

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

WRIT PETITION NO. 8219 OF 2014

1. Amit s/o Balasaheb Takte,
Age: 34 years, Occ: Agri.,
2. Prashant s/o Balasaheb Takte,
Age: 37 years, Occ: Agril/Hotel Business,

Both R/o. Khadamba (Bk.), Tq. Rahuri,
Dist. Ahmednagar.
3. Anupama Uddhayrao Dhanwate,
Age: 37 years, Occ: Household,
R/o. Puntamba, Tq. Rahata,
Dist. Ahmednagar.

...Petitioners

versus

1. Krishna Raosaheb Pawar,
Age: 36 years, Occ: Agri.,
R/o. Wadala Mahadeo,
Tq. Shrirampur, Dist. Ahmednagar.
2. Balasaheb s/o Govind Takte,
Age: 64 years, Occ: Agri.,
R/o. At Post Khadamba (Bk),
Tq. Rahuri, Dist. Ahmednagar.
3. The Manager,
Raosaheb Patwardhan Nagari Sahakari
Path Sanstha Ltd., Ahmednagar,
Pipe Line Road, Savedi, Ahmednagar.
4. Dr. Sushant H. Wadile,
Special Recovery Officer,
Raosaheb Patwardhan Nagari Sahakari
Path Sanstha Ltd., Ahmednagar,
Pipe Line Road, Savedi, Ahmednagar.

...Respondents

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Mr. Rahul R. Karpe, Advocate h/f Mr. Sandeep S. Munde,
Advocate for petitioners.
Mr. Niteen V. Gaware, Advocate h/f Mr. G.D. Tanpure,
Advocate for respondent No.1.

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CORAM : N.W. SAMBRE, J.

DATED : 19TH JANUARY, 2015

JUDGMENT :

. This petition is by defendants, questioning an order passed under the provisions of Order 8 Rule 6A and 6C of the Code of Civil Procedure, whereby the counter claim filed by the defendants in Regular Civil Suit No. 561 of 2014, which was filed in accordance with the provisions of Section 38 of the Specific Relief Act for perpetual injunction, was ordered to be excluded with liberty to file fresh suit by the defendants-petitioners.

2. The few facts giving rise for filing the writ petition are as under :-

. Respondent No.1 to the present petition, claims to have purchased the suit property which consists of plot and building constructed thereon admeasuring 201.78 sq. meters situated at Khdamba (Bk), Taluka Rahuri, District Ahmednagar.

3. It is claimed by respondent No.1-plaintiff that vide registered sale deed dated 25/02/2014, the suit property was purchased by him from defendant No.3 for consideration of

Rs.36,00,000/- and after the same, his name came to be mutated in the revenue record and also Grampanchayat record.

4. It appears that the above said sale transaction preceded with some loan transaction by defendant No. 3 to the said suit, who happened to be father of the petitioners i.e. defendant Nos. 1 and 2 to the suit and as he was not in a position to satisfy the said debt and was unable to manage the property which was developed for the purpose of carrying hotel business, came to be sold to the plaintiff.

5. It is alleged that defendant Nos. 1 and 2 have issued notice dated 03/05/2014 to Raosaheb Patwardhan Credit Co-operative Society i.e. from whom their father-defendant No. 3 has taken loan and copy of the said notice was sent to the plaintiff-respondent No.1. The said notice was duly replied on 19/05/2014, which was followed with another notice by the defendants to the plaintiff on 06/06/2014. Defendant Nos. 1 and 2 have obstructed the use and enjoyment of the property by the plaintiff and he was unable to start his hotel business and develop the property further, same has prompted him to file the suit in question i.e. Regular Civil

Suit No. 561 of 2014.

6. After suit summons were served on the defendants to the suit, the defendants filed their appearance in common, however on the next date, the defendants split up in one group i.e. defendant Nos. 1 and 2 and submitted the counter claim against the plaintiff and defendant No. 3 i.e. their father.

