

CR No.1743 of 2024

2024:PHHC:042510

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

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**CR No.1743 of 2024 (O&M)
Reserved on : 20.03.2024
Pronounced on : 01.04.2024**

Pushpa Enterprises & Anr.

....Petitioners

VERSUS

ITC Ltd.

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Deepam Raghav, Advocate for the petitioners.

ALKA SARIN, J.

1. The present revision petition has been filed by the defendant-petitioners challenging the order dated 20.11.2023 dismissing the application filed by them seeking permission to file counter-claim.

2. The plaintiff-respondent filed a suit for recovery of Rs.1,51,56,669/- against the defendant-petitioners. The defendant-petitioners were proceeded against ex-parte on 21.09.2021 and the case was adjourned for ex-parte evidence. Thereafter, an application under Order IX Rule 7 CPC was filed on behalf of the defendant-petitioners on 23.11.2021 which application was allowed on 23.12.2021. On 22.03.2022 written statement was filed on behalf of the defendant-petitioners. On the same date an application under Order VII Rule 11 CPC read with Section 151 CPC was also moved on behalf of the defendant-petitioners which was subsequently withdrawn on 20.09.2022. After admission and denial of documents relied upon by both the parties, on 12.12.2022 issues were framed and the suit was adjourned to 12.01.2023. The evidence of the plaintiff-respondent was fixed

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for 23.01.2023. On 23.01.2023 the witness of the plaintiff-respondent was present but on the request of learned counsel for the defendant-petitioners his examination was not conducted. On 16.02.2023 the examination-in-chief of witness of the plaintiff-respondent was recorded and his cross-examination was deferred to 23.02.2023 and for examination of remaining witnesses of the plaintiff-respondent. On 23.02.2023 the suit was adjourned to 02.03.2023 and then to 16.03.2023. On 16.03.2023 the defendant-petitioners filed an application seeking permission to file a counter-claim. The counter-claim was filed along with the application but without the requisite court fee. On 06.04.2023 the deficiency in court fee on the counter-claim was made good by the defendant-petitioners and the plaintiff-respondent also filed it's reply to the application seeking permission to file counter-claim. Vide the impugned order the said application has been dismissed. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that the Trial Court erred in dismissing the application seeking permission to file counter-claim. It is submitted that the defendant-petitioners could not file the counter-claim earlier due to bad health and financial crisis and that there was no intentional delay in filing the counter-claim. Reliance has been placed on **Mahesh Govindji Trivedi vs. Bakul Maganlal Vyas & Ors. [2022 SCC Online SC 1390]** and **Southern Ancillaries Pvt. Ltd. vs. Southern Alloy Foundaries Pvt. Ltd. [AIR 2003 Mad 416]**.

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4. Heard.

5. The Trial Court dismissed the application seeking permission to file the counter-claim while placing reliance on the decision of the Hon'ble Supreme Court in the matter of **Ashok Kumar Kalra vs. Wing Cdr. Surendra Agnihotri & Ors. [2020 (1) RCR (Civil) 255 = (2020) 2 SCC 394]** and a decision of this Court in **Jaideep Kaur & Anr. vs. Gurmail Singh through his LRs & Ors. [2021 (4) RCR (Civil) 68]**. Issues in the present suit were framed on 12.12.2022 and evidence of the plaintiff-respondent started to be recorded on 16.02.2023. The application seeking permission to file the counter-claim was filed on 16.03.2023 without proper court fee which was made good on 06.04.2023. In Ashok Kumar Kalra's case (supra) it was held that :

“18. As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6-A in Order 8 CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counterclaim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant

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miscarriage of justice. At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counterclaim has to be filed along with the written statement and beyond that, the court has no power. The courts, taking into consideration the reasons stated in support of the counterclaim, should adopt a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counterclaim has to be filed, by curtailing the discretion conferred on the courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counterclaim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to CPC.

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21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- (i) Period of delay.
- (ii) Prescribed limitation period for the cause of action pleaded.
- (iii) Reason for the delay.
- (iv) Defendant's assertion of his right.
- (v) Similarity of cause of action between the main suit and the counterclaim.
- (vi) Cost of fresh litigation.
- (vii) Injustice and abuse of process.

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(viii) Prejudice to the opposite party.

(ix) And facts and circumstances of each case.

(x) In any case, not after framing of the issues.”

6. Thus, there is a clear-cut embargo on the filing of a counter-claim after the issues have been framed, as in the present case. The evidence of the plaintiff-respondent had also commenced. The decision in Mahesh Govindji (supra) is distinguishable as in that case the issues had still not been framed when the application seeking permission to file counter-claim was moved. In the case of Southern Ancillaries (supra) a decision of the Karnataka High Court was followed where it had been held that a counter-claim cannot be permitted to be filed when once recording of evidence commences.

7. In view of the above, I do not find any ground to interfere with the impugned order. There is no illegality or irregularity in the exercise of it's jurisdiction by the Trial Court. The present revision petition being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.04.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO