

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No. 4880 of 2014 (O&M)
Date of decision: 01.12.2015**

Rattan Chand

... Petitioner

versus

Biru Ram and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. H.S. Dhindsa, Advocate for the petitioner.

Mr. Sandeep Jain, Advocate for the respondents.

K.Kannan, J.

The counter claim filed in respect of execution which had arisen even prior to the suit and which was available at or before filing the written statement cannot be permitted by the plain reading of Order 8 Rule 6A. The Section is reproduced as under:

6A. Counter claim by defendant.-

(1) A defendant in a suit may, in addition to his right of pleading a set off under rule 6, set up, by way of counter claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of to suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not:

Provided that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter claim shall have 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 claim and on the counter claim.

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(3) The plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the court.

(4) The counter claim shall be treated as a plaint and governed by the rules applicable to plaints.

This provision has come up for consideration before the Supreme Court in Bollepanda P. Poonacha Vs. K.M. Madapa, 2008 (3) RCR (Civil) 150 which held that the Counter claim will be restricted to the issues which the defendant could seek for an adjudication of any matter arising before or after the suit but before the statement was filed. In yet another judgment in Rohit Singh and others Vs. State of Bihar, 2007 (1) RCR (Civil) 674, it was stated that the counter claim could be filed even after filing the written statement but it cannot be filed after the issues were framed and evidence was closed. The judgment in Rohit Singh's case (Supra) consequently covers the case and it is no argument that the defendant will not bring any additional evidence and will merely make submissions about the counter claim.

Counsel appearing on behalf of the respondent states some decisions of this Court in Mohinder Singh Vs. Karnail Singh and others, 2012 (5) RCR (Civil) 55, M/s Pritam Rice & General Mills Anga Kirri and another Vs. M/s Guru Nanak Traders Commission Agents and others, 2014 (4) RCR (Civil) 613, Avtar Singh Vs. Smt. Rajwanti and another, 2009 (4) RCR (Civil) 400, that appear to take the limit of discretion as available. I will allow myself no such discretion beyond what the CPC provides and how the said provision has been interpreted by the Supreme Court.

The impugned order is set aside and the revision petition is allowed with the costs of Rs. 3,500/- against the respondents.

(K.KANNAN)
JUDGE

01.12.2015

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