

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9286 OF 2015

Tamiz Begum Gulam Dastagir Shaikh,	]
at present residing at C/o. Refant,	]
Baegum Patiwala, 10, Geet Gunjan	].. Petitioner
Co-operative Housing Society Ltd.,	](Org. Deft No.1
Ganjmal, Nasik 422 00.	]to counterclaim)

Versus

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| 1. Gulam Dastagir Shaikh, Assistant |] |
| Commissioner of Labour, Bombay, |] |
| residing at Government Quarters, |] |
| Ground Floor, Walkeshwar, |] |
| Bombay 400 006. |] |
| 2. M/s. Bombay Builders, a |] |
| partnership firm registered under |] |
| the Indian Partnership Act, having |] |
| their office at Shalimar House 335, |] |
| Grant Road, Bombay-400 007. |] |
| 3. M/s. Huma Builders, Zohra Nagar, |] |
| Yari Road, Versova, Andheri (West), |] |
| Bombay 400 058. |] |
| 4. Shri. Zakaria Haji Latif Aghadi, |] |
| Hanjar Villa, 5, Club Bake Road, |] |
| Bombay 400 008. |] |

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| 5. Shri. Sattar Ahmed Nainpurwala, |] |
| Hanjar Villa, 5, Club Bake Road, |] |
| Bombay 400 008. |] |
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| 6. Shri. Razak Suleman Bechav, |] |
| Shalimar House, 335, Grant Road, |] |
| Bombay 400 007. |] |
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| 7. Haroon Sattar Pothiwala, |] |
| Shalimar House, 335, Grant Road, |] |
| Bombay 400 007. |] |
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| 8. Mazmuddin Abdul Rauf, |] |
| Shalimar House No.335, Grant Road, |] |
| Bombay 400 007. |] |
| | |
| 9. Smt. Hajrabai Z. Aghadi, |] |
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| 10. Smt. Zohrabai Z. Aghadi, |] |
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| 11. Shri. A. Razak Rajivali Mohamed, |] |
| All are residing at Hanjer Villa, 5, |] |
| Colub Bake Road, Bombay 400 008. |] |
| | |
| 12. Shri. A. Rauf Shaikh, at Shalimar |].. Respondents |
| House, 335, Grant Road, Bombay |](No.1 Original |
| 400 007. |]Plaintiff to |
| | counterclaim) |

Mr. P G. Karande i/by Mr. S. S. Redekar, for the Petitioner.

Mr. S. M. Shettigar, for the Respondent No.1.

CORAM : R.M. SAVANT, J.
DATE : 19th OCTOBER, 2015

ORAL JUDGMENT

1. Since the contesting Respondent i.e. Respondent No.1 is represented by advocate, the Petition is taken up for hearing as to admission. The Respondent Nos.2 to 12 being formal parties in the context of the challenge raised in the above petition, the Learned Counsel for the Petitioner seeks their deletion. The said Respondents are accordingly deleted at the risk of the Petitioner.

2. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3. The Writ Jurisdiction of this Court is invoked against the order dated 30.07.2015 passed by the Learned Judge of the City Civil Court, Mumbai, by which order the application being Notice of Motion No.2106 of 2015 filed by the Petitioner for being permitted to file her reply/written statement to the counterclaim came to be rejected. The suit was originally filed in this Court and bore High Court Suit No.1493 of 1988. On the pecuniary jurisdiction of the City Civil Court being enhanced it was transferred to the City Civil Court in October-November 2012 and now bears Short Cause Suit No.71 of 1988. The Respondent No.1 herein

who is the erstwhile husband of the Defendant No.12 filed his counterclaim on 21.04.1995 along with his Written Statement and the same was served upon the Plaintiff i.e. Petitioner herein. The Petitioner did not file her Written Statement/reply to the counterclaim and the ground made out was that she was not aware of the filing of the counterclaim. It appears that on two occasions the suit came to be dismissed for non-prosecution, however, thereafter has been restored. In view of the fact that the suit came to be dismissed for non-prosecution, the counterclaim was sought to be proceeded under Order VIII Rule 10 of the CPC. It is at the said stage that the instant application being Notice of Motion No.2106 of 2015 came to be filed. The ground made out was that Petitioner was not aware of the filing of counterclaim and her advocate had not informed her of the same. The said reason did not commend acceptance to the Trial Court who by the impugned order dated 30.07.2015 rejected the said Notice of Motion. The rejection of the said Notice of Motion is principally on the ground that there is a delay of about 20 years in filing the counterclaim.

4. Heard the Learned Counsel for the parties. The Learned Counsel for the Petitioner Mr. P. G. Karande would seek to reiterate the case of the Petitioner i.e. original Plaintiff and Defendant in the counterclaim. Whereas the Learned Counsel Mr. S. M. Shettigar appearing

for the Respondent No.1 would support the impugned order.

5. Having heard the Learned for the parties. In my view, the impugned order in the facts and circumstances of the present case is required to be quashed and set aside. It is required to be noted that in the suit as yet no issues have been framed. However, whilst the suit stood dismissed for non-prosecution that the counterclaim was sought to be proceeded with. The suit in question has been filed long back in the year 1988 and hence the amended provisions of the CPC are not applicable. Though there is a delay of about 20 years in filing the Written Statement/ reply to the counterclaim, having regard to the stage at which the suit is at present, no prejudice would be caused to the original Defendant No.1 if the instant Notice of Motion is allowed. For the inconvenience that is caused on account of the delay in filing of the Written Statement to the counterclaim, the Respondent No.1 can be adequately compensated by way of costs. The impugned order dated 30.07.2015 is accordingly quashed and set aside. The Notice of Motion No.2106 of 2015 stands allowed. In the facts and circumstances of the case, the Petitioner herein to pay costs of Rs.5,000/- to the Respondent No.1 within a period of four weeks from date and to also file the Written Statement to the counterclaim within four weeks. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs of

the Petition.

6 . The Learned Counsel to inform the developments in the above matter to the Trial Court when the suit comes up before it.

[R.M. SAVANT, J]