

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11786 OF 2017

1. M/s. Ashok Irrigation Equipments
Pvt. Ltd., as Private Limited Company
Through its Managing Director
Ashokkumar Gangaram Ranglani
Age 64 years, Occ. Business,
R/o. Plot No. C-9, MIDC, Jalgaon
Tq. and District Jalgaon
 2. Ashokkumar Gangaram Ranglani
Age 64 years, Occ. Business,
R/o. Plot No.6, Shivram Nagar
M.J. College Road, Jalgaon
Tq. and District Jalgaon
- ...Petitioners

versus

1. The Jalgaon Janta Sahakari
Bank Limited, Jalgaon
Seva 117/119, Navi Peth, Jalgaon
Through its Manager
2. Harshad Ashok Rangelani
Age major, Occ. Business,
R/o. Plot No. C-9, MIDC,
Jalgaon, District Jalgaon
3. Amit Ashok Rangelani,
Age major, Occ. Business,
R/o. Plot No. C-9, MIDC,
Jalgaon, District Jalgaon
4. Hemant Nandlal Rangelani,
Age major, Occ. Business,
R/o. 1, Telephone Nagar,
Jalgaon, District Jalgaon
5. Nandlal Gangaram Rangelani,
Age major, Occ. Business,
R/o. 1, Telephone Nagar,
Jalgaon, District Jalgaon
6. Prabhudas Gangaram Rangelani,
Age major, Occ. Business,
R/o. 2, Telephone Nagar,

Jalgaon, District Jalgaon

7. Chandrakant Khushiram Adwani
Age major, Occ. Business,
R/o. Hotel Poonam, Station Road,
Jalgaon, District Jalgaon ...Respondents

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Mr. Ajay G. Talhar, advocate for the petitioners
Mr. V.J. Dixit, senior counsel, i/b Mr. A.N. Nagargoje, advocate for
respondent No.1

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CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment : 22.11.2017**

**Date of pronouncing
the Judgment: 05.12.2017**

JUDGMENT:-

1. Rule. Rule returnable forthwith. By consent, heard finally at admission stage.
2. The Instant writ petition has been filed challenging the legality and validity of the judgment and order dated 8.4.2017 passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad in Revision No. 52 of 2016 and 18 of 2017, whereby the learned appellate court allowed the revision filed by respondent No.1 Bank and quashed and set aside the order dated 26.9.2016 passed by the learned Judge, Co-operative Court, Jalgaon below Exh.127 in Dispute No. 326 of 2010, accepting the

counter claim of present petitioners.

3. Brief facts giving rise to the present writ petition are as follows:-

a) The petitioner company has obtained loan facilities from respondent No.1 Bank. However, the dispute arose in respect of said loan transaction and after some proceedings initiated under the provisions of Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act 2002, respondent No.1 Bank filed dispute as contemplated under Section 91 of Maharashtra Co-operative Societies Act 1960 before the Co-operative Court at Jalgaon for recovery of term loan of Rs.3,64,43,441/-, hypothecation cash credit loan of Rs.1,41,81,547/- and WCTL loan of Rs. 1,58,08,942/- from the petitioner company.

b) Though the petitioner company was duly served and appeared in the matter, failed to file written statement and therefore, "No W.S." order came to be passed against the petitioner company on 19.10.2011. On 12.11.2014, the petitioner company has moved an application Exh.106 alongwith written statement for setting aside the said order of "No W.S.". In the meantime, respondent bank led its evidence and no cross order was passed. Even respondent bank

had filed evidence close pursis on 11.5.2016. Application Exh.106 filed by the petitioner company for setting aside order of "No W.S." came to be rejected by the Co-operative Court by order dated 15.7.2015. The petitioner company had therefore, filed Revision No. 6 of 2016, which came to be allowed on 5.8.2016 by directing the petitioner to file written statement on or before 21.8.2016 subject to deposit cost of Rs.1,00,000/- each by the petitioners herein. The petitioners therefore, approached to this Court by filing writ petition No. 8932 of 2016. However, this Court by order dated 19.8.2016 in writ petition No. 8932 of 2016 disposed of the writ petition by only extending the time of 8 days w.e.f. 21.8.2016 for filing written statement. On 29.8.2016, the petitioners had filed their written statement before the Co-operative Court. The petitioners have also moved an application Exh.127 for taking counter claim on record and for grant of time to pay the court fees. The learned Judge of the Co-operative court by order dated 26.9.2016 has allowed the said application Exh.127.

