

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5034 OF 2017

KETAN SURESH GORADIA
VERSUS
PRITI SURESH GORADIA @ PRITI RAJNDRA CHAND AND OTHERS.

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Advocate for the Petitioner : Shri Bhadgaonkar Umesh A..
Advocate for Respondent 1 : Shri Bedre Vinayak Sudhakar.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th September, 2017

Per Court:

1 The Petitioner/ original Defendant No.3 is aggrieved by the orders dated 13.03.2014 and 06.04.2016 passed by the Trial Court below Exhibit-58 and Exhibit-124, respectively.

2 The learned Advocate for the Petitioner submits, on instructions, that as Respondent No.1 is the original Plaintiff and is the only contesting litigant with relation to the cause of action raised in this petition, Respondent Nos.2 to 9, who are the original Defendants, can be deleted.

3 The said deletion is permitted at the risk of the Petitioner and deletion to be carried out forthwith.

4 The dates and sequence of events in this petition are as

under:-

- (a) Respondent No.1/ Plaintiff filed Special Civil Suit No.19/2006 on 28.04.2006.
- (b) The Petitioner/ Defendant No.3 filed the Counter Claim on 11.01.2007 at Exhibit-58.
- (c) As the court fees were not paid, the Trial Court passed an order on 26.02.2014 that Respondent No.1 shall deposit the court fees by the next date which was 13.03.2014.
- (d) On 13.03.2014, the Trial Court passed the impugned order rejecting the Counter Claim under Order VII Rule 11(c) of the Code of Civil Procedure for having not complied with the directions of the Court.
- (e) On 15.03.2014, the Petitioner deposited the court fees of Rs.3 lac which is in fact the requisite court fees to be deposited along with the Counter Claim.
- (f) As the Counter Claim was not taken on record pursuant to the order dated 13.03.2014, on 21.03.2014 the Petitioner moved the application Exhibit-124 praying for review of it's order dated 13.03.2014.
- (g) By the impugned order dated 06.04.2016, the said application was rejected.

5 Shri Bedre, learned Advocate for Respondent No.1, submits that Order VIII Rule 6-A and especially sub-clause (4) thereof needs to be considered. It provides for treating the Counter Claim as a plaint and would be governed by the Rules applicable to the plaints.

6 He, therefore, submits that once the Counter Claim is rejected by the order dated 13.03.2014, there is no counter claim on record and as such, this Court need not entertain this petition as there was no application filed by the Petitioner seeking leave to enlarge the time to comply with the directions of the Court.

7 Reliance is placed upon the judgment of this Court in the matter of Dilip Kisanrao Khasbage vs. Leeladhar Pandurang Ganorkar and others, 2011 (1) Mh.L.J. 969.

8 Having considered the submissions of the learned Advocates, I have gone through Order VIII Rule 6-A (4) r/w Order VII Rule 11(c) of the Code of Civil Procedure. It is specifically provided in Section 148 of the Code of Civil Procedure that a party could move the Court for seeking enlargement of the time when any period is fixed or granted by the court for doing any act prescribed or directed by the court. The court would then permit, by exercising its discretion, the party to comply with the direction by enlarging the time as is found appropriate even though the time originally fixed has expired.

9 No such application was filed by the Petitioner before the

Trial Court and enlargement of time was not sought. Yet, of its own accord, the Petitioner deposited the court fees of Rs.3 lac by depositing the court fees stamp for the said purpose on 15.03.2014, which is after two days from the date of the rejection of the Counter Claim.

10 The fact remains that the intention of the Petitioner was expressed by depositing the court fees of Rs.3 lac on 15.03.2014.

11 Shri Bedre has raised an issue that even if this Court, to meet the ends of justice, allows the filing of the Counter Claim, the date of filing of such claim shall be construed to be effective from the date of the order of this Court today.

12 Though the submissions of Shri Bedre, in principle, are correct, I am not able to accept his contention that the date of filing of the Counter Claim should be the date on which I have passed this order for the reason that the Petitioner has deposited Rs.3 lac on 15.03.2014. May be on account of lack of proper advise, the Petitioner did not file an application under Section 148 on 13.03.2014 disclosing his intention that he would deposit the court fees within 48 hours. If such an application would have been filed, I am sure that the Trial Court would have considered it as the Petitioner has in fact deposited the court fees within 48 hours from 13.03.2014.

13 Considering the above, this Writ Petition is allowed and the impugned order dated 13.03.2014 is quashed and set aside only on

account of the fact that the Petitioner has deposited the court fees on 15.03.2014. As such, the impugned order dated 06.04.2016 would not survive and would stand set aside.

14 Insofar as reducing the hardships being suffered by Respondent No.1/ original Plaintiff is concerned, I have called upon the Petitioner to make a statement whether, he is willing to deposit costs.

15 Shri Bedre has demanded costs of Rs.1 lac.

16 The learned Advocate for the Petitioner, on instructions from the Petitioner present in the Court, submits that he would deposit an amount of Rs.25,000/- in this Court.

17 Shri Bedre graciously submits that out of the said amount, Rs.5000/- can be deposited with the Advocate Association's Bar Library, High Court, Aurangabad as a donation and Respondent No.1 would then withdraw the remaining amount of Rs.20,000/-.

18 The Counter Claim Exhibit-58 shall stand restored to the file in Special Civil Suit No.19/2006 and shall be deemed to have been filed on 15.03.2014. The Petitioner shall have the right under the Code of Civil Procedure to deal with the said Counter Claim.

19 The Trial Court shall note that the issue of limitation with regard to the cause of action put forth by the Petitioner in his counter claim shall be calculated from 15.03.2014 which shall be deemed date on which the Counter Claim has been filed.

20 Rs.25,000/- (Rupees Twenty Five Thousand) shall be deposited by the Petitioner in this Court within THREE WEEKS from today and produce a receipt of such deposit before the Trial Court within ONE WEEK thereafter, failing which the Counter Claim shall stand rejected automatically.

21 After the amount as above is deposited, the Registry of this Court shall transmit Rs.5,000/- (Rupees Five Thousand) to the Advocate Association's Bar Library, High Court, Aurangabad and Respondent No.1 would be at liberty to withdraw an amount of Rs.20,000/- (Rupees Twenty Thousand) without conditions, subject to furnishing the identity proof in the form of the Voter's Identity Card issued by the Election Commission of India and the Adhaar Card/ PAN Card and due identification by the Registry.