

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

WRIT PETITION NO. 3582 OF 2014

Shri Vishal Vishwanath Landge & Ors.

.... Petitioners

Versus

Shri Dnyaneshwar Kondiba Londhe & Ors.

.... Respondents

Mr. S.V.Sadavarte for petitioners.

Mr. V.S.Talkute for respondent no.1.

Mr. G.H.Keluskar for respondent no.3.

***CORAM : N. M. Jamdar J.
Wednesday 5 October 2016***

ORAL ORDER

. By order dated 30 September 2016, parties were put to notice that the petition will be taken up for disposal. Accordingly, it taken up for disposal.

2. The petitioners are the original defendant nos. 2 to 5 in Regular Civil Suit No. 1 of 2004 filed by the respondents. Initially, the respondents had filed the suit against Pimpri Chinchwad Municipal Corporation. In the suit the petitioners made an application for impleadment and for joining themselves as

defendants. It was decided on 11 August 2004. Thereafter the petitioners filed the written statement and also the counter-claim. The petitioners thereafter filed an application challenging the maintainability of the suit and on 6 July 2007 and 9 March 2009 the application was allowed holding that the suit filed by the plaintiffs/respondent nos.1 and 2 is not maintainable and it was directed that the counter-claim to continue. The counter-claim thereafter continued as a Regular Civil Suit No. 228 of 2010. In this proceedings, the petitioners filed an application for amendment of the counter-claim on 26 February 2013. While this application was pending, an order below Exhibit 1 was passed striking out the petitioners from the suit. Thereafter an application for review of order was filed, which was rejected.

3. Heard learned Counsel for the parties. The impugned order does not give any satisfactory reasoning. It infact proceeds to suo-mottu review an order whereby the suit was dismissed and counter-claim was allowed to continue. The learned Civil Judge has proceeded on the basis that the joinder of petitioners initially itself was not justified and directed that they be struck out from the suit. There was no such occasion to suo mottu undertake an exercise of this nature. No application was filed by the plaintiffs/respondent nos.1 and 2 for dismissal of the counter-claim. What was filed by the petitioners was an application for amendment of the counter-

claim. Therefore, there appears to be confusion as to what was the exact application. This exercise could have been corrected when it was brought to the notice of the learned Civil Judge, now the learned Civil Judge maintained that the Court has ample power to strike out the parties. The learned Counsel for respondents submitted that the counter-claim is not maintainable, however, there is no such application filed by the respondents.

4. In the circumstances, the impugned orders dated 22 October 2013 have been quashed and set aside. The application filed by the petitioners under Order 6 Rule 17 of the Code of Civil Procedure stands restored to file. It is open to the respondents to file an application as per law in furtherance of their contention that the counter-claim is not maintainable. The learned Civil Judge will decide these applications on their own merits.

5. The Writ Petition is accordingly disposed of in above terms. All contentions have been kept open.

6. It is open to the parties to make a request for an early disposal of the suit and if there are no earlier commitments, it is open to the learned Civil Judge to take the suit for disposal early.

(N. M. Jamdar, J.)