

WRIT PETITION NO. 11024 OF 2016

Sahebrao Sidaba Kapse and others .. Petitioners

Versus

Prakash Krushanaji Hitnalikar
and others .. Respondents

Shri Vilas P. Savant, Advocate for Petitioners.

CORAM : S. V. GANGAPURWALA, J.

DATE : 06TH DECEMBER, 2016.

PER COURT :

The order below Exhibit 86 allowing the application filed by the defendants thereby seeking leave to deposit the Court Fees is assailed.

2. Mr. Savant, the learned counsel for petitioners strenuously contends that, the suit was filed in the year 2008. The written statement was filed by the defendants on 24.07.2009. Thereafter, the issues were framed on 30th September, 2013. The plaintiffs had filed their examination in chief and when the matter was for cross examination, the defendants filed an application allowing them to deposit Court Fees on the counter claim i. e. after lapse of five years. The learned counsel submits that, the Court had

also not passed any order asking the plaintiffs to file written statement to the counter claim. Even the counter claim was not separately filed by defendants. As such, at such a belated stage the impugned order could not have been passed by the Court. The counter claim has to be filed as per Order VIII Rule 6-B of the Code of Civil Procedure. The same is not followed.

3. The counter claim can be filed as a part of the written statement. In fact, it is for the Court to pass an order directing the plaintiffs to file written statement to the counter claim. For non payment of court fees the plaint and/or counter claim can be rejected, if a Court passes an order directing a party to deposit Court fees within stipulated period and the Court fees is not deposited within the said stipulated period. However, in the instant matter the same is not the case. For the fault of the Court party cannot be made to suffer.

4. It is submitted that, the defendants now have deposited the Court fees of the counter claim also. The Court has in the impugned order observed that, the counter claim of the defendants mentioned in the written statement be placed for further order before the Court upon payment of Court fees as per the provisions of the Bombay Court Fees Act and upon valuation made by the defendants. Naturally, if the counter claim is allowed to be filed by the Court, then the plaintiffs would have

every right to file written statement to the counter claim as per Order VIII Rule 18 of the C. P. C. (Bombay Amendment).

5. In view of the above, the writ petition is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Dec. 16