

(2022-1)205 PLR 042

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice H.S. Madaan.

KEWAL KRISHAN (since deceased Thr. Lrs) and others – Petitioners,

versus

SADHU SINGH and others – Respondents.

CR-2042 of 2021 (O&M)

Civil Procedure Code, 1908 (V of 1908) Order 8, Rule 6-A – Trial Court in its wisdom has thought it proper to try the main suit as well the counter claim together and it has been rightly so done as per provisions of law.

Mr. Kashish Garg, for the petitioners. *Mr. Suresh Singla*, for the caveators.

H.S. Madaan , J . – (28th September, 2021) – Case taken up through video conferencing.

CM-5914-CII-2021

This is an application for impleading LR of deceased petitioner No.1-Kewal Krishan. Heard. Allowed subject to all just exceptions. Amended memo of parties has been filed, which be taken on record.

Main Case

2. Petitioners Kewal Krishan (since dead) now represented by his son Naresh Kumar @ Mahesh Kumar and wife Amra Devi, both residents of Bhuchho Mandi, Tehsil & District Bathinda, had brought the present civil revision petition against respondents Sadhu Singh and others, craving for setting aside of order dated 08.09.2021 (Annexure P-16), passed by Civil Judge (Jr. Divn.) Bathinda, vide which application of petitioners for separating the suit for permanent injunction from counter claim filed by defendants No.4 and 5 as well as defendants No.6 & 7 and furthermore, against order dated 30.04.2021 (Annexure P-8), vide which the counter claim of defendants No.6 and 7 which was initially registered as separate suit was ordered to be attached with suit for injunction for disposal.

3. Briefly stated facts of the case are that, plaintiffs Sadhu Singh and others had brought a suit against defendants Shivnandan Lal and others seeking a decree for permanent injunction, restraining the defendants from dispossessing the plaintiffs illegally and forcibly from their share of land total land measuring 69K-1M situated within revenue limits of Village Bhuchho Kalan, Tehsil & District Bathinda along with consequential relief etc.

4. Notice of the suit was given to the defendants, who put appearance and filed written statements. Defendants No.6 and 7 had filed a counter claim also. Issues on merits were framed. Matter having gone to the Apex Court, a direction was issued to the trial Court to decide the case within 09 months. The counter claim was ordered to be attached with the main case.

5. An application was filed for separation of counter claim from the main suit, which was dismissed by the trial Court of Civil Judge (Jr. Divn.) Bathinda, vide order dated 08.09.2021. The operative part of the order runs as follows:-

“First and foremost, I deem it essential to produce the provision that deals with the exclusion of counter-claim:

6C. *Exclusion of counter-claim.* – Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to 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.

Further, Order 8 Rule 6A (2), [CPC](#) stated that:

“... (2) 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. ...”

6. Accordingly, under Order VIII Rule 6A, the claim and counterclaim are to be regarded as a unified proceeding and the same are to be disposed of by a single judgment, both on the original claim and on the counterclaim. Under rule 6C, the court has the power to exclude a counterclaim and order the defendant to file an independent suit in respect of the claim therein presumable where it is embarrassing or its filing is not fair to the plaintiff or where it avoidably creates complications prolonging the trial.

7. In the present case, the application to separate the counterclaim has not been filed by the plaintiffs but by the defendants on the grounds that they are being strongarmed into producing their evidence in a time-bound manner in accordance with the order dated 22.2.2021 passed by the Hon’ble Supreme Court.

8. Rule 6C clearly states that such an application can be filed by the plaintiffs only and that too before the framing of the issues. It is forthcoming from the record that the counterclaim by defendants 4 and 5 was filed on 15.10.2014 and the defendants 6 and 7 filed it on 21.01.2015. On 11.06.2016, even the replication to the written statement to counterclaim of defendant 4 and 5 was filed. Vide order dated 30.04.2021, proceedings of the original claim and counterclaim were clubbed together. Thereafter, vide application under Order 14 rule 5, CPC, it was brought to the notice of the court that no issues have been framed on the counterclaims filed by the defendants and accordingly, vide order dated 08.07.2021, issues on counterclaims were framed by this court and all the issues of the present case

were enlisted jointly. Application raising objections pertaining to said order and for framing correct issues on the counterclaim was then filed by the defendants 4 to 7 which was dismissed by the order dated 20.07.2021. The defendants 4 to 7 filed revision of the said order but issues number 7 to 10 have been held to be properly framed by the order dated 18.08.2021 of the Hon'ble Punjab and Haryana High Court. Therefore, it is evident that from to 15.10.2014 to 27.08.2021, applying defendants wanted their claim to be decided along with original claim.

9. From the perusal of the file, it is further forthcoming that defendant 4 to 7 have been shrugging their duty of leading defendant evidence on one pretext or another inspite of strict order of this court. Therefore, the filing of present application on the grounds that the defendants 4 to 7 should not be made to lead their evidence in a time-bound manner in accordance with the mandate of Hon'ble Supreme Court shows malafide of the applying defendants.

10. The present application is legally not maintainable and factually, it is nothing more than a dilatory tactic. Such an application is highly condemned especially when the same is intended to defy the order passed by the Hon'ble Supreme Court of India.

11. In view of the above discussion, present application stands dismissed with costs to the tune of Rs. 1,500 to be paid to the opposite party and Rs. 500 to be paid to DLSA."

6. After hearing learned counsel for the revisionists and going through the record, I find that no interference with the order by way of exercising revisional jurisdiction is called for, rather, the order is quite detailed, well reasoned and it does not from any illegality or infirmity.

7. The trial Court in its wisdom has thought it proper to try the main suit as well the counter claim together and it has been rightly so done as per provisions of law. The petitioners are unnecessary feeling aggrieved. The revision petition filed does not seem to have any iota of merit, rather, it seems to be a dilatory tactics adopted by the revisionists to stretch the proceedings despite the fact that the case has been ordered to be disposed of by the Apex Court within a period of 09 months. Such approach of petitioner cannot be appreciated. The revision petition is doomed for failure and is dismissed accordingly.

R.M.S.

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Petition dismissed.