

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

CR No.7373 of 2017 (O&M)

Date of decision : 27.10.2017

Daljit Singh Sall and others

...Petitioners

Versus

Ragbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Hardeep Singh, Advocate for the petitioners.

ANIL KSHETARPAL, J. (ORAL)

Landlord is in revision petition against the order dated 14.07.2017. By the impugned order, learned Rent Controller has held that the tenant is entitled to maintain a counter claim to recover the excess payment to the landlord.

Landlord had filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as “the Act of 1949”. Landlord had claimed that there were certain arrears of rent and, therefore, the tenant was liable to be evicted on account of the aforesaid non-payment. The tenant tendered the rent in the Court and filed its written statement and counter claim under Section 8 of the Act of 1949. Section 8 of the Act of 1949 reads as under:-

“8. Rent which should not have been paid may be recovered. (1) Where any sum has, whether before or after the commencement of this Act, been paid which sum is by

reason of the provisions of this Act irrecoverable, such sum shall, at any time within a period of six months after the date of the payment, or in the case of a payment made before the commencement of this Act, within six months after the commencement thereof, be recoverable by the tenant by whom it was paid or his legal representative from the landlord who received the payment or his legal representative, and may without prejudice to any other method of recovery be deducted by such tenant from any rent payable within such six months by him to such landlord.

(2) In this Section the expression "legal representative" has the same meaning as in the Code of Civil Procedure, 1908, and includes also in the case of joint family property, the joint family of which the deceased person was a member."

The Court proceeded with the counter claim. Landlord filed an application that the counter claim should be rejected on the ground that only a separate petition could be filed and counter claim could not be filed in this case. The aforesaid request of the landlord was rejected.

Counter claim is always treated as a separate suit/proceedings. In the present case, the tenant had filed a counter claim under Section 8 of the Act of 1949. Once there is a specific provision permitting the tenant to recover the excess payment, this Court does not find any good ground to interfere with the order passed by the Rent Controller.

Revision petition is dismissed.

27.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No