

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1483 OF 2015

Ramnath Annasaheb Deokar

.. **Petitioner**

Versus

Dattu Eknath Lokhande

.. **Respondent**

Shri Rahul P. Dhase, Advocate for the Petitioner.

Shri S. D. Tawshikar h/f Shri Ashok S. Pavse, Advocate for the Respondent / Sole.

CORAM : S. V. GANGAPURWALA, J.

DATE : 14th December, 2017

PER COURT :

1. The amendment application filed by the defendant seeking counter claim is allowed. Aggrieved thereby the present petition.
2. Mr. Dhase, learned advocate for the petitioner submits that 7 years after filing of written statement, an application is moved seeking amendment in the written statement thereby adding the relief of counter claim. No sufficient cause is stated for not filing the amendment application earlier. The evidence of the plaintiff has almost come to an end. At such a belated stage

application for amendment that too of introducing counter claim could not have been filed. The learned advocate relies on the Judgment of learned Single Judge of this court in a case of **Nagnath Jagannath Lomate and another Vs. Narsingh Sambha More and others** reported in **2009 (3) Mh. L. J. 564.**

3. Mr. Tawshikar, the learned advocate for the respondent submits that in fact the claim for recovery of encroached portion was made in the original written statement, however it was not stated that the same is by way of an amendment. It is only stated that the same be treated as a counter claim. All these aspects are considered by the court while allowing the application.

4. I have gone through the written statement filed by the defendant. In the written statement, the defendant has stated about the encroachment made by the petitioner / plaintiff. He had stated in paragraph No. 15 of the written statement that the plaintiff refused to give possession of the encroached portion and when he sought possession of the encroached portion the present suit is filed. In paragraph No. 19 of the original written

statement filed by the defendant, he had prayed for directions against the plaintiff to remove the encroachment. However the same was not stating that it is by way of a counter claim. The counter claim can be pleaded by three modes-

- I] As a part of the written statement.
- II] By way of an amendment under Order 6 Rule 17.
- III] By way of an additional written statement as per Order 8 Rule 9 of the Civil Procedure Code, 1908.

5. The petitioner has in fact pleaded in the original written statement and even in the prayer clause that the plaintiff be directed to remove the encroachment. In view of that the counter claim was present in the original written statement. Though belatedly now by inserting para 18(A) it has been specifically stated that the same is by way of a counter claim. The defendant ought to pay court fees upon the same.

6. In view of the fact that the pleadings were already present in the written statement and the prayer was also made by the defendant in original written statement seeking directions against the plaintiff to remove the encroachment a clarificatory amendment stating that the same be treated as a counter claim

would not be barred. The Judgment relied by the learned advocate for the petitioner in case of Nagnath Jagannath Lomate and another Vs. Narsingh Sambha More and others (supra) would not apply.

7. Considering the above, I pass the following order.

ORDER

I] The defendant shall pay court fees on the counter claim.

II] The plaintiff will be entitled to file written statement to the counter claim of the defendant and will be entitled to adduce further evidence.

8. With these observations, the writ petition is disposed of.

No costs.

[S. V. GANGAPURWALA, J.]

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