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

WRIT PETITION NO. 141 OF 2016

Arvind Harish Mittal.

... Petitioner.

V/s.

UTI Infrastructure and Services Ltd. & Ors. Respondents.

Ms. Shilpa Kapil for the Petitioner.

Ms. Kanchan Gupta i/b. Vigil Juris for Respondents 1 and 2.

Mr. Suresh Dubey for Respondents 3 & 4.

CORAM : N.M. Jamdar, J.

31 August, 2016.

Oral Order :-

The Petitioner challenges the order passed by the learned City Civil Court Judge whereby the Notice of Motion taken out by the Petitioner for rejection of the counter-claim was dismissed.

2. Heard the learned Counsel for the parties.

3. The learned Counsel for the Petitioner has sought to contend that the manner in which the counter-claim has been registered without setting aside the earlier orders when the suit was

transferred to the City Civil Court is highly inappropriate and this Court should go through the record and conclude the issue as to the registration of the counter-claim. The learned Counsel for the Respondents has sought to advance the contentions in support of the proper registration of the counter-claim. The learned Counsel for the Respondents has also urged this Court to call for the Record and Proceedings.

4. Considering the nature of the jurisdiction which the Petitioner invokes, it has to be kept in mind that the decision on the contentions which are sought to be advanced by the Petitioner will entail examination of the Court record and to find out how the entries came about in the Court records and whether the counter-claim was filed without setting aside the earlier order and was within time. This will entail a detailed factual enquiry. The suit filed by the Petitioner is pending. Therefore, without going into the controversy at present, the Writ Petition can be disposed of by keeping the contentions of the parties regarding the tenability of the counter-claim to be decided when the counter-claim is taken out for consideration on merits. It is clarified that irrespective of the impugned order, it will be open to the Petitioner to urge the points which are sought to be urged in this Petition, when the counter-claim is to be taken up for consideration on merits. All contentions of the Respondents are also kept open in that regard.

5. The Writ Petition is accordingly disposed of. It is open to the Petitioner to file reply to the counter-claim without prejudice to rights and contentions of the Petitioner which are raised in this Petition.

(N.M. Jamdar, J.)