

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO.6277 OF 2014

(Uttam Nagoji Raut ..vs.. Satish Nathmal Karwa)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 04-07-2016

Heard Shri R.N. Ghuge, Advocate for the
petitioner-original defendant.

2. The petitioner has challenged the order passed by the trial Court rejecting the application (Exhibit No.18) filed by the petitioner-defendant seeking to amend the written statement to incorporate counter-claim and for impleading additional party in the counter-claim.

3. The learned trial Judge has rejected the application (Exhibit No.18) on the ground that the defendant is seeking to raise counter-claim to challenge the sale-deed dated 13-09-1982 and as the claim is time barred, the defendant cannot be permitted to incorporate the counter-claim. Relying on the judgment given by the Hon'ble Supreme Court in the case of *Pankaja and another vs. Yellappa (Dead) by Lrs. and others* reported in (2004) 6 SCC 415, it is submitted that the reason given by the learned trial Judge is not proper and therefore, the order passed by him is unsustainable and

it be set aside and the application filed by the petitioner-defendant be allowed.

4. With the assistance of the learned Advocate for the petitioner, I have examined the documents placed on the record of the petition. The written statement is filed by the defendant on 13-04-2011. In the proposed counter-claim, the petitioner seeks to raise challenge to the sale-deed executed on 20-04-2011. Thus the cause of action on the basis of which the counter-claim is sought to be made has arisen after the filing of the written statement. The provisions of Order VIII Rule 6A of the Code of Civil Procedure do not permit making of such a counter-claim.

5. Though the reason given by the learned trial Judge for rejecting the application (Exhibit No.18) is not proper, the application cannot be allowed for the above reason.

6. Hence, the following order :

- (i) The application (Exhibit No.18) filed by the petitioner-defendant before the trial Court stands rejected.
- (ii) The petitioner-defendant would be at liberty to file separate civil suit, if so advised and if permissible in law.
- (iii) The petition is dismissed.

(iv) The parties to bear their own costs.

JUDGE

adgokar