7. The nature of the counter claim submitted by the petitioners, who are defendant Nos. 1 and 2 and third party, was for setting aside the sale deed dated 25/02/2014, for partition, possession and declaration. In the said counter claim, it is claimed by present petitioners that Govind Gayaji Takte was owner of the property in question, who expired on 09/01/1987. The property owned by the said Govind devolved in partition amongst his sons and daughters. Defendant No. 3 to the original suit namely Balasaheb received the suit property in the said partition alongwith other properties. It is further claimed by the petitioners that defendant No. 3 has no authority to transfer the suit property to original plaintiff and the said sale was neither for legal necessity. As such, they have sought for setting aside the registered sale deed dated 25/02/2014 and sought partition of the said property alongwith other four

properties received by defendant No. 3 from Govind. In the said counter claim, original defendant No.3 was added as defendant No.1, original plaintiff as defendant No.2, the management of Credit Co-operative society as defendant No.3 and Special Recovery Officer appointed by the State Government as defendant No. 4. It will not be out of place to mention here that defendant Nos. 3 and 4 are neither party to the suit preferred by plaintiff-respondent No.1 to the present petition. In the counter claim, a declaration is sought that the suit property and other properties mentioned in Paragraph-25 of the counter claim be declared as the joint family property of Hindu family and further sought partition of the said property and also sought declaration that the sale deed dated 25/02/2014 bearing document Registration No.618/2014 be declared as illegal and not binding on the claimants in the counter claim. In the counter claim, suit of the plaintiff was sought to be rejected.

8. After filing of the counter claim, the plaintiff moved an application Exhibit-29 claiming to be under the provisions of Rule 6A, 6C, 13 and 19 of Order 8 of Civil Procedure Code alleging therein that the counter claim be excluded. The cause for seeking exclusion as is cited are as under :-

- a) The suit properties are different,
- b) the alleged loan transaction by defendant No. 3 is not an issue in the suit preferred by the plaintiff,
- c) the partition dispute is amongst co-parceners,
- d) in addition to setting aside the sale deed dated 25/02/2014, there are other various claims made in the counter claim, and
- e) the valuation in the counter claim ousted the jurisdiction of Civil Judge, Junior Division as counter claim is valued at Rs. 36,17,750/-.

9. The said application Exhibit-29 was objected by present petitioners by filing their reply. The petitioners alleged that the suit property since is ancestral property, the counter claim is filed by all the legal heirs. It is further claimed by the present petitioners that, they are in possession of the suit property and they are not interested in prolonging the matter. They have made allegation against their own father that without disclosing the loan transaction to the present petitioners, their father namely defendant No. 3 has transferred the property. It is further claimed by them that the application is liable to be

rejected.

10. Learned Court of 2nd Joint Civil Judge, Junior Division, Rahuri, by an order dated 09/09/2014 ordered exclusion of counter claim preferred by the present petitioner at Exhibit-16 from the suit of respondent No. 1-plaintiff with liberty to defendant Nos. 1 and 2 to file fresh suit about the subject matter of counter claim. As such, present writ petition.

11. Mr. Karpe, learned Counsel for the petitioners-defendant Nos. 1 and 2 submits that, if the order impugned is sustained, same will cause great prejudice to the present petitioners, as according to him two separate proceedings will be tried in relation to same suit property in two different Courts. He further submits that it was always open for the Court of Civil Judge, Junior Division, instead of entertaining suit proceedings before him to transfer the suit as well as counter claim to the competent Court's jurisdiction (Civil Judge, Senior Division) and same is very much permissible in the Civil Manual and Civil Procedure Code. He further submits that, if the suit alongwith counter claim is transferred to the Civil Judge, Senior Division, the said Court will have complete jurisdiction over the entire claim raised in the suit and counter claim. According to him the

order impugned is not sustainable as it is not open for the learned Court of Civil Judge, Senior Division to return the counter claim.

12. Mr. Gaware, learned Counsel for respondent No. 1, while resisting the contention raised by Mr. Karpe, learned Counsel for the petitioners, has urged that the suit filed by his client respondent-plaintiff is for simplicitor perpetual injunction. He further submits that the claim raised in the counter claim involves various issues, such as common nucleus, nature of the suit property whether ancestral or self-acquired property, validity of loan transaction, validity of sale deed in favour of the plaintiff, and other issues. He submits that, the counter claim as is required to be tried as a separate suit, according to him, even parties to the counter claim are different. He submits that in counter claim, in addition to defendant Nos. 1 and 2, one more legal heir is impleaded as party claimant plaintiff and parties have added their own father, who has transferred the property to the plaintiff I. e. defendant No. 3 as defendant No. 1. According to him, in addition to the said fact, in counter claim the plaintiff has impleaded defendant No. 3 and 4, who are officials of the Credit Co-operative Society, from whom the loan was obtained. He urged that, learned Court below has rightly

passed an order excluding the counter claim in view of provisions of Rule 6A and 6C of Order 8 of Code of Civil Procedure.

