

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

CR No.4461 of 2017(O&M)

Date of Decision:-12.07.2017

Deepak Kumar.

.....Petitioner.

Versus

Smt. Kulwinder Kaur.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Rahul Garg, Advocate for the Petitioner.

JASWANT SINGH, J. (ORAL)

Petitioner (tenant) is in revision aggrieved against the orders dated 18.10.2016 (P-5), 08.05.2017 (P-7) and 04.7.2017 (P-9) respectively passed by the learned Rent Controller, Naraingarh whereby his application/prayer for framing of proper issue on his counter claim in the pending eviction petition filed by the landlord has been dismissed including the application for clarification of the issue framed vide P-5.

Facts in brief are that the eviction petition was filed on 18.04.2013 by the landlady Smt. Kulwinder Kaur seeking ejectment of the petitioner(tenant) from Shop No.257/4 situated at Ward No.4, Main Bazar, Naraingarh, District Ambala on grounds of arrears, as also grounds of personal necessity. The petitioner (tenant) set up a counter claim for refund of rent at the rate of Rs.4750/- per month w.e.f. 01.10.2012 to February 2013 as an amount of Rs.40,000/- by way of security stood deposited with

the landlady.

The Rent Controller vide order dated 27.02.2015 (P-3) ordered the eviction on both the grounds, without deciding the issue set up in the counter claim. The appeal filed by the tenant was allowed by the Appellate Authority, Ambala vide judgment dated 31.08.2016 by recording that the Rent Controller was required to frame issue on account of counter claim and give his findings on the said issue. Accordingly the judgment was set aside and case was remanded back to the Rent Controller to frame issue on counter claim and after giving opportunity to lead evidence pass afresh judgment in the rent application in accordance with law. Consequently the Rent Controller vide order dated 18.10.2016 (P-5) has framed the following issue:-

- “ 1. *Whether counter claimant/respondent is entitled to counter claim for directing the petitioner to refund the rent w.e.f. 01.10.2012 to February 2013 @ Rs.4750/- per month to respondent/counter claimant which the petitioner had taken double from him as prayed for?OPP.* ”

Subsequently the tenant filed an application under Order 14 Rule 5 for framing of all the issues afresh which was declined vide order dated 8.5.2017 (P-7) and its clarification was also dismissed vide order dated 4.7.2017 (P-9).

Learned Counsel for the petitioner has argued that in the light of order dated 31.08.2016 (P-4) passed by the Appellate Authority, Ambala, the Rent Controller was required to frame issues on all aspects and permit adducing of evidence afresh and thereafter passes order.

After hearing learned Counsel for the petitioner (tenant) it is apparent that the plea is totally misconceived. The Appellate Authority vide order dated 31.08.2016 (P-4) while setting aside the previous judgment

passed by the Rent Controller due to mistrial had only directed the framing of fresh issue on counter claim and give findings afresh on the basis of evidence adduced on all the issues including issue of counter claim. The impact of the evidence on this freshly framed issue, no doubt would be considered in conjunction to the findings on the other issues while passing the judgment.

The Whole effort appears to be to delay the eviction proceedings pending since long.

In view of the above, finding no merit in the present revision petition, the same is hereby dismissed with costs of Rs.10,000/- to be deposited within one month from today with District Legal Services Authority, Ambala.

(JASWANT SINGH)
JUDGE

July 12, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>