

130 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3359-2023

Date of decision: 17.10.2023

SANJEEV KUMAR JANGRA AND OTHERS

...PETITIONERS

V/S

DEV KARAN DHARAMSHALA TRUST KATH MANDI AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Jaivir Yadav, Senior Advocate with
Ms. Sunita Shekhawat, Advocate and
Mr. Rohit Kumar Rana, Advocate
for the petitioners.

Mr. Vivek Suri, Advocate with
Mr. Vishal Jassal, Advocate and
Mr. Vrishank Suri, Advocate
for respondents No.1 to 3.

SANJAY VASHISTH J. (ORAL)

On 25.07.2023, following order was passed by this Court:-

“1. Present revision petition has been instituted by the petitioners (defendants No.1,3,5,6 and 7) challenging the order dated 10.03.2023 (Annexure P-1), whereby learned trial Court has dismissed the application for seeking permission to file counter claim.

2. Learned Senior Counsel for the petitioners submits that the application has been dismissed solely on the ground that same does not contain any mention about the specific “**cause of action**” accruing to the defendants in compliance to Order 8 Rule 6 (A) CPC. He further submits that cause of action is an admitted fact keeping in view of the paragraph No.13 of the application, which reads as under:

‘13.The defendant being the office bearers and Trustees of the duly executed and registered Trust have served notice in a legal way asking the plaintiff to handover the charge of management and function of the Trust but the plaintiff went on putting

off the defendants at one pretext or the other and has filed the fake and frivolous suit, which gave rise to the present counter claim.'

3. *There is a reference for serving of notice in a legal way to the plaintiffs by the defendants. Reference is also made to the paragraph No.20 of the plaint, where there is an admission regarding the receiving of the legal notice dated 27.06.2015 through their counsel Sh. Amit Kumar, Advocate Bahadurgarh.*

4. *Thus, Mr. Yadav, learned Senior Advocate submits that there should not be any misconception to the Court, deciding the application, regarding cause of action because the said fact is already admitted in the plaint in paragraph No.20 and thus, the application filed by the petitioners(defendants No.1,3,5,6 and 7) was in compliance to the provisions of Order 8 Rule 6(A) of CPC. For the sake of convenience, paragraph No.20 of the plaint is reproduced hereunder:*

'20.That the defendants have illegally issued a notice dated 27.6.2015 through their counsel Sh. Amit Kumar, Advocate, Bahadurgarh to the office bearers of the plaintiff No.1 to hand over to them all the record of the Dev Karan Dharamshala Trust and have also circulated a pamphlet to this effect in the Town, as such the plaintiffs office bearers came to know of the illegal registration of the Trust by the defendants in the office of the Sub-Registrar, Bahadurgah, Distt. Jhajjar. '

5. *Mr. Yadav, learned Senior counsel also relies upon the judgment of the Apex Court titled as **Vijay Prakash Jarath Vs. Tej Prakash Jarath, 2016 (2) R.C.R. (Civil) 392 Doc id #748711** and refers to paragargh No. 9 of the same, which reads as under:*

'9.It is quite apparent from the factual position noticed herein above, that after the issues were framed on 18.10.1993, the counter claim was filed by the appellants before this Court (i.e. by defendant Nos.3 and 4 before the trial court)almost two and a half years after the framing of the issues. Having given our thoughtful consideration to the provisions relating to the filing of counter claim, we are satisfied, that there was no justification whatsoever for the High Court to have declined, the appellant before this Court from filing his counter claim on 17.06.1996, specially because, it is not a matter of dispute, that the cause of action, on the basis of which the counter claim was filed by defendant Nos.3 and 4, accrued before their written statement was filed on 11.11.1992. In the

present case, the respondent-plaintiff's evidence was still being recorded by the trial court, when the counter-claim was filed. It has also not been shown to us, that any prejudice would be caused to the respondent-plaintiff before the trial court, if the counter-claim was to be adjudicated upon, along with the main suit. We are of the view, that no serious injustice or irreparable loss (as expressed in paragraph 15 of Bollepanda P.Pooncha's case), would be suffered by the respondent-plaintiff in this case.'

6. *On being asked by the Court, Mr. Yadav, learned Senior Counsel submits that if the rights of the plaintiffs are not prejudiced, in compliance to the provisions of Order 8 Rule 6(a) of CPC, counter claim can be instituted at any time because there is no fixed limitation for filing the same.*

7. *At this stage, learned Senior counsel submits that respondents No. 1 to 3 would be the only contesting respondents as others are the proforma respondents, therefore he states that service of notice qua other respondents be dispensed with at this stage.*

8. *Ordered accordingly.*

9. *Notice of motion at this stage be issued only to respondents No. 1 to 3 for 17.08.2023.*

10. *Process dasti as well.*

11. *To be shown in the urgent list."*

2. Learned counsel for respondents No.1 to 3-plaintiffs cites the judgment of the Hon'ble Apex Court rendered in ***Ashok Kumar Kalra versus Wing Cdr. Surendra Agnihotri and others, 2020 (1) RCR (Civil) 255-law finder doc id #1624000*** and submits that this judgment is subsequent to earlier one cited by learned senior counsel for the petitioners (***Vijay Prakash Jarath Vs. Tej Prakash Jarath, 2016 (2) R.C.R. (Civil) 392 Doc id #748711***).

3. Faced with the situation, learned senior counsel for the petitioners prays for permission to withdraw the present revision petition with liberty to file a fresh civil suit on the same cause of action, as may be permissible under the law.

4. In view of the statement made by learned Senior counsel for the petitioners, the instant revision petition stands dismissed as withdrawn, with the liberty as sought and recorded hereinabove.

October 17, 2023
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(SANJAY VASHISTH)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |