



2025:DHC:9523-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15.10.2025

+ **RFA(COMM) 440/2024 & CM APPL. 61120/2024 (Stay)**

DR. MEENAKKSHI SHARMAAppellant

Through: **Mr. Vishal Chaudhary, Ms. Supriya Chaudhary, Mr. Vivek Jha, Mr. Kanwar Anang Pal Singh, Advs.**

versus

SMT. MONIKA CHUGHRespondent

Through: **Mr. Nishant Bhagrava, Ms. Kanhan Roda and Mr. Sarthak Sharma, Advocates.**

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T (O R A L)

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ANIL KSHETARPAL, J.

1. The present Appeal has been filed under Section 13 of the **Commercial Courts Act, 2015**¹, read with Section 96 of the Code of Civil Procedure, 1908, against the **Judgment dated 07.06.2024**² passed by the learned **District Judge, Commercial Court, South East, Saket Court, Delhi**³, in CS (DJ) No. 615/2022, titled “*Monika*

¹ CC Act

² Impugned Judgement

³ Commercial Court



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Chugh v. Dr. Meenakkshi Sharma”.

2. The facts necessary for the adjudication of the present Appeal are briefly stated hereunder:

- (a) The Appellant was a tenant in respect of the suit premises, i.e., the Shop bearing no. 41-G, Pushpa Market, Lajpat Nagar-II, New Delhi-110024, owned by the Respondent.
- (b) The Respondent instituted the suit alleging that, despite the expiry of the lease agreement, the Appellant continued to occupy the suit property without paying rent for a long time. The Respondent, therefore, sought possession of the premises, recovery of arrears of rent, mesne profits, and interest. It was further alleged that, even after termination of the tenancy and service of legal notices dated 21.08.2021 and 23.05.2022, the Appellant neither vacated the property nor cleared the outstanding dues.
- (c) The Appellant, while admitting tenancy, claimed that the Respondent had unlawfully retained a refundable security deposit of ₹10,00,000/-. In that regard, the Appellant filed a Counterclaim bearing No. CS(Comm) 743/2023 seeking recovery of the said amount, which remains pending before the learned Commercial Court.
- (d) The learned Commercial Court, by the Impugned Judgment dated 07.06.2024, adjudicated CS (DJ) No. 615/2022 and decreed the suit in favour of the Respondent. It ordered the eviction of the Appellant from the suit premises, holding that the Appellant was not entitled to the protection afforded under the Delhi Rent Control Act, 1958, since the monthly rent



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exceeded Rs. 3,500/-.

- (e) The learned Commercial Court observed that the testimony of PW-1 and documents supporting the same remained unrebutted, thereby establishing the Appellant's liability on the strength of the uncontroverted evidence. Relying on **Central Bank of India v. Ravindra**⁴, the Court held that the grant of pendente lite and future interest lies within judicial discretion and is not strictly governed by the agreement between the parties.
- (f) Accordingly, the Court awarded pendente lite and future interest at the rate of 6% per annum, taking into account Section 34 of the CPC, the Interest Act, 1978, and prevailing nationalised bank rates. The suit was decreed in favour of the Respondent, directing the Appellant to hand over peaceful possession of the premises, pay arrears of rent, interest at 6% per annum, and the costs of the suit.
3. The sole contention advanced by learned counsel for the Appellant is that, although the suit filed by the Respondent has been adjudicated and decreed in her favour, the Counter-Claim filed by the Appellant seeking recovery of a specified amount remains pending and ought to have been decided simultaneously with the main suit.
4. The original Written Statement was filed on 31.10.2022. Thereafter, the Suit was amended on 03.06.2023. Subsequently, the Appellant filed the Counter Claim on 27.07.2023, and the Written Statement to the amended suit was filed on 06.01.2024.
5. Learned counsel for the Respondent submits that the Counter Claim was not made part of the amended written statement.

⁴ AIR 2001 SC 3095



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6. In response to a query from the Court, learned counsel for the Appellant submits that the Counter Claim was made part of the amended written statement. However, when asked to draw the Court's attention to the amended written statement, the learned counsel sought an adjournment.

7. It is no longer *res-integra* that a counterclaim filed by a defendant in a suit is in the nature of a cross-suit, and therefore, its adjudication is independent of the fate of the main suit. Even if the original suit is decreed or dismissed, the counterclaim continues to subsist and must be decided on its own merits in accordance with the law. In this regard, the Allahabad High Court, following the precedents of the Hon'ble Supreme Court and various High Courts, recently summarized the legal position in *Ishita Dua v. Tarun Kumar Sharma*⁵. The relevant portion of the said judgment reads as under:

“10. A perusal of the aforesaid provisions of CPC would clearly indicate that when the suit is filed, the defendant has a right to file counter-claim in addition to his right of pleading a set-off under Rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not. Rule 6-A (2) clearly provides that such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim. Sub-rule (3) of Rule 6-A provides that the plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court. Sub-rule (4) of Rule 6A provides that the counter-claim shall be treated as a plaint and governed by the rules applicable to the plaints. This provision by itself clearly reflects that the counter-claim has to be treated a separate cause of action for which counter-claim shall be treated as plaint for all

⁵ 2024 SCC OnLine All 1729



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practical purposes and clearly, the word 'written statement' has been used for the reply to be filed by the plaintiff to such counter-claim. The words used are absolutely clear on this issue, however, provision also reflects that cause of counter-claim shall be disclosed in the counter-claim as they are mentioned in the plaint to which the plaintiff has right to file written statement. Rule 6-C clearly provides for exclusion of counter-claim and it says that where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded and the Court may, on the hearing of such application make such order as it thinks fit.

12. Insofar as Rule 6-D of Order VIII CPC as relied on by the learned counsel for the appellant is concerned, it clearly provides for "Effect of discontinuance of suit" that if in any case in which the defendant sets up a counterclaim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with. In the present case, the proceedings of the divorce petition have not been stayed, therefore, the said term is excluded. Insofar as the term 'discontinued or dismissed' is concerned. Once the withdrawal application is allowed, the suit stands discontinued for all practical purposes. Even otherwise, the withdrawal of the suit is always as dismissed as withdrawn and therefore, withdrawal of the suit would fall within the two words, i.e., 'discontinued or dismissed'. The definition of the word 'Discontinuance' as given in *Black's Law Dictionary* (Eighth Edition) is 'the termination of a lawsuit by the plaintiff; a voluntary dismissal'. Needless to say that it is the termination of proceedings by the plaintiff himself and it is a voluntary termination, therefore, as per *Black's Law Dictionary* (Eighth Edition) it is included in the word 'Discontinuance'. In Legal Glossary published by the Government of India, the word 'Discontinue' means 'to cause to cease; or to put a stop to'. Now, in the present case, it is the plaintiff who had caused the suit proceedings to cease and thus, undisputedly has put a stop to the same. Therefore, it clearly the withdrawal of the suit is included in the term 'Discontinuance' or 'Dismissed'. In any case, the provisions clearly provides that in case the suit does not proceed for any reason whatsoever, the counter-claim shall be proceeded with. In the present case, the Withdrawal Application was not opposed on the condition clearly put forth that the counter-claim shall proceed, in other words, it is only on this condition the same was not opposed. Therefore, it is clear that there was a

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conditional acceptance to the withdrawal of the suit that the counter-claim shall remain alive. Rule 6-E provides that if the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit. Rule 6-G provides that the rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim. It is, therefore, clear that the proceedings of the counter-claim are treated as suit proceedings. The provisions of Rule 7 of Order VIII CPC provides that once the defendant relies upon several distinct grounds of defence or set-off or counter-claim founded upon separate and distinct facts, they shall be stated, as far as may be separately and distinctly.”

8. In view of the above, in the present case, we are of the considered view that the Counter Claim is to be treated as a separate suit and which is admittedly still pending.

9. In these circumstances, it would not be appropriate to keep the Appeal pending, as doing so would unjustly deprive the owner of possession of the property. The Counter Claim, which is limited to the recovery of a security amount, will be adjudicated by the Court.

10. No other issue was raised by learned counsel for the Appellant.

11. Accordingly, the Appeal, along with pending application(s), if any, stands dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
OCTOBER 15, 2025/Pa/sm/her