

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

WRIT PETITION NO. 602 OF 2016

Keru s/o Lena Salve,
Age 65 years, occup. Agril.,
R/o Deogaon, Tq. Newasa,
Dist. Ahmednagar .. Petitioner

versus

01. Kacharu Lena Salve,
Age 70 years, occup. Agril.
r/o Deogaon, Tq. Newasa,
Dist. Ahmednagar
02. Babanbai Madhukar Vanjare,
Age major, occup. Agriculture,
r/o Bhansahiwara, Tq. Newasa,
Dist. Ahmednagar
03. Ramesh Kisan Kedare,
Age major, occup. Agriculture,
r/o P.S. Colony, White B.S.T.
Building No. 3, Room No. 28,
Ghatkopar (West)
04. Deogaon Vividh Karyakari Seva
Sahakari Society Ltd., Deogaon,
Tq. Newasa, Dist. Ahmednagar
through its Secretary
05. Sushila Manohar Hire,
Age 60 years occup. Household,
r/o Kannamwar Nagar,
Building no. 189, in front of Court,
Vikroli, Mumbai
06. Ranjana Anand Pujari,
Age 58 years, occup. Household,
r/o Asllapa Vijel, N.S. road,
Ghatkopar, Mumbai .. Respondents

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Mr. P. S. Pawar, Advocate for petitioner
Mr. H. D. Deshmukh, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
DATE : 20TH APRIL, 2016

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. Petitioner who is original defendant no.1 is aggrieved by order on Exhibit 103 in regular civil suit no. 264 of 2010 passed by Civil Judge, Junior Division, Newasa, dated 09-06-2015 whereunder petitioner's application seeking to file counterclaim stands rejected.

3. Learned counsel for petitioner submits that information in respect of a few properties which have been already referred to in the written statement has now been available with some certainty as documents relating to the same could be secured by him and as such said information with details could be brought on record and as such, application Exhibit-103 had been moved seeking counterclaim. He submits that it is not the case that it has no basis whatsoever in the written statement. In the circumstances, the court ought to have viewed the matter accordingly and eschewed pedantic approach.

4. Learned counsel for respondent no.1-original plaintiff and other respondents Mr. Deshmukh, however, contends that the application had been moved by present petitioner with a view to

avoid early decision in the suit which has been pending since 2010. He invites attention to that the written statement had been filed on 05-10-2010. Thereafter the plaintiff's witnesses were examined and were cross examined by defendants. Defendant no. 1 had also been examined and cross examined and even his witnesses had also been examined and cross examined. Thereafter, four more dates intervened and it is thereafter that the application had been moved.

5. Learned counsel for respondents further submits that counterclaim is a facility available as provided under the rules in the Code of Civil Procedure, 1908 and cannot be lodged as a matter of right. A facility will have to be enjoyed only in the way as prescribed under the rules. Application filed by present petitioner is not in compliance of rules, particularly rule 6A under Order VIII of the Code of Civil Procedure. Although it is the contention of the petitioner that there is basis seeking counterclaim in the written statement, nothing had forbidden him from seeking counterclaim claim at the time of lodging written statement. Getting information with certainty is merely a subterfuge to procrastinate the proceedings which have progressed to final stage.

6. It appears that the trial court has taken stock of all the aspects and passed the impugned order. The order cannot be faulted with. Having regard to relevant rules, particularly rule 6A,

of the Code of Civil Procedure and the conduct of the petitioner and taking into account the reasons which have weighed with the trial court while passing the order as reflected in paragraphs 12 and 13 of the same, I do not consider that the present case is fit enough to consider under discretionary powers of this court.

8. Writ petition as such is rejected. This order, however, does not preclude petitioner from taking recourse to remedy in respect of his claims as would be available in law.

9. Rule stands discharged.

SUNIL P. DESHMUKH,
JUDGE

pnd