

## **Lt. Col. Sunil Kalia Vs Brig. Jagdish Malhotra and Another**

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Oct. 3, 2012

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 7 Rule 11, Order 8 Rule 1  
Constitution of India, 1950 â€” Article 227

**Citation:** (2013) 169 PLR 277 : (2013) 2 RCR(Civil) 596

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Advocate:** Jai Shree Thakur, for the Appellant;

**Final Decision:** Dismissed

### **Judgement**

L.N. Mittal, J.

C.M. No. 24972-C-II of 2012:

Allowed as prayed for.

Main Case :

1. Defendant no. 1 has invoked the jurisdiction of this Court under Article 227 of the Constitution of India by filing this revision petition to assail

order dated 18.08.2012 (Annexure P-6) passed by the trial court, thereby permitting respondent no. 1-plaintiff to file written statement to counter-

claim of defendant no. 1, subject to payment of Rs. 2,000/- as costs. In suit filed by respondent no. 1-plaintiff against defendant no. 1 -petitioner

and defendant no. 2 (proforma respondent no. 2 herein), defendant no. 1 filed counter-claim (Annexure P-2). The case was adjourned for filing of

reply thereof by the plaintiff. However, on the date fixed, plaintiff moved application under Order 7 Rule 11 of the CPC (in short CPC) for

rejection of the counter-claim due to nonpayment of court fee. The said application was allowed and defendant no. 1 accordingly paid court fee on

the counter-claim. Then, application for amendment of plaint was filed by the plaintiff. The said application was also allowed. Case was adjourned

to file written statement to the amended plaint. However, since the amendment of plaint was only clerical in nature, no fresh written statement to the

amended plaint was filed. Consequently, issues were framed in the case and it was adjourned for evidence.

2. After both the parties led evidence, plaintiff moved application (Annexure P-4) for permitting him to file written statement to the counterclaim

alleging that after amendment of plaint, the case was not fixed for filing of written statement to the counterclaim, and therefore, inadvertently and

due to oversight, written statement to counterclaim could not be filed.

3. Defendant no. 1, by filing reply (Annexure P-5), opposed the aforesaid application.

4. Learned trial court, vide impugned order (Annexure P-6), has allowed application (Annexure P-4) moved by the plaintiff and has permitted the

plaintiff to file written statement to counter-claim of defendant no. 1, subject to payment of Rs. 2,000/-as costs. Feeling aggrieved, defendant no. 1

has filed this revision petition to challenge order Annexure P-6 passed by the trial court.

5. I have heard counsel for the petitioner and perused the case file.

6. Counsel for the petitioner contended that counter-claim of defendant no. 1 was within the knowledge of the plaintiff, who should have therefore

filed the written statement to the counter-claim at appropriate stage, but he did not do so, and therefore, at the fag end of the trial, the plaintiff

could not be permitted to file written statement to the counterclaim. Reference in this regard has been made to Order 8 Rule 1 CPC stipulating

filing of written statement in a suit within 30 days of service of summons on the defendant and the said period of 30 days being extendable to 90

days only. Reliance has been placed on a judgment of this Court namely Mohinder Singh Vs. Sardool Singh and Others, nd also a judgment of

Hon"ble Supreme Court in the case of Mohammed Yusuf Vs. Fajj Mohammad and Others,

7. I have carefully considered the aforesaid contentions.

8. It has been laid down by Hon"ble Supreme Court in the case of Mohammed Yusuf (supra) that provision of Order 8 Rule 1 CPC, although

couched in the form of mandatory provision, is directory in nature, but at the same time, filing of written statement beyond 90 days should be

allowed to avoid extreme hardship and only in rare and exceptional cases. In the instant case, the facts are very peculiar. As noticed herein before,

defendant no. 1 did not pay requisite court fee on his counter-claim. Consequently, when the case was fixed for filing written statement by the

plaintiff to the counter-claim, the plaintiff was forced to move application under Order 7 Rule 11 CPC to require the defendant no. 1 to pay

requisite court fee on the counter-claim. The said application was allowed by the trial court and defendant no. 1 accordingly paid requisite court

fee. Thereafter, the plaintiff was allowed to amend the plaint and the amendment was clerical in nature. The case was then fixed for filing of written

statement to the amended plaint, but no fresh written statement was filed, and therefore, straightway issues were framed in the case without

granting opportunity to the plaintiff to file written statement to the counter-claim. In these peculiar circumstances, the plaintiff has been rightly

permitted by the trial court to file written statement to the counter-claim. The plaintiff has also been burdened with costs because there was also

some negligence on his part.

9. It may be added that the plaintiff stated in the trial court that no further evidence would be led by him after filing of written statement to the

counter-claim. Consequently, disposal of the suit and counter-claim would also not be delayed. For the reasons aforesaid, I do not find any

perversity, illegality or jurisdictional error in the impugned order of the trial court so as to call for interference by this Court in exercise of

supervisory jurisdiction under Article 227 of the Constitution of India. The revision petition is devoid of merit and is accordingly dismissed in limine.