

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

CR-522-2020(O&M)

Date of decision: 24.01.2020

Kuldip Singh @ Baljit Singh

.....Petitioner

Versus

Sunita Devi and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Saurabh Bajaj, Advocate for the petitioner

ANIL KSHETARPAL, J. (ORAL)

Petitioner-defendant No.1 has filed the present revision petition challenging the correctness of order passed by learned Civil Judge, Junior Division, Kurukshetra dated 30.11.2019. In a suit filed by the plaintiff, defendant No.5 filed a counter claim. Defendant No.1 filed an application for rejection of the counter claim on the ground that certain relief has been sought against the co-defendants and as such it is not maintainable. Learned Trial Court on appreciation of the pleadings found that relief has not only been sought against the plaintiff but also against the co-defendants. Such counter claim cannot be dismissed under Order 7 Rule 11 CPC.

This Court has heard learned counsel for the petitioner at length. He submits that some relief has been sought against co-defendants which is not permissible by filing a counter claim. He, hence, submits that the Court erred in refusing to reject the counter claim.

This Court has considered submissions made by the learned counsel for the petitioner. No doubt there is some substance in the

arguments of the learned counsel for the petitioner, however, there is another way to examine the entire controversy. It is not in dispute that a part of the counter claim as filed, relief has also been sought against the plaintiff. Thus the counter claim as such cannot be rejected under Order 7 Rule 11 CPC. There is no provision under Order 7 Rule 11 CPC rejecting only a part of the counter claim, which in essence is a plaint.

A counter claim is an independent suit for all intents and purposes. The counter claim can very well be entertained and decided as a separate suit.

Keeping in view the aforesaid facts, the present revision petition is disposed of with liberty to the petitioner to draw attention of the Trial Court towards this fact and apply for treating the counter claim as a separate suit.

Since this order has been passed without hearing the respondents, therefore, they shall be at liberty to move an application for recall, if so advised.

Disposed of.

24.01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No