13. Having given my thoughtful considerations to the points raised by the respective Counsel, while assailing the order dated 09/09/2014 passed by 2nd Joint Civil Judge, Junior Division, Rahuri in Regular Civil Suit No. 561 of 2014 below Exhibit-29, it is noted by me that the suit filed by respondent No. 1-plaintiff is for simplicitor injunction based on his title acquired by him by virtue of registered sale deed dated 25/02/2014. It is required to be noted that, claim put forth by way of counter claim is in the light of the provisions of Order 8 of Civil Procedure Code by original defendant Nos. 1 and 2, perhaps alongwith their sister, who is added as third party to the counter claim. Same is for partition, separate possession, declaration in relation to various properties mentioned in the counter claim. However, the issue in relation to loan transaction between defendant No. 3 to the suit and Credit Co-operative society, sale deed executed by defendant No. 3 in favour of plaintiff is also subject matter of the counter claim. Having regard to the nature of the claim raised in the counter claim, same is valued at Rs. 36,17,750/-.

14. It is admitted position on record that, in view of pecuniary jurisdiction of the counter claim, the power to entertain the said counter claim lies with Civil Judge, Senior Division and the jurisdiction of Civil Judge, Junior Division is ousted.

15. The provisions of Rule 6A and 6C of Order 8 of Civil Procedure Code reads thus:-

“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 damage 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 counter-claim.

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.

Rule 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.”

16. It is required to be noted that, Rule 6A of Order 8 of Civil Procedure Code provides for filing of a counter claim by defendant in the suit in relation to cause of action accruing to the defendant against the plaintiff either before or after filing of the suit, however, before defendants delivered their defence. The rider is incorporated by Sub rule 1 of Rule 6A or Order 8 of Civil Procedure Code that the counter claim shall not exceed

pecuniary limits of jurisdiction of the Court. In the present case, the counter claim as admittedly exceeded pecuniary jurisdiction of Civil Judge, Junior Division, so as to entertain counter claim. Having regard to its value, the jurisdiction vests with the Civil Judge, Senior Division. Rule 6C of Order 8 of Civil Procedure Code provides that, after defendants set up a counter claim and the plaintiff claims that said claim be not disposed of by way of counter claim, but in an independent suit, it is open for the plaintiff prior to settling the issues in relation to counter claim apply to the Court for an order that such counter claim may be excluded. Plain reading of Rule 6C of Order 8 of Civil Procedure Code provides that same is with an intention to facilitate the plaintiff that counter claim filed by defendants may not be tried in his suit. Even though said is incorporated, so as to facilitate the plaintiff, however, it is required to be noted that, same can not be granted merely for asking by the plaintiff unless the plaintiff establish case on legal grounds or any legal infirmity as to why counter claim can not be tried with his suit.

17. In the present case, the plaintiff in clear terms in his application Exhibit-29 has come out with the case that, in view of proviso to Sub-rule 1 of Rule 6A of Order 8 of Civil Procedure Code, the counter claim exceeds pecuniary

jurisdiction of the Court, before whom the plaintiff has filed his suit. The plaintiff has also come out with a case in the application that, the suit properties in the counter claim are different, but for one property which was purchased by him by the registered sale deed dated 25/02/2014. The plaintiff in addition to above, has brought to the notice of learned trial Court that the counter claim be not decided with his suit and be excluded as partition is claimed by the parties to the counter claim and in the counter claim three new parties are added i. e. legal heir of original defendant No. 3, defendant Nos. 3 and 4 i. e. Bankers. It is brought to the notice of the Court that, the pecuniary jurisdiction of Civil Judge, Senior Division, before whom the suit was filed, does not permit him to entertain counter claim. It is also claimed that, there are certain other issues qua loan transaction etc. raised in the counter claim.

18. Having regard to the above referred issues, learned trial Judge has proceeded to pass an order, ordering exclusion of the counter claim. The exclusion of counter claim, though in my opinion, was right step taken in the light of proviso to Sub rule 1 of Rule 6A and 6C of Order 8 of Civil Procedure Code.

