

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

**CR No.1122 of 2016
Decided on: 24.02.2016**

Amit Sharma

....Petitioner

Versus

Bimla Devi and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. Gourav Goel, Advocate
for the petitioner.

REKHA MITTAL J. (Oral)

The present petition lays challenge to order dated 30.01.2016 passed by the Civil Judge (Junior Division), Ambala, dismissing the application filed by petitioner for permission to file counter claim (Annexure P-5).

Counsel for the petitioner contends that Bimla Devi (respondent No.1) has filed a suit for permanent injunction pertaining to a street depicted in the Site Plan appended with the plaint. The petitioner/defendant filed the written statement contesting claim of the respondent/plaintiff. Later, he filed an application for permission to file counter claim and the same has been dis-allowed by the learned trial Court primarily on the ground that application has been filed at a belated stage as the respondent/plaintiff has already closed his evidence and the case is pending for evidence of the defendants. It is vehemently argued

that the learned trial Court committed a gross error as it failed to interpret the provisions of Rules 6A to 6C of Order VIII of the Code of Civil Procedure (in short 'CPC') in right perspective. In support of his contention, he has relied upon judgment of the Hon'ble Supreme Court of India ***“Mahendra Kumar and another vs State of M.P. and others”***, AIR 1987 (SC) 1395. He has further referred to judgment of the Karnataka High Court ***“Hanumanthagouda vs Bandu @ Bandeppa Venkatesh Kulkarni and others”***, AIR 2001 (Karnataka) 10 and judgment of the Bombay High Court ***“Sheshrao vs Ganesh”***, 2006(6) Maharashtra Law Journal 728.

I have heard counsel for the petitioner and perused the records.

There cannot be any quarrel with proposition of law laid down by the Apex Court in Mahendra Kumar and another's case (*supra*), relied upon by the Karnataka High Court in Hanumanthagouda's case (*supra*) and the Bombay High Court has relied upon decision of the Karnataka High Court in the aforesaid authority. The Hon'ble Apex Court in Mahendra Kumar and another's case (*supra*), in Para 15, while interpreting the provisions of Rule 6A(1) of Order VIII CPC has laid down, reads thus:-

“The next point that remains to be considered is whether Rule 6A(1) of Order 8, Civil Procedure Code bars the filing of a counter-claim after the filing of a

written statement. This point need not detain us long, for Rule 6A(1) does not, on the face of it, bar the filing of a counter claim by the defendant after he had filed the written statement. What is laid down under Rule 6A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had 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. The High Court, in our opinion, has misread and misunderstood the provision of Rule 6A(1) in holding that as the appellants had filed the counter claim after the filing of the written statement, the counter claim was not maintainable.”

In view of the above, I find merit in contention of the petitioner that application for filing of counter claim cannot be dismissed on the ground that the counter claim is not maintainable either after filing of the written statement or framing of issues or even adducing evidence by either of the parties. However, there cannot be any dispute that a counter claim can be filed provided the cause of action had accrued to the defendant before the defendant had delivered his defence or before the time limited for delivering his defence has expired as has been envisaged under Rule 6A (1) of Order 8 CPC. In the case at hand, the written statement was filed by the petitioner on 16.11.2010 in a suit instituted in the year 2010. In the counter claim (Annexure P-5), there is no reference as to when cause of action to file the counter claim accrued to the

petitioner much less having accrued prior to the petitioner delivered his defence or before the time limited for delivering his defence has expired. As the counter claim does not satisfy the requirements of Rule 6A(1), I do not find any merit in the application to allow the petitioner to file counter claim.

In view of what has been discussed hereinabove, the petition is dismissed without prejudice to the rights of the petitioner to take recourse to appropriate remedy for adjudication of his claim sought to be raised by way of counter claim, in accordance with law.

(REKHA MITTAL)
JUDGE

24.02.2016
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