

CR-831-2020

2023:PHHC:057025

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

CR-831-2020

Date of decision: April 21, 2023

Bimal Kumar Goel

....Petitioner

versus

Resham Singh Mann & others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Munish Gupta, Advocate
for the petitioner.

Ms. Grocia Jain, Advocate for
Mr. Ranjeet Kumar Jaswal, Advocate
for respondents No.1&2.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside the impugned order dated 16.10.2019 (Annexure P-6) passed by learned Additional Civil Judge (Senior Division), Patiala, whereby an application dated 24.04.2019 (Annexure P-4) moved by the petitioner/plaintiff for rejection of counter claim, was dismissed.

2. The revision petition is premised on the averments that learned Additional Civil Judge (Senior Division), Patiala, has erroneously dismissed the application moved by the petitioner ignoring the settled principles of law as also the provisions of Order 8 Rule 6, Order 8 Rule 6A, 6B and 6C. It is contended that defendants No.1 and 2 cannot file a counter claim in the suit preferred by petitioner/plaintiff and they are required to file a separate suit for that purpose. Therefore, prayer has been made to set aside the impugned order dated 16.10.2019 passed by learned trial Court.

3. Per contra, learned counsel appearing on behalf of respondents

No.1 and 2 submits that application filed by plaintiff/petitioner is not

maintainable and has been filed only to defeat the rights of counter-claimants.

4. I have heard learned counsel for parties and perused the case file.

5. Impugned order dated 10.10.2019 passed by learned trial Court, is premised, *inter alia*, on the following reasoning:

“Judicial record has been perused careful in the light of the above cited rival contentions of the parties.

As can be culled from the judicial record, the plaintiff by virtue of present suit, has sought recovery of Rs.73 lacs along with interest from the defendants namely Resham Singh Maan, Gurjot Singh Mann, Jasbir Singh and Sukhchain Singh whereas defendants No.1 and 2 through their counter claim have sought recovery of Rs.58 lacs along with interest from Bimal Kumar, Harjinder Singh, Jasbir Singh and Sukhchain Singh. From the key rings on file it can be duly inferred that there have been multiple financial transactions between the parties interse and as such the liability of each of the parties cannot be duly inferred that there have been multiple financial transactions between the parties interse and as such the liability of each of the parties cannot be decided separately through separate suits, rather the entire impact of the financial transactions between the parties is to be adjudicated upon vide a single judgment and decree. Thus it cannot be said that the counter claim filed by defendants No.1 and 2 is in the shape of separate suit rather the claim so mounted by the said defendants is inherently in the form of a cross suit. Order 8 Rule 6 of CPC provides for exclusion of counter claim only in the eventuality where such claim is ought not to be disposed of by way of counter claim but through an independent suit. On the basis of the factual matrix put forth in the counter claim of defendants No.1 and 2, this court is of the considered opinion that no grounds, justifiable enough, are made out for exclusion of the same rather it is to be decided along with the main suit and not by way of an independent suit.

As an upshot of the reasons cited supra, the application under deliberation is hereby dismissed. To come up on 4.12.2019 for filing replication, framing of issues and exploring the possibility of settlement as envisaged U/S 89 of CPC.”

7. Apart from the reasons given by Ld. Court below as reproduced above, I am of the view that on none of the counts as

envisaged under Order 7 Rule 11 of CPC, learned counsel has been

able to convince me that the counter claim was *ex facie* not maintainable.

8. Having heard the arguments of learned counsel for parties, I am of the opinion that there is no room for interference in the aforesaid valid reasons recorded by learned Court below. The Court below has rightly come to a conclusion that the counter claim filed by respondent/defendants No.1 and 2 is to be decided along with suit filed by petitioner/plaintiff and they are not required to file a separate suit for that purpose.

9. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.

10. In view of the aforesaid, revision petition is dismissed being devoid of merit.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 21, 2023
Nisha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No