19. While passing the order impugned, learned trial Court has relied upon the judgment of the Apex Court in the matter of **Gurbachan Singh Vs. Bhag Singh** reported in **AIR 1996 SC 1087**, so as to convey that Rule 6A(i) of Order 8 of Civil Procedure Code debars filing of counter claim of valuation which divest pecuniary jurisdiction of the Court before whom the main suit is pending. So far as the above judgment is concerned, learned Counsel for the petitioner has sought to distinguish its applicability to the facts of the present case on the ground that, in the case of **Gurbachan Singh** (supra) the trial Court has proceeded with the suit and trial in the suit has substantially progressed. As such, Supreme Court has taken view adverse to the interest of petitioners. In my opinion, the above referred contentions of the petitioner are liable to be rejected in view of the observations made by Apex Court in para No. 3 of the said Judgment which reads thus:-

“3. It is true that Rule 6A(a) was introduced by Amendment Act of 1976. Preceding the amendment, it was settled law that except in a money claim, counter claim or set off cannot be set up in other suits. The Law Commission of India had recommended, to avoid multiplicity of the proceedings, right to the defendants to raise the plea of set off in addition to a counter claim in Rule 6 in the same suit irrespective of the fact whether

the cause of action for counter claim or set off had accrued to defendant either before or after the filing of the suit. The limitation was that the counter claim or set off must be pleaded by way of defence in the written statement before the defendant filed his written statement or before the time limit for delivering the written statement has expired, whether such counter-claim is in the nature of a claim for damages or not. Further limitation was that the counter-claim should not exceed the pecuniary limits of the jurisdiction of the court. In other words, by laying the counter claim pecuniary jurisdiction of the court cannot be divested and the power to try the suit already entertained cannot be taken away by accepting the counter claim beyond its pecuniary jurisdiction. Thus considered, we hold that in a suit for injunction, the counter-claim for possession also could be entertained, by operation of Order 8 Rule 6 (A) (1) of CPC."

20. The Apex Court in clear terms has observed that in view of proviso to Rule 6A of Order 8 of Civil Procedure Code, if by filing counter claim, having valuation which oust the jurisdiction of the Court from trying suit, then such counter claim can not be accepted. In other words, a counter claim beyond pecuniary jurisdiction of the Court can not be entertained.

21. The next contention of the learned Counsel for the

petitioner that, law laid down by this Court in the matter of **Sanjay Vaijinath Deshpande Vs. Rajesh Anandrao Deshapnde** reported in **2008(2) Bom. C.R. 399**, squarely applies to the present case and according to him, the counter claim is very much maintainable is concerned, the perusal of the said judgment reflects that in paragraph No. 4 the Court consider the challenge raised to the impugned order on the ground that, when the question of jurisdiction was involved, the suit ought not to be transferred by District Judge administratively to the Court of Civil Judge, Senior Division, who has pecuniary jurisdiction. The High Court has also considered provisions of Section 22 to 24 of Civil Procedure Code and clause 233 of Civil Manual and in the light of same, District Judge ordered transferring the matter by administrative order to the Court of Civil Judge, Senior Division when as per the contention of the parties, the proper course for Court of Civil Judge, Junior Division was to dismiss the claim as it was exceeding pecuniary jurisdiction of the said Court.

22. The High Court in the said judgment, having regard to the provision of chapter IX, clause 233 of the Civil Manual has observed that, the District Judge was within its power to transfer the matter administratively to the Court of

Civil Judge, Senior Division, on the ground that, Civil Judge, Junior Division has no pecuniary jurisdiction.

23. Mr. Karpe, learned Counsel for the petitioner has also placed the reliance upon the judgment of the Apex Court in the matter of **Jag Mohan Chawla Vs. Dera Radha Swami Satsang** reported in **AIR 1996 SC 2222**, so as to canvass that defendant can claim any right by way of counter claim in respect of any cause of action that had accrued to him, even though it was independent cause of action averred by the plaintiff and had same cause of action adjudicated without relegating defendant to file a separate suit. The Apex Court, while dealing with the said issue, has noted in paragraph No. 5 thus :-

“5. The question, therefore is: whether in a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable? Whether counter-claim can be made on different cause of action? it is true that preceding PC Amendment Act, 1976, Rule 6 of Order 8 limited the remedy to set off or counter-claim laid in a written statement only in a money suit. By CPC Amendment Act, 1976, Rules 6A to 6G were brought on statute. Rule 6a(1) provides that 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 damage or not. A limitation put in entertaining the counter-claim is as provided in the proviso to sub-rule (1), namely, the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court. Sub-rule (2) amplified that 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. The plaintiff shall be given liberty to file a written statement to answer the counter-claim of the defendant within such period as may be fixed by the Court. The counter-claim is directed to be treated, by operation of sub-rule (4) thereof, as a plaint governed by the rules of the pleadings of the plaint. Even before 1976 Act was brought on statute, this Court in *Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala & Ors.* [(1964) 2 SCR 567], had come to consider the case of suit and cross suit by way of counter-claim. Therein, suit was filed for enforcement of an agreement to the effect that partnership between the parties had been dissolved and the partners had arrived at a specific amount to be paid to the appellant in full satisfaction of the share of one of the partners in the partnership and thereby decree for settlement of accounts was sought. Therein the legal representatives of the deceased partner contended in the written statement, not only

