

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13252 OF 2017

SHRIKRUSHNA MALHARI DHADGE AND ANOTHER
VERSUS
NARAYAN DAGADU BINE AND OTHERS

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Advocate for Petitioners : Mr. N. C. Garud
Advocate for Respondents no.1,3 to 5 : Mr. R. K.Temkar

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CORAM : V. K. JADHAV, J.
DATED : 21st MARCH, 2018

PER COURT:-

1. By way of this petition, petitioners/original plaintiffs have challenged the order passed by the trial court dated 01.09.2017 below Exh.132.

2. The petitioners/original plaintiffs have filed the application at exh.132 in RCS no.859 of 2012 for condonation of delay caused in filing reply to the counter claim filed by defendants no.1 & 3 to 5. By the impugned order dated 01.09.2017 the trial court has rejected said application Exh.132.

3. It appears from the impugned order that the petitioners/plaintiffs have instituted a suit on 23.07.2012 and

respondents/defendants no.1, 3 to 5 have filed their written statement along with counter claim on 12.09.2012. Thereafter, issues were framed on 23.11.2015. The plaintiffs have adduced their evidence and the defendants no.1,3 to 5 have also adduced their evidence and evidence of respondent /defendant no.6 was also closed on 03.05.2017 and as stated in para no.4 of the impugned order passed by the trial court, the matter was fixed for final argument. At this stage the petitioners/plaintiffs have filed application Exh.132 and as such there is a delay of 5 years in filing the reply to the counter claim. It is not necessary to state here that in terms of the provisions of Order VIII Rule 6-A Sub-Rule (4), the counter-claim is to be treated as a plaint and governed by the rules applicable to the plaint. I thus find no fault in the impugned order passed by the trial court.

4. Learned counsel for the petitioners has expressed his apprehension that by way of the counter-claim, respondents/defendants no.1, 3 to 5 are seeking demolition of the house structure of the petitioners/plaintiffs to the extent of 25 X 30' and the trial court would pronounce the judgment for the reasons that the petitioners/original plaintiffs have not

contested the same by filing the reply.

5. In terms of the provisions of Order VIII Rule 6-E in case of default of the plaintiff to reply to the counter claim, the court may pronounce the judgment against the plaintiff in relation to the counter claim made against him or make such order in relation to the counter claim as it thinks fit. Needless to say that the trial court has to exercise the judicial discretion while passing the final order in terms of the provisions of Order VIII Rule 6-E wherein the alternate option is also provided that the trial court may make such order in relation to the counter claim as it thinks fit. Though the failure of the plaintiff to file written statement in answer to the counter claim of the defendant will make the provisions of Order VIII Rule 5(2) applicable enabling the court to treat the allegations in the counter claim as admitted and pronounce the judgment on that basis as per provisions of Order VIII Rule 6-G, this specific provision of Rule 6-E has empowered the court also to exercise the sound discretion and make such order in relation to the counter claim as it thinks fit.

6. In view of aforesaid provisions of Rule 6-E, it is for the trial

court to exercise the powers with sound judicial discretion and there cannot be a criteria to decide the counter claim in terms of its prayer clause only for the reasons that the plaintiffs failed to file any reply to the counter claim. With these observations, the writ petition is disposed of. No costs.

(V. K. JADHAV, J.)

vsm/

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