

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12689 OF 2016**

Shri Jalindar Sakharam Baravkar

..Petitioner.

Vs

1. Shri Lahanu Rama Baravkar
and Ors

.. Respondents

Mr. N.V.Vechalekar i/b N.V.Vechalekar & Co, Advocates for
Petitioner.

Mr. D.B.Lonkar, Advocate for Respondents no. 1 to 9, 11 to 14,
23 and 26 to 29.

Mr. A.N.Mishra, Advocate for respondents no. 15 to 19.

CORAM : R.G.KETKAR,J.

DATE : 28/11/2016

PC:

1. Heard Mr.N.V.Vechalekar, learned counsel for the petitioner, Mr.D.B.Lonkar, learned counsel for respondents no. 1 to 9, 11 to 14, 23, 26 to 29 and Mr. A.N.Mishra, learned counsel for respondents no. 15 to 19 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged the Judgment and order dated 22.8.2016 passed by the learned Civil Judge, Jr. Dn., Daund, below Exhibit-82 in Regular Civil Suit No. 348 of 2015. By that order, the learned trial Judge allowed the application made by defendants no. 1 to 9, 11 to 14, 23, 26 to 29 (for short, 'these defendants') filed under Order VI, Rule 17 of C.P.C for amending the counter claim. These defendants filed application for amending cause title of the

counter claim. By the impugned order, the learned trial Judge has allowed the application subject to payment of costs of Rs.500/-. While allowing the application, the learned trial Judge also observed that by the proposed amendment, these defendants are only amending the cause title of counter claim. The proposed amendment does not alter the pleadings and, therefore, allowed the application for amendment.

3. In support of the petition, Mr. Vechalekar submitted that the counter claim submitted by these defendants itself is not maintainable. He submitted that the counter claim does not form part of the written statement. The counter claim is set up on 28.12.2015 and the present application for amendment is filed on 5.7.2016. On the other hand, Mr. Lonkar supported the impugned order. He submitted that application Exhibit-97 filed by the plaintiff for dismissal of the counter claim on the ground of maintainability is rejected by the trial Court.

4. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the impugned order shows that the learned trial Judge has referred to application Exhibit-97 filed by the plaintiff. Mr. Lonkar has tendered photocopy of the certified copy of the order dated 22.8.2016 filed before the learned trial Judge thereby rejecting the application Exhibit-97 which is taken on record and marked 'X' for identification. Apart

from the fact that the application Exh.97 is rejected by the learned trial Judge, the proposed amendment does not alter the pleadings of these defendants. By the proposed amendment, only cause title of counter-claim is sought to be amended. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

5. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C. Liberty is also reserved to the petitioner to challenge the order dated 22.8.2016 below Exhibit-97. Order accordingly.

(R.G.KETKAR, J.)