

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4786 OF 2017

Sakhahari Namdeo Kolhe	 Petitioner
V/s.	
Pandurang Chiman Kolhe & Ors.	 Respondents

Mr. Sachin Gite for the Petitioner.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH JANUARY 2018.

P.C. :

1. Heard Mr. Gite, learned counsel for the Petitioner.
2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 6th August 2016 passed by the Joint Civil Judge, Senior Division, Niphad, below “Exhibit-59” in Regular Civil Suit No.371 of 2012. By this application filed at “Exhibit-59”, the Petitioner, who is Original Defendant No.1 in the Trial Court, wanted to add the relief of compensation by way of counter-claim and also the relief of possession of encroached portion from Defendant Nos.2 to 9.
3. In the first place, the relief of possession by way of counter-claim cannot be tenable against the co-Defendant Nos.2 to 9. Secondly and

most importantly, what is relevant is that, in the present case, written statement was filed by the present Petitioner in the Trial Court on 23rd January 2013; whereas, the cause for filing of counter-claim, as stated in the amendment application, is said to have occurred on 21st July 2014. Thus, the 'cause of action' for filing of counter-claim, having occurred subsequent to the date of filing of the written statement, the counter-claim cannot be tenable at all.

4. The provisions of Order VIII Rule 6(a) of C.P.C. are very specific to that effect, which provide that,

“A Defendant, in his Suit, may, in addition to his right of pleading a set off under Order VI, 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 filing of the Suit but before the Defendant has delivered his defence or before the time limit for delivering his defence has expired.”

5. Therefore, the crucial words in this provision are that, *“the cause of action must have occurred before the Defendant has delivered his defence or before the time limit for delivering the defence has expired”*. In this case, admittedly, as the 'cause of action' has occurred after the filing of the written statement by the present Petitioner, the counter-claim cannot be tenable. The Trial Court has, hence, rightly rejected the Petitioner's application filed at “Exhibit-59”.

6. The impugned order, therefore, passed by the Trial Court, being within the four corners of the law, no interference is warranted in the said order. Writ Petition, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]