed only against the plaintiff(s) and against no other person. Order VII Rule 1 CPC



prescribes about particulars to be contained in plaint but order VIII does not prescribe containing of such particulars in the written statement or counter-claim also. Meaning thereby the particulars about plaintiff(s) and defendant(s) remain the same in both cases as shown in the plaint and in my considered opinion, parties to the suit are treated the parties to the counter-claim also, therefore, there arises no question of substitution of LRs/addition of new party in the counter claim also.

11. In the case of Gastech Process Engineering (India) Pvt. Ltd. Vs. Saipem 2009 (159) DLT 756 and Hari Singh Kapur Vs. Ajit Kumar Kapur and Ors. 2008(4) Civil Court Cases 812 (P&H), Delhi and Punjab & Haryana High Courts have held that counter-claim cannot be filed against the persons who are not parties to the suit i.e. against the stranger to the suit. It is also well settled that without written statement, there cannot be a counter-claim.

12. In the present case the particulars of parties (i.e. plaintiffs and defendants) have been given in the plaint only and rightly while filing counter claim, the same has been adopted by the defendant/counterclaimant also, therefore, in such condition, even the question of substitution in the counter-claim does not arise.

13. As such, it can be concluded that the parties to the suit and counterclaim both, remain the same, however it is the choice and requirement of the one or more defendants to file counter-claim or not.”

6 . Because a counter claim is treated as a suit, therefore, just contrary to procedure prescribed in the CPC, a practice has developed to the effect that whenever a counter claim is filed by the defendant(s), the same is filed with a different title, renaming the defendant(s) of the counter claim as “*plaintiff(s) of counter claim*” and the plaintiff(s) is/are shown to be the “*defendant(s) of counter-claim*”. Without raising any objection, some Courts have also adopted the said unknown procedure and are trying the suit/counter claim in the said manner, which is not known to the law/CPC.

7. In the case in hand, a civil suit appears to have been filed by plaintiff-



Narendra Rawat against the defendants 1 to 4 (Surendra Kumar Rawat, Vijendra Kumar Rawat, Smt. Guddibai and State of Madhya Pradesh). In the civil suit, by following correct procedure, a counter claim has been filed by the defendants 1-2 (Surendra Kumar Rawat and Vijendra Kumar Rawat) against the plaintiff (Narendra Kumar Rawat).

8. But, when the plaintiff had filed written statement to the counter claim, he changed the original title of suit, describing the defendants 1-2 as “*Surendra Kumar and another--Counterclaimants*” vs. “*Narendra Kumr Rawat--Defendant*” and in the entire written statement the plaintiff-Narendra Kumar Rawat has shown himself as “*defendant of counterclaim*”.

9. It is very strange that while recording deposition too, trial Court has in beginning of the deposition, mentioned “*counterclaim plaintiff witness no. 1*”. Then in the same deposition “*Chief examination by Shri Punit Verma, Advocate for counter claimant/plaintiff*”, has been mentioned. Thereafter “*Cross-examination by Shri Nitesh Gaur, Advocate for defendant*” has been mentioned, whereas Shri Nitesh Gaur, Advocate is for the plaintiff- Narendra Kumr Rawat.

10. Some copies of the trial Court’s record available with this Court show that thereafter an application u/o 16 Rule 1 CPC was filed by plaintiff-Narendra showing himself as defendant-Narendra, which has been decided by the impugned order.

11. Aforesaid practice started by the counsels and accepted by some Courts, does not find support with any provision in the CPC or with any decision given by any Court in the Country, therefore, all the Courts of



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District Judiciary in the State of Madhya Pradesh deserve to be informed about the existing decision of this Court in case of Mazid Beg (*supra*), with a view to avoid future mistakes.

12. Registry is requested to circulate this order to all the concerned.

(DWARKA DHISH BANSAL)
JUDGE

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