denying the settlement of accounts but also made a counter-claim in the written statement for the rendition of accounts against the appellant and paid the court fee as plaint. They also sought a prayer to treat the counter-claim as a cross suit. The trial Court dismissed the suit and the counter-claim. On appeal, the learned Single Judge accepted the counter-claim on a plaint in a cross suit and remitted the suit for trial in accordance with law. On appeal, per majority, this Court had accepted the respondents' plea in the written statement to be a counter-claim for settlement of their claim and defence in written statement as a cross suit. The counter-claim could be treated as a cross suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, CPC but the object of the amendments introduced by Rules 6A to 6G are conferment of a statutory right on the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of Rule 6A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the

counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. Acceptance of the contention of the appellant tends to defeat the purpose of amendment. Opportunity also has been provided under Rule 6-C to seek deletion of the counter-claim. It is seen that the trial Court had not found it necessary to delete the counter-claim. The High Court directed to examine the identity of the property. Even otherwise, it being an independent cause of action, though the identity of the

property may be different, there arises no illegality warranting dismissal of counter-claim. Nonetheless, in the same suit, both the claim in the suit and the counter-claim could be tried and decided and disposed of in the same suit. In Mahendra Kumar & Anr. v. State of Madhya Pradesh & Ors. [(1987) c SCC 265] where a Bench of two Judges of this Court was to consider the controversy, held that since the cause of action for the counter-claim had arisen before filing of the written statement, the counter-claim was maintainable. The question therein was of limitation with which we are not concerned in this case. Thus considered we find that there is no merit in the appeal.”

24. From the above observations made by the Apex Court as are reproduced herein above, the Apex Court, in the light of amended provisions of Order 8 Rule 6, whereby Rule 6A to 6G of Code of Civil Procedure were incorporated, has noted the limitation imposed which entertaining the counter claim; as provided in sub rule (1) namely the counter claim shall not exceed the pecuniary limits of the jurisdiction of the Court. The Apex Court also considered that the effect of the counter claim to be that of cross suit which enables the trial Court to pronounce the final judgment in the same suit, both on the original claim and the counter claim. Sub rule (4) of the said Rules contemplates the treating of the counter claim as plaint, which governed by the rules

of the pleadings. The Apex Court has further noted that the object of amendment introduced by Rules 6A to 6G are conferment of a statutory right on the defendant to set up a counter claim independent of the claim on the basis of which the plaintiff has initiated the suit, on the cause of action therein. As such, according to the Apex Court, the counter claim, no longer can be confined to money claim or cause of action of the same nature as originally brought into action by the plaintiff. The Apex Court also clarified that it need not be related or to be connected with the original cause of action pleaded by the plaintiff.

. However, the rider provided as regards ousting of pecuniary jurisdiction of the Court trying the suit as per Sub-rule (1) of Rule 6A of Order 8 of Civil Procedure Code can not be given go-bye. The observations made by the Apex Court in the case of **Jag Mohan Chawla** (supra) and that of **Gurbachan Singh** (supra) takes this Court to the only conclusion that such counter claim, which oust the jurisdiction of the trial Court, who was trying the suit, is not tenable.

25. In that view of the matter, the contentions raised by Mr. Karpe that both suit and counter claim should be

transferred to the Court of Civil Judge, Senior Division and order to that effect passed by learned Court of Civil Judge, Junior Division is fallacious and does not call for any interference.

26. In that view of the matter, no material illegality or irregularity is noticed in the order impugned, which calls for no interference in the extra-ordinary jurisdiction of this Court. As such, writ petition fails, same stands dismissed.

27. Initially, this Court has pronounced the operative order, to which learned Counsel for the petitioners sought stay for the period of four weeks. The request was opposed by the learned Counsel for the respondents.

28. Having regard to the issue raised before this Court for consideration and the fact that the counter claim was ordered to be returned, it will be appropriate that, further proceedings in the suit shall remain stayed for the period of four weeks from today.

Sd/-
[N.W. SAMBRE, J.]