



**CR-5482-2025(O&M) and
CR-5492-2025 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Decided on :- 19.08.2025

1. CR-5482-2025 (O&M)

Gurmeet Bharti @ Gurmeet Bharthi

...Petitioner

VERSUS

Piari Devi

...Respondent

2. CR-5492-2025 (O&M)

Gurmeet Bharti @ Gurmeet Bharthi

...Petitioner

VERSUS

Piari Devi

...Respondent

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

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MANDEEP PANNU J.

1. This common order shall dispose off above-numbered two revision petitions filed against the order dated 23.07.2025 passed by the learned Civil Judge (Junior Division), Patiala, whereby the application dated 16.08.2024 filed by the present petitioner for rejection of the counter-claim preferred by the respondent has been dismissed.

Brief Facts

2. The petitioner–plaintiff Gurmeet Bharti instituted a suit for permanent injunction restraining the defendant–respondent Pyari Devi and her agents from interfering in his peaceful possession of the shop in dispute. It was pleaded that the



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shop in question was taken on rent by the petitioner in October 2011 at a monthly rent of ₹7,000, under an oral tenancy. The respondent further executed a registered mortgage deed dated 18.10.2011 in favour of the petitioner and his brother Kamal Bharti. The petitioner was carrying on business in the disputed shop under the name and style of Bharti Karyana Store, being its sole proprietor. The petitioner has been paying monthly rent of ₹7,000 in cash to the respondent, though no rent receipts were issued. One electricity connection in the shop stands in the name of Ramesh Kumar (brother-in-law of the respondent) and the petitioner has been regularly paying the electricity charges. The respondent was attempting to enhance the rent from ₹7,000 per month to ₹17,000, though the petitioner expressed willingness to increase it up to ₹10,000. Instead of accepting the rent, the respondent allegedly threatened to dispossess the petitioner forcibly. It was further pleaded that the mortgage in respect of the property has not been redeemed, and therefore the petitioner continues to have an independent right to remain in possession as a tenant.

3. The respondent filed a written statement taking preliminary objections, inter alia, that the petitioner has no locus standi to file the present suit, as he never signed or accepted the mortgage deed dated 18.10.2011. It was alleged that the suit has been filed in collusion with Kamal Bharti, brother of the petitioner. It was contended that Kamal Bharti, being the signatory of the mortgage deed, has already received a sum of ₹60,000 in full and final settlement towards vacation of the shop, and hence the present claim is frivolous and intended to grab the property of a widow. The respondent further alleged theft of articles from the suit property and denied any oral tenancy at ₹7,000 per month. As per the mortgage deed, once ₹60,000 was repaid, the possession of the shop was required to be returned to the respondent.



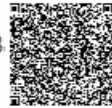
4. Along with the written statement, the respondent also filed a counter-claim against Gurmeet Bharti and Kamal Bharti, seeking possession of the shop and a direction to them to hand over the same, asserting that the amount of ₹60,000 had already been repaid to Kamal Bharti. It was also alleged that two separate suits were filed by the petitioner in respect of the same property with varying descriptions—one concerning the shop and another concerning the entire building—demonstrating mala fide intention. Reliance was placed on the terms of the mortgage deed for seeking possession and damages.

5. The petitioner moved an application dated 16.08.2024 for dismissal of the counter-claim, inter alia, on the ground that the counter-claim was not maintainable as per Order 8 Rule 6-A CPC, since it was filed not only against the plaintiff but also against Kamal Bharti, who was not a party to the original suit. It was urged that a counter-claim cannot be directed against a person who is not already a party to the suit, and hence the counter-claim was liable to be rejected. The learned trial Court, however, vide order dated 23.07.2025, dismissed the said application for rejection of counter-claim.

6. Hence, the present revision petition.

7. I have heard learned counsel for the petitioner and gone through the record.

8. It is relevant to mention here provisions of Order VIII Rule 6-A of the Code of Civil Procedure, 1908 (for short, 'CPC'). It permits a defendant, in addition to a set-off, to file a counter-claim against the plaintiff in respect of a cause of action accruing either before or after the filing of the suit but before the defendant has delivered his defence. A counter-claim is in substance a cross-suit by the defendant



against the plaintiff. Therefore, the necessary condition is that the counter-claim must be directed only against the plaintiff(s) of the suit.

9. This Court, in case of *Kehar Singh Vs. Hukam Singh And Another*, C.R No.6465 of 2013, decided on 25.10.2013 relying upon judgment passed by the Hon'ble Supreme Court in the case of *Jag Mohan Chawla Vs. Dera Radha Swami Satsang [1996(2) R.R.R 623]*, has held as under:-

“Order 8 Rule 6-A CPC stipulates that counter-claim can be set up by defendant against the plaintiff. The expression against the plaintiff used in the aforesaid provision is highly significant for the purpose of this revision petition. The aforesaid expression would depict that counter-claim has to be made against the plaintiff only and not against the third party. Consequently, a third person cannot be added as a new party to the suit for adjudicating counter-claim because counter-claim has to be confined against the plaintiff only. In this view of the matter, I am supported by observation of Hon'ble Supreme Court in the case of Jag Mohan Chawla (supra), wherein also it has been held that defendant can also claim in the counter-claim injunction 'against the plaintiff'. Thus, relief in the counter-claim can be claimed against the plaintiff and not against the third person.”

10. In view of the law laid down in *Kehar Singh's case (supra)*, which further relies upon judgment of Hon'ble Supreme Court in the case of *Jag Mohan Chawla (supra)* a counter-claim cannot be filed against third party who is not a party to the original suit as plaintiff. The defendant cannot, by way of counter-claim, enlarge the scope of the *lis* by bringing in a third party against whom the plaintiff



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himself never sought any relief. If a defendant has an independent cause of action against such a third party, his proper remedy is to file a separate suit.

11. Thus, where a counter-claim is filed against both the plaintiff and a third party, the law does not require that the entire counter-claim must be rejected. The proper course is to strike out the counter-claim only against the non-plaintiff and treat it as maintainable, if otherwise in order, against the plaintiff(s). Courts have consistently held that mis-joinder of parties does not necessarily vitiate the entire counter-claim. The portion of relief claimed against a non-party can be ignored or rejected, but the counter-claim may proceed against the plaintiff to the extent it is maintainable.

12. The impugned order dismissing the application dated 16.08.2024 for rejection of the counter-claim preferred by respondent is hereby modified and the same is rejected qua stranger (non-plaintiff-Kamal Bharti) and qua plaintiff, the same is treated as maintainable.

13. With the above-said observation, both the revision petitions are partly allowed.

14. Pending application(s), if any, also stand disposed of.

August 19, 2025
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**(MANDEEP PANNU)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No