

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

CR No.6288 of 2015

Date of decision :28.05.2016

Promila Chopra and another

..... Petitioners

Versus

Sat Pal and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Rohit Ahuja, Advocate
for the petitioners.

Mr. Atul Jain, Advocate
for respondents no.1 to 5, 10 to 23.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
- 2. To be referred to the Reporters or not?Yes.**
- 3. Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

1. The present revision petition has been preferred against the order dated 02.07.2015, passed by the learned trial Court vide which the application moved by the petitioners-plaintiffs for rejection of the counter claim filed by the respondents-defendants no.1 to 5, 10 to 23, has been dismissed.

2. The petitioners-plaintiffs have filed the suit for declaration that they and defendants no.24 are owner to the

extent of 1/5 share of the house bearing no. B-V/166, Mohalla Jatpura, Kapurthala along with consequential relief of permanent injunction. Respondents no.1 to 5 and 10 to 23 have filed the counter claim for passing the decree of separate possession by way of partition by metes and bounds of the suit property. The said counter claim was filed by them after filing of the written statement.

3. Learned counsel for the petitioners contended that as per the provisions of Order 8 Rule 6A of the Code of Civil Procedure, 1908 (for short 'CPC'), if the counter claim is not set up by the defendant in the original written statement, it cannot be taken on record and it is not permissible to file the counter claim after filing of the written statement. To support his contentions, he has relied upon case **M/s Pritam Rice & General Mills Anga Kirri and another Vs. M/s Guru Nanak Traders Commission Agents and others 2014 (4) R.C.R (Civil) 613**. Thus, he contended that the counter claim filed by the respondents after filing of the replication is liable to be rejected.

4. On the other hand, learned counsel for the contesting respondents contended that it is not mandatory that the counter claim must be filed along with the written statement. Even thereafter, the counter claim can be filed with respect to the cause of action which had accrued to them before they had filed the written statement. He contended that

the cause of action to seek the decree of separate possession by way of partition had accrued to the contesting respondents even before filing of the written statement by them. So, the counter claim is maintainable. To support his contentions, he has relied upon case **Vijay Prakash Jarath Vs. Tej Prakash Jarath 2016 (2) R.C.R (Civil) 392.**

5. I have duly considered the aforesaid contentions.

6. The petitioners have filed the suit for declaration claiming themselves and defendant no.24 to be the owner to the extent of 1/5th share in the disputed house along with consequential relief of permanent injunction. Respondents no.1 to 5 and 10 to 23 filed the written statement dated 02.08.2014 contesting the said suit. Thereafter, they have filed the counter claim for decree for separate possession by way of partition by metes and bounds of the house in dispute. This counter claim is dated 06.01.2015. The only question involved in the present revision petition is as to whether the counter claim filed by the contesting respondents after filing of the written statement will be maintainable or not or is liable to be rejected. Order 8 Rule 6A CPC reads 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.

(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.”

7. In a latest judgment titled as **Vijay Prakash Jarath (Supra)**, the Hon'ble Apex Court has laid down as under:-

“9. It is quite apparent from the factual position noticed hereinabove, that after the issues were framed on 18.10.1993, the counter claim was filed by the appellants before this Court (i.e. by defendant Nos.3 and 4 before the trial court) almost two and a half years after the framing of the issues. Having given our thoughtful consideration to the provisions relating to the filing of counter claim, we are satisfied, that there was no justification whatsoever for the High Court to have declined, the appellant before this Court from filing his counter claim on 17.06.1996, specially because, it is not a matter of dispute, that the cause of action, on the basis of which the counter claim was filed by defendant Nos.3 and 4, accrued before their written statement was filed on 11.11.1992. In the present case, the respondent-plaintiff's evidence was still being recorded by the trial court, when the counter-claim was filed. It has also not been shown to us, that any prejudice would be caused to the respondent-plaintiff before the trial court, if the counter-claim was to be adjudicated upon, along with the main suit. We are of the view, that no serious injustice or irreparable loss (as expressed in paragraph 15 of Bollepanda P.Pooncha's case), would be suffered by the respondent-

plaintiff in this case.”

As per the aforesaid ratio of law laid down by the Hon'ble Apex Court, if the cause of action has accrued to the defendants/counter claimants before filing the written statement, counter claim filed even after filing of the written statement will be maintainable. In that case, the counter claim was filed when even the issues were framed and case was pending at the stage of plaintiffs evidence. But, the case in hand is on better footings as this fact has not been disputed at bar that when the counter claim was filed even the issues were not framed and the trial has not yet commenced. Moreover, in Para no.10 of the counter claim, it has been categorically mentioned that cause of action to file the counter claim has arisen one and half year ago from the final refusal of the respondents to accede to the genuine request of the counter claimants. So, the cause of action to file the counter claim has arisen before filing of the written statement. Thus, the counter claim filed by the contesting respondents is quite maintainable. Case **M/s Pritam Rice & General Mills Anga Kirri (Supra)** relied upon by the petitioner is of no help to him in view of the latest authoritative pronouncement of the Hon'ble Apex Court in **Vijay Prakash Jarath's case (Supra)**.

8. Thus, keeping in view of my aforesaid discussion, I do not find any illegality in the well reasoned order passed by the learned trial Court calling for any interference by this

Court.

9. Consequently, the present revision petition having no merits, is hereby dismissed.

28.05.2016

S.khan

(DARSHAN SINGH)
JUDGE