

(2013) 09 P&H CK 0375

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 5325 of 2013 (O and M)

M/s. Chaudhary Chemicals Industries

APPELLANT

Vs

M/s. National Fertilizer Limited and Others

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2014) 173 PLR 512

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Judgement

Paramjit Singh, J.—Instant revision petition has been filed impugning the order dated 29.7.2013 passed by learned Civil Judge (Junior Division), Anandpur Sahib, whereby the application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, has been dismissed. Brief facts of the case are that civil suit No. 182 of 3.6.1986 and suit No. 183 of 3.6.1986 have been consolidated. The said suits were filed by respondent - National Fertilizers Ltd. against the petitioner for recovery. On notice petitioner/defendant appeared and filed written statement and raised counter-claim. Thereafter application for amendment of the counter-claim has been moved. Learned trial court dismissed the application for amendment of counter-claim vide impugned order.

2. Hence, this revision petition.

3. I have heard learned counsel for the petitioner and perused the record.

4. Learned counsel for the petitioner vehemently contended that counter-claim has been filed but its title could not be mentioned in the written statement. For mentioning the title separate application under Order 6 Rule 17 CPC was moved, which has been wrongly declined by learned trial court. Learned counsel for the petitioner further contended that counter-claim is an independent plaint and the same provisions as are applicable to the suit, will apply; meaning thereby it should be separately numbered and there should also be a cause title of the same; as such the amendment should be allowed.

5. In other words, learned counsel for the petitioner contended that it is an independent cross-suit and same principle as applicable to a suit should apply to it. Now the petitioner wants that amendment should be allowed in order to create a separate cause title of the suit so that it can also be numbered separately.

6. I have considered the contentions raised by learned counsel for the petitioner.

7. Before I deal with the contentions raised by learned counsel for the petitioner, it would be appropriate to reproduce Order 8 Rule 6A to 6G, which read as under:--

6A. Counter-claim by defendant--(1) A defendant in a suit may, 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:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(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 counterclaim.

(3) 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.

(4) The counter-claim shall be treated as a plaint, and governed by the rules applicable to plaints.

6B. Counter-claim to be stated- Where any defendant seeks to rely upon any ground as supporting a right of counterclaim, he shall, in his written statement, state specifically that he does so by way 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.

6D. Effect of discontinuance of suit- If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

6E. Default of plaintiff to reply to counter-claim- If the plaintiff makes default in putting in 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 counterclaim as it thinks fit.

6F. Relief to defendant where counter-claim succeeds-Where in any suit a set-off or counter-claim is established as defence against the plaintiffs claim and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

6G. Rules relating to written statement to apply- The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.

8. From the perusal of Order 8 it is clear that a counter-claim is really like an independent suit filed by defendant in main suit for claiming his/its right though the same is also pleaded in the written statement. Just as the suit is filed by the plaintiff, in counter-claim defendant seeks relief against the plaintiff on a cause of action, which he/it has against the plaintiff. It is an independent cause of action which could also be agitated in a separate suit. In order to avoid multiplicity of proceedings, defendant has been given liberty to file counter-claim and get adjudication thereof alongwith the suit. Issues are framed in both the original claim as well as the counter-claim. Issues arising in the original claim and the counter-claim are disposed of by a common judgment. Reading of Order 8 Rule 6A makes it clear that there can be a final judgment in the same suit with regard to original claim and the counterclaim. In common parlance, common judgment means decision arrived at simultaneously in more than one suits tried together. In view of this, a counter-claim or a set off can be made in any form of a suit but no separate cause title is required to be given to the same as the counter claim is being raised in the suit. So everything with regard to the counter claim is to be taken care of in the same very suit.

9. In view of this, no separate cause title is required to be created and the amendment under Order 6 Rule 17 CPC for giving separate cause title to the counter-claim, has been rightly rejected by learned trial court.

10. I do not find any illegality or perversity in the impugned order. The revision stands disposed of accordingly.