

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1181 of 2017 (O&M)

Date of Decision: March 12, 2019

Jagdish Ram Mittal

...Petitioner

Versus

Monika Mittal & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Vikas Mehsempuri, Advocate,
for the petitioner.

Mr. Akshay Jain, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present civil revision is directed against the impugned order, whereby the application of the petitioner-plaintiff for rejection of the counter claim by invoking the provisions of Order 8 Rule 6-C CPC and for non-payment of the court fees, has been dismissed.

Petitioner-plaintiff preferred a civil suit for injunction against the respondent-defendants from interfering in the peaceful possession of the house measuring 169.5 sq.yards out of total plot measuring 250 sq.yards as well as from obstruction in the construction of the separate wall. In the aforementioned suit, the defendant filed a counter claim restraining the plaintiff from interfering in her and children' peaceful life and for mandatory injunction directing the plaintiff to return all original documents, i.e., registered sale deed dated 16.05.1991 and other documents, like bank pass books, FDRs, cheque books, insurance policy and refund of gold and silver ornaments.

Mr. Vikas Mehsempuri, learned counsel for the petitioner-

plaintiff submitted that the counter claim was not maintainable as per the provisions of Rule 6-C of Order 8 CPC and the remedy was of a separate suit and if any court fees has been paid, for refund of the court fees and, therefore, dismissal of the application is wholly erroneous as there is no reference to the aforementioned plea.

Mr.Akshay Jain, learned counsel for the respondent-defendants submitted that it is premature for the plaintiff to seek rejection of the counter claim as no issue was pressed at that stage. Defendant No.1 is none else but the daughter-in-law of the plaintiff and the controversy arose after the death of her husband. She is residing there and, thus, prayed for dismissal of the revision petition.

Rule 6-C of Order 8 CPC deals with the exclusion of the counter claim which can be set up in independent suit and imposes an embargo for counter claim. The same reads thus:-

“6C. Exclusion of counter-claim— Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.”

The relief as sought would not, in my view, fall in the exclusion clause to non-suit the defendant as both the parties are seeking injunction against each other. It is to avoid harassment to the defendant, who is widow and daughter-in-law of the plaintiff.

As regards the payment of the court fees, the same can only be assessed at final stage when the counter claimant is able to bring on record the valuation of the documents.

For the reasons mentioned above, I do not find any illegality or perversity in the impugned order. Resultantly, the revision petition stands disposed of.

March 12, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No