

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

923 WRIT PETITION NO. 7850 OF 2014

**SHRIDHAR SHAHAJI GADHEKAR, L.RS. NATHA AND OTHERS
VERSUS
GOVINDSINGH JAGANNATHSINGH NAIK AND OTHERS**

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**Advocate for Petitioners : Ms. Langhe Pooja V And
Mr. V. R. Langhe
Advocate for Respondents 1 to 10 : Mr. A. D. Kasliwal**

CORAM : V. K. JADHAV, J.

DATE : 2nd February, 2016

PER COURT :

1. With consent of the parties, taken up for final hearing at the stage of admission.
2. The petitioners are the original defendants in Special Civil Suit No.255/2011. The respondents/original plaintiffs instituted the suit for perpetual injunction. The petitioners/original defendants have filed counter claim vide Exh.46 claiming relief of perpetual injunction on the basis of cause of action shown to have arisen on 18.07.2012. The trial court, by the impugned order dated 13.08.2014, rejected the counter claim moved by the defendants at Exh. 46 as not maintainable.
3. The learned counsel for the petitioners submits

that the petitioners moved application for temporary injunction and the same is granted by the trial court. The order of temporary injunction granted in favour of the petitioner defendants is confirmed up to the Hon'ble Apex Court. The learned counsel submits that thereafter the respondents plaintiffs have moved application raising objection to the counter claim. The leaned counsel further submits that the petitioners would suffer irreparable loss, if their counter claim is rejected in the manner as by the impugned order dated 13.08.2014. The learned counsel, in the alternative, submits that the petitioner/defendants may be permitted to file application before the trial court for amendment of the pleadings. The leaned counsel, in order to substantiate her contention, placed reliance on the following cases.

- (1) Laws (GJH) 2009-7-129, Sidi Muslim Jamat Bilali Vs. Kasamsha Hajisha Sotiayara
- (2) Judgment of this court in WP No.6767/2012 and connected matter , Bankatlal s/o Pusaram Bajaj Vs. Pusaram s/o Chunilal Bajaj and others
- (3) Judgment of this Court in WP No.8936/2012, Ramniwas Bansilal Lakhotia died through L.Rs. Vs. Sunil Pannalal Agrawal and others

4. Learned counsel for the respondents/original

plaintiffs submits that the trial court has rightly rejected the counter claim of defendants in the light of provisions of Order 8 Rule 6A(1) of the Civil Procedure Code. The learned counsel submits that the counter claim for the cause of action occurred after filing of the written statement cannot be entertained and the cause of action must have accrued before the written statement is filed. The learned counsel submits that there is no substance in the writ petition and the same is liable to be dismissed.

5. In view of provisions of Order 8 Rule 6A(1) of the Civil Procedure Code, counter claim for cause of action occurred after filing of the written statement cannot be entertained. In the case in hand, defendant Nos. 1 to 4 have filed written statement at Exh. 11 on 10.06.2011 whereas defendant Nos. 5 to 10 filed written statement at Exh. 38 on 01.07.2011. Counter claim at Exh. 46 is placed on record on 02.08.2011. Cause of action for the counter claim is shown dated 18.07.2011. Thus, in view of the settled position of law and in the aforesaid facts and circumstances, the trial court has rightly rejected the counter claim moved by the petitioners/defendants. However, the alternative

submissions can be accepted to some extent. The petitioners/original defendants can be granted liberty to file application for amendment in the pleadings and the trial court may decide the said application on its own merits, in accordance with law.

6. In view of the above, following order is passed:

O R D E R

- i. Writ petition is hereby dismissed.
- ii. The petitioners/original defendants are at liberty to file application for amendment in the pleadings and the trial court may decide the said application on its own merits, in accordance with law.
- iii. In the circumstances there shall be no order as to costs.

(V. K. JADHAV, J.)

JPC