b) Being aggrieved by the same, the respondent bank has preferred Revision No. 52 of 2016 before the Co-operative Appellate court, Aurangabad. Aggrieved by the very same order to some extent, the present petitioners have also filed Revision application No. 18 of 2017. The Co-operative Appellate Court, by common order

dated 8.4.2017 in Revision No. 52 of 2016 and Revision No. 18 of 2017 allowed the Revision No. 52 of 2016 filed by respondent No.1 Bank and set aside the order passed by Co-operative Court below Exh.127 in Dispute No. 326 of 2010 and rejected application Exh.127 filed by the petitioner. Revision No. 18 of 2017 came to be rejected. It is not out of place to mention here that in the counter claim, two respondents are added as party respondents and the petitioners moved an application below Exh.134-A for issuance of summons to the added respondents i.e. Reserve Bank of India and District Industry Center. The said application came to be rejected vide order dated 24.10.2016 with further direction to the petitioners to delete the said added respondents. Against the said order, the petitioners herein preferred aforesaid Revision No. 18 of 2017 which came to be rejected by the aforesaid common order. Hence, this writ petition.

4. Learned counsel for the petitioners submits that the petitioners being aggrieved by rejection of application Exh.106 filed for setting aside "No W.S." order, preferred Revision No. 6 of 2016 before the Co-operative Appellate court, Bench at Aurangabad and appellate court by order dated 5.8.2016 allowed the said revision and set aside the order passed by the co-operative court below Exh.106 in Dispute No. 326 of 2010 and allowed application Exh.106 subject to deposit of costs of Rs.1,00,000/- each, to be deposited on or

before 21.8.2016, with the trial court. The said time of depositing the cost amount only came to be extended by this court in writ petition No. 8932 of 2016 for 8 days from 21.8.2016 and thus, after fulfilling the said condition of deposit of costs, written statement came to be accepted by the co-operative court on 29.8.2016. The petitioners have filed their counter claim on 29.8.2016 itself and also requested for grant of time to pay the requisite court fees. The learned Judge Co-operative court has directed the other side to file say and accordingly kept the matter on 8.9.2016. Thus, by order dated 26.9.2016 the learned Judge of the Co-operative court has allowed application Exh.127 filed by the present petitioners for taking counter claim on record and for permission to grant time to affix the court fees. The learned counsel submits that filing of counter claim by the petitioners after filing of written statement is not barred. On the other hand, on the day on which written statement was accepted the petitioners have filed their counter claim. The cause of action, as shown in the counter claim, arises either before or after filing of the suit and before filing of the written statement. Rule 6A(1) of Order VIII of C.P.C. does not, on the face of it, bar filing of counter claim by the defendants after he had filed the written statement. Learned counsel submits that though the Co-operative court has rightly allowed application Exh.127 and accepted the counter claim, filed by the petitioners, the Co-operative appellate court has failed to

consider the legal aspects and rejected application Exh.127. Learned counsel submits that the respondent bank has closed its evidence before the written statement filed by the petitioners. Under these circumstances, the petitioners would be entitled to call witness of respondent No.1 Bank for cross examination in the light of the pleadings and even issues are likely to be recasted in terms of pleadings of the counter claim filed by the petitioners. In view of the same, no prejudice is likely to be caused to the respondent Bank. The petitioners' evidence is yet to commence and the respondent No.1 Bank's evidence in strict sense, is not closed.

5. Learned counsel for the petitioners, in order to substantiate his contentions, placed reliance on the following cases:-

- i) Vijay Prakash Jarath vs. Tej Prakash Jarath, reported in 2016 AIR (SC) 1304,
- ii) Shanti Rani Das Dewanjee vs. Dineshchandra Day, reported in 1997 AIR (SC) 3985
- iii) Mahendra Kumar vs. State of Madhya Pradesh, reported in 1987 AIR (SC) 1395,
- iv) Sharad Dinkar Padalkar and others vs. Sugandha Balasaheb Jadhav and Anr, reported in 2014 (1) AIR Bom.R. 107,

- v) Sugesan and Co. Pvt. Ltd. Madras vs. Hindustan Machine Tools Ltd., reported in AIR 2004 AP 428;
- vi) Gulf Oil India Limited vs. Tube Investment of India Limited, reported in 2013 (2) ALL MR 206
- vii) Baburam Sharma vs. District Judge Hardoi and others, reported in 2011 (85) ALR 195.

