

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6612 OF 2014

SHANTABAI VINAYAK DESHMUKH
VERSUS
INDIRABAI SANJIVANRAO DESHMUKH DIED THR. LRS.
VASANT SHANKARRAO MULE AND OTHERS

...
Advocate for Petitioner : Mr. R.N. Bharaswadkar
Advocate for Respondents : Mr. B. S. Kudale

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CORAM : V.K. JADHAV, J.
Dated: February 23, 2015

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PER COURT :-

1. Heard learned counsel for the petitioner.
2. The deceased respondent No.1 has filed RCS No.68/1982 which is on transfer to Civil Judge (J.D.), Wadwani, re-numbered as 10/2009 for recovery of possession and the same is still pending. The petitioner was added as a party to the suit subsequently. Initially 'No W.S. Order' was passed against the petitioner who was the original defendant No.18. However, his written statement was taken on record by allowing the application on costs on 9.10.1992. It appears from the impugned order that inadvertently said written statement was treated as written statement filed by some other defendant and by taking advantage of the same, the petitioner/original defendant

No.18 has filed another written statement in the year 2007.

3. The learned counsel for the petitioner submits that the petitioner was dispossessed from the suit property on 30.1.2006 and therefore, the petitioner has submitted his counter claim under Order 8 Rule 6A of Civil Procedure Code. The learned counsel further submits that the learned Judge of the Trial Court has not considered the provisions of Order 8 Rule 6A of Civil Procedure Code and rejected the application by the impugned order.

4. It appears that the petitioner/original defendant No.18 has filed his written statement way back in the year 1992 and not in the year 2007. In view of the provisions of Order 8 Rule 6A of the Civil Procedure Code, in addition to the right of pleading, a defendant can set-off his claim by way of counter claim against the claim of the plaintiff, only in respect of a right or claim of a cause of action accruing to him either before or after filing of the suit but before the defendant has delivered his defence or before the time limit for delivering his defence has expired.

5. Here in this case, the petitioner/original defendant No.18 has come with the case that the cause of

action accrued in the year 2006 i.e. much after filing of the written statement in the year 1992. In view of the same, the provisions of Order 8 Rule 6A of the Civil Procedure Code cannot be attracted. Learned counsel for the petitioner submits that, in that event the petitioner shall be at liberty to institute a separate suit, if required. There is no need to grant such liberty since the petitioner can always institute a separate suit for cause of action accrued subsequent to filing of his written statement.

6. In view of this, there is no merit in the writ petition. Writ Petition is thus liable to be dismissed.

7. Writ Petition is hereby dismissed. No costs.

(V.K. JADHAV, J.)

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aaa/-