

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

**CR No.8583 of 2017
Date of decision:16.01.2018**

Babita ... Petitioner

Vs.

Jaswinder and another ... Respondents

CR No.8593 of 2017

Babita ... Petitioner

Vs.

Kamlesh Sharma ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajesh Lamba, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two revision petitions bearing Nos.8583 and 8593 of 2017.

The petitioner-defendant is aggrieved of the impugned order dated 15.11.2017 (Annexure P-3), whereby, the application for setting up the counter claim in the written statement filed in two suits claiming permanent injunction, has been rejected.

Mr. Rajesh Lamba, learned counsel for the petitioner submitted that in both the cases, civil suit has been filed claiming permanent

injunction, whereas, petitioner is in possession of the property and wanted to set up a counter claim by way of declaration but the fact of the matter is that the written statement had already been filed and the trial Court by applying the provisions of Order 8 Rule 6-A CPC has rejected the application. He further submitted that for the purpose of claiming declaration and ownership, there is no limitation. This aspect has totally been ignored by the trial Court, thus, there is illegality and perversity in the order under challenge, much less is without jurisdiction.

I have heard learned counsel for the petitioner, appraised the paper book.

The suit for permanent injunction has been filed in the year 2015, whereas, written statement had already been filed but the counter claim was sought to be filed at later point of time without seeking amendment of the written statement. For the sake of brevity, the provisions of Order 8 Rule 6-A CPC read 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.”

If at all the petitioner had moved an appropriate application seeking amendment of the written statement, perhaps rigours of Order 8 Rule 6-A CPC would not have come in his way.

Be that as it may, the petitioner-defendant in my view, would be at liberty to seek declaration in an independent suit in accordance with law instead of seeking counter claim.

While upholding the impugned order, revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

January 16, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No