6. Learned senior counsel for the respondent Bank submits that the dispute was filed on 6.6.2010 and the petitioners have put their appearance on 13.10.2010 but failed to file their written statement. Consequently, "No W.S." order came to be passed on 19.10.2011. In the meantime, the respondent Bank led its evidence and also filed evidence close pursis. On 12.11.2014 the petitioners filed an application Exh.106 for setting aside the "No W.S." order and to accept the written statement. However, the said application came to be rejected on 15.7.2015. Alongwith application Exh.106, though written statement was filed on 12.11.2014, the counter claim was not filed. Though cause of action shown to have been arisen prior to filing of written statement, the petitioners have not filed counter claim at the time of filing of written statement. The petitioners have filed counter claim on 8.9.2016. Learned senior counsel submits that order passed by the revisional court thereby allowing revision No.52

of 2016 is well within four corners of law. It is well settled that the counter claim has to be filed at the time of filing of written statement and counter claim filed after written statement cannot be accepted.

7. Learned senior counsel for respondent No.1 Bank in order to substantiate his submissions placed reliance on the judgment in the case of ***Ramesh Chand Ardawatiya vs. Anil Panjwani, reported in (2003) 7 SCC 350.***

8. Learned senior counsel appearing for respondent bank has vehemently submitted that the belated counter claim must be discouraged by the court. Learned counsel for the petitioner has submitted that even the court in many cases has allowed the defendant to amend his written statement so as to enable him to elaborate his defence and take additional plea in support of his case. Further litigation should be endeavoured to be avoided and even the joining several cause of actions in the suit is permissible.

9. In the backdrop of these submissions, Rule 6-A of Order VIII of C.P.C. is reproduced herein below:-

“6A. Counter claim by defendant.- (1) A defendant in a suit may, in addition to his right of pleading a set off under rule 6, set up, by way of counter claim against the claim of the plaintiff, any right or claim in

respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not;

Provided that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter claim shall have the same effect as a cross suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counter claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the court.

(4) The counter claim shall be treated as a plaint and governed by the rules applicable to plaints.”

10. A perusal of sub-Rule (1) of Rule 6A of Order VIII, it leaves no room to a doubt that cause of action in respect of which counter claim can be filed, accrued before the defendant has delivered his defence i.e. before the defendant has filed written statement. Right to file counter claim is additional right and thus the cause of action must accrue either before or after filing the suit but before the defendant has raised his defence.

11. In the instant case, in para 28 of the counter claim the cause of action shown to have been occurred on 15.3.2012 when the petitioners submitted “O.T.S.” proposal on or before 15.4.2012 the

same was refused on 2.5.2012 by the Bank branding the petitioners as willful defaulters. Even though assuming that in the year 2014 the petitioners have filed their written statement alongwith application Exh.106 filed for setting aside "No W.S." order, the aforesaid cause of action shown to have been arose before or after filing of the dispute but certainly before the petitioners original defendants have tendered their defence in the suit. It is well settled that the counter claim, being suit in status subject to law of limitation can be entertained even after the written statement is filed by defendant and however, subject to condition that such cause of action arises either before or after filing of the suit, upper limit of which, is filing of the written statement.

12. Learned senior counsel for the respondents bank has placed his reliance on the judgment in the case of **Ramesh Chand Ardawatiya vs. Anil Panjwani, (supra)**. In para 28 of the said judgment, the Supreme Court has made the following observations:-

"28. Looking to the scheme of Order VIII as amended by Act No. 104 of 1976, we are of the opinion, that there are three modes of pleading or setting up a counter-claim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with Rule 6-A would be a counter-claim against the claim of the plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counter-claim may

be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed. Thirdly, a counter-claim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases the counter-claim though referable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the Court, either under Order VI Rule 17 of the CPC if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under Order VIII Rule 9 of the CPC if sought to be placed on record by way of subsequent pleading. The purpose of the provision enabling filing of a counter-claim is to avoid multiplicity of judicial proceedings and save upon the Court's time as also to exclude the inconvenience to the parties by enabling claims and counter-claims, that is, all disputes between the same parties being decided in the course of the same proceedings. If the consequence of permitting a counter-claim either by way of amendment or by way of subsequent pleading would be prolonging of the trial, complicating the otherwise smooth flow of proceedings or causing a delay in the progress of the suit by forcing a retreat on the steps already taken by the Court, the Court would be justified in exercising its discretion not in favour of permitting a belated counter-claim. The framers of the law never intended the pleading by way of counter-claim being utilized as an instrument for forcing upon a re-opening of the trial or pushing back the progress of proceeding. Generally speaking, a counter-claim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case set down for trial, and more so when the trial has already commenced. But certainly a counter-claim is not entertainable when there is no written statement on record. There being no written statement filed in the suit, the counter-claim was obviously not set up in the written statement within the meaning of Rule 6-A. There is no question of such counter-claim being introduced by way of amendment; for

there is no written statement available to include a counter claim therein. Equally there would be no question of a counter-claim being raised by way of 'subsequent pleading' as there is no 'previous pleading' on record. In the present case, the defendant having felled to file any written statement and also having forfeited his right to filing the same the Trial Court was fully justified in not entertaining the counter-claim filed by the defendant-appellant. A refusal on the part of the Court to entertain a belated counter-claim may not prejudice the defendant because in spite of the counter-claim having been refused to be entertained he is always at liberty to file his own suit based on the cause of action for counter-claim."

13. In para 30 of said judgment, the Supreme Court has following observations by referring some other cases which are relevant for discussion in the present matter:-

"30. In Mahender Kumar and Anr's case (supra) counter- claim was sought to be brought on record after the filling of a written statement which was turned down by the Trial Court upon a misreading of Rule 6-A(1) that the counter-claim filed after the filing of the written statement was ipso facto not maintainable. This Court upset such erroneous view by clarifying the legal position, apparent on a bare reading of the relevant provision that the only requirement of Rule 6-A(1) was that the cause of action for the counter-claim should have arisen before the filing of the written statement and if that was so, the counter-claim was not simply excluded. In Shanti Rani Das Dewanji's case (supra), the brief order of this Court deals with the situation that the right to file a counter-claim does not come to an end by filing of the written statement once. None of the two decisions deals with a situation

as before us and the question of law arising therefrom namely whether it is permissible to raise and plead a counter-claim though the defendant has not filed a written statement and has also lost his right to file the same. On the contrary, in both the cases cited by the learned senior counsel for the appellant, there was a written statement filed by the defendant available on record and the counter-claim was sought to be pleaded in addition to the defence taken in the written statement. It is difficult to conceive the defendant being conferred with a right to attack the plaintiff by way of a counter-claim in that very suit in which he has been held entitled not even to defend himself by filing a written statement and pleading a positive defence to defend himself against the relief sought for by the plaintiff."

14. In the case cited above, the Supreme court has dealt with the issue wherein the counter claim alone filed without filing any written statement. The Supreme Court has observed that there being no written statement filed in the suit, the counter claim obviously not set up in the written statement within the meaning of Rule 6-A of Order VIII of C.P.C. Thus, the issue is altogether different and the aforesaid case relied upon by learned senior counsel cannot be made applicable to the facts and circumstances of the present case.

15. In view of above discussion, I find that the impugned order passed by the Maharashtra State Co-operative Appellate Court is not sustainable. Writ petition thus deserves to be allowed by setting aside the order passed by the Co-operative appellate court.

16. At this stage, learned counsel for the petitioners, on instructions, submits that the petitioners are not pressing their prayer to the extent of quashing and setting aside the order passed by the appellate court in revision No 18 of 2017. In view of the same, the order dated 26.10.2016 passed by the Co-operative Court below Exh.134-A filed by the present petitioners directing deletion of additional parties in the counter claim i.e. Reserve Bank of India and the District Industry Center would stand as it is.

17. Learned senior counsel at this stage submits that the dispute is pending since long and thus Co-operative court may be directed to dispose of the pending dispute expeditiously. In view of above, following order is passed:-

O R D E R

- I. The writ petition is hereby partly allowed. No costs.
- II. The judgment and order dated 8.4.2017 passed by the Member, Maharashtra State Co-operative Appellate court, Bench at Aurangabad in Revision application No. 52 of 2016 is hereby quashed and set aside and revision application No. 52

of 2016 filed by respondent No.1 Bank is hereby dismissed. The order dated 26.9.2016 passed below Exh.127 in Dispute No. 326 of 2010 by the Co-operative Court, Jalgaon stands confirmed.

- III. The writ petition is hereby dismissed to the extent of rejection of Revision No.18 of 2017 by the Member, Maharashtra State Co-operative Appellate court, Bench at Aurangabad. Needless to say that the order passed by the Co-operative court dated 26.10.2016 below Exh.134-A stands confirmed.
- IV. The Co-operative Court, Jalgaon is hereby directed to dispose of Dispute No. 326 of 2010, as expeditiously as possible and preferably within period of six months from the date of receipt of this order.
- V. Writ petition is accordingly disposed of.
- VI. Rule is made absolute in the above terms.

(V. K. JADHAV, J.)