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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8213 OF 2017**

Vishal Suresh Mandot

.....Petitioner

V/s.

Smita Subhash Mandot and others

....Respondents

Mr. Shailesh Chavan I/b Mr. Milind Deshmukh for the petitioner.
None for the respondent.

CORAM : NITIN W. SAMBRE, J.**DATE : 27th JUNE, 2018.****P.C.**

Heard. R.C.S. no. 173 of 2016 is initiated by the plaintiff against respondent/defendants for specific performance.

2 In the said suit, a defence is raised by the respondent/defendants that there is a leave and licence agreement. According to the respondent, