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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(201)

CR-3487-2022

Date of Decision: - 07.04.2025

Rakesh Kumar alias Rakesh Singla

....Petitioner

Versus

Satish Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Akshay Jindal, Advocate,
Mr. Abhishek Shukla, Advocate, and
Mr. Bhavya Vats, Advocate
for the petitioner.

Mr. Vikram Singh, Advocate, and
Mr. Abhinav Sood, Advocate
for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 22.07.2022 passed by the Civil Judge (Junior Division), Assandh, District Karnal, whereby the application of the petitioner to amend the written statement by filing the counter-claim in the main suit has been rejected.

2. Learned counsel for the petitioner has submitted that in the present case, the respondent had filed a suit for possession by way of redemption and the petitioner had filed a written statement dated 24.08.2018 and in the said written statement had raised a plea of oral



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agreement to sell stated to have taken place on 25.05.2017. It is further submitted that the entire stand of the petitioner was mentioned in the written statement but inadvertently no counter-claim was filed, moreso, with respect to specific performance of the said oral agreement. It is stated that subsequently an application was filed on 04.02.2022 under Order 6 Rule 17 CPC read with Section 151 CPC with a prayer to permit the applicant/defendant to amend the written statement by filing a counter-claim. It is further stated that the same has been illegally dismissed vide the impugned order. It is argued that the petitioner has already led his evidence and would not lead any further evidence in case the amendment is allowed and the petitioner be permitted to file the counter-claim on the basis of the plea taken in the written statement.

3. Learned counsel appearing for the respondent, on the other hand, has opposed the present revision petition and has submitted that the application for amendment for filing the counter-claim has been filed after the issues have been framed and after the entire evidence of the plaintiff as well as the defendant has been led and was in fact filed at the stage of rebuttal evidence. It is further submitted that in such a situation, the petitioner cannot be permitted to file a counter claim. In support of his arguments, learned counsel for the respondent has relied upon a judgment of the Hon'ble Supreme Court in case titled as “Ashok Kumar Kalra Vs. Wing Cdr. Surendra Agnihotri and others”, reported as **2020(2) SCC 394**. It is stated that even the plea raised with respect to the oral agreement and the fact that out of Rs.25 lakhs, Rs.24 lakhs had been paid



without getting the sale deed registered, is also baseless and unbelievable. It is argued that the impugned order has been rightly passed and deserves to be upheld.

4. This Court has heard learned counsel for the parties and has perused the paper-book and finds that the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

5. It is not in dispute that the respondent had filed a suit for possession by way of redemption against the present petitioner on the plea that he had mortgaged the property in question on 27.12.2013 and a mortgage deed was executed on the said date vide vasika No.3405/1 and after the mortgage of the said property, the possession of the same was delivered to the defendant. It is further stated that it was agreed between the parties that the petitioner/defendant would vacate the shop in question after the receipt of Rs.2 lakhs on or before 30.09.2016 and that the mortgagee would hand over the possession of the shop in question to the mortgagor. It is the case of the plaintiff that the plaintiff had approached the defendant and had made a request to vacate the premises after accepting the amount of Rs.2 lakhs i.e. mortgage money. The written statement dated 24.08.2018 was filed by the petitioner in which the plea with respect to there being an oral agreement to sell dated 25.05.2017 and the total consideration amount of Rs.25 lakhs, out of which Rs.24 lakhs had been paid, was raised and it was further his case that after receiving



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the balance sale consideration of Rs.1 lakh, a registered sale deed was to be executed.

6. It is not in dispute that the issues had been framed and the entire evidence of the respondent-plaintiff was concluded and thereafter, even the evidence of the present petitioner-defendant had been concluded on 10.09.2021 and it is thereafter, when the case was fixed for rebuttal evidence/arguments that the present application under Order 6 Rule 17 CPC read with Section 151 CPC was made to amend the written statement by the petitioner by filing a counter-claim. The trial Court dismissed the said application after observing that since the case was fixed for rebuttal evidence/arguments and the basis for filing the counter-claim was known to the petitioner from the very beginning, as is apparent from a bare reading of the written statement, thus, the petitioner could not be permitted to file the application for amendment at the belated stage as the same would prolong the trial and also prejudice the case of the plaintiff.

6. The Hon'ble Supreme Court in the case of **Ashok Kumar Kalra (supra)** had adjudicated upon the reference on the issues, which had been highlighted in para 6 of the majority view of the said judgment. The said para 6 is reproduced herein-below: -

“6. We have heard the learned counsel on either side at length and perused the material available on record. In the light of the reference and the arguments advanced on behalf of the parties, the following issues arise for consideration before this Court:

6.1.(i) Whether Order 8, Rule 6A of the CPC mandates an



embargo on filing the counterclaim after filing the written statement?

6.2.(ii) *If the answer to the aforesaid question is in the negative, then what are the restrictions on filing the counterclaim after filing of the written statement?*

7. In answer to the said issues, it was observed in the majority view by the Hon'ble Supreme Court that although Order 8, Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, but the outer limit for filing the counter-claim is, till the issues are framed. Several parameters were laid down, which were stated to be illustrative and not exhaustive. Parameter No.10, as laid down in the majority view, provided that in no case, the counter claim could be filed after the framing of the issues. Paras No.21 and 22 of the majority judgment, is reproduced herein below: -

*“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.*
- (viii.) *Prejudice to the opposite party.*
- (ix.) *And facts and circumstances of each case.*
- (x.) ***In any case, not after framing of the issues.***

22. *We answer the reference accordingly. The instant special leave petition may be placed before an appropriate Bench after obtaining orders from the Hon'ble Chief Justice of India, for considering the case on merits."*

8. In the present case, it is not in dispute that the said application was filed even after the evidence of the defendant was over and the case was fixed for rebuttal evidence/arguments and thus, on the said short point alone, in view of the above-said judgment, the impugned order, rejecting the application filed by the petitioner under Order 6 Rule 17 CPC, deserves to be upheld.

9. It would also be relevant to note that even otherwise, there is no valid reason given for moving the application at such a belated stage and since the respondent/plaintiff had already led his entire evidence, thus, allowing the application would also cause serious prejudice to the plaintiff.

10. Keeping in view the above-said facts and circumstances, the impugned order is in accordance with law and is upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

April 07, 2025
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes