

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CR No.283 of 2015 (O&M)  
Date of decision:17.05.2016

Gurdeep Singh and another

... Petitioners

Vs.

Gurwinder Singh Virk and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Rakesh Chopra, Advocate  
for the petitioners.

Mr. A.K.Handa, Advocate  
for respondent No.1.

**AMIT RAWAL J. (Oral)**

The petitioners are aggrieved of the impugned order dated 18.10.2014 (Annexure P-1), whereby, an application filed under Order 8 Rule 6 read with Section 151 of the Code of Civil Procedure, for proceeding with the counter claim at the instance of the defendants, has been dismissed.

Mr. Rakesh Chopra, learned counsel appearing on behalf of the petitioners submits that in a suit filed by the respondent-plaintiffs claiming permanent injunction, the petitioner-defendants had filed a counter claim seeking mandatory injunction. However, as per the order dated 09.01.2012 (Annexure P-4), suit was dismissed in default. Though there was no separate order of dismissal of the counter claim yet the counter claim has also been sent to the record room. The Order 8 Rule 6(D) of the Code of Civil Procedure envisages that the counter claim has to be decided as an

independent suit. In this regard, the petitioners have moved an application for recalling of the order which has erroneously been dismissed.

Mr. A.K.Handa, learned counsel appearing on behalf of respondent No.1 submits that revision petition, much less, application is not sustainable as no application for restoration of the counter claim has been filed. Dismissed in default of the suit also entails to the dismissal of the counter claim, therefore rightly so, the application has been dismissed.

I have heard learned counsel for the petitioners and appraised the paper book. For the sake of brevity, Order 8 Rule 6 (D) of the Code of Civil Procedure reads thus:-

**6D. Effect of discontinuance of suit.-** If in any case in which the defendant sets up a counter claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter claim may nevertheless be proceeded with.

On perusal of the statutory provisions of law, it is settled law that counter claim is to be treated as a separate suit. Whereas, on the contrary, order dated 09.01.2012 does not show that the counter claim was dismissed in default, but it only envisages the dismissal of the suit in default which reads thus:-

*“Present: None.*

*Despite repeated calls neither the plaintiff nor any counsel appeared. The suit of the plaintiff is dismissed in default. File be consigned to the Record Room.”*

In my view, the trial Court ought to have more vigilant, rather should have been specific in passing the order and rightly so, the

jurisdiction was invoked by filing an application for recalling of the order.

The impugned order dated 18.10.2014 (Annexure P-1) is set aside and counter claim of the petitioner-defendants is restored to its original number.

Accordingly, the revision petition is allowed.

**(AMIT RAWAL)**  
**JUDGE**

**May 17, 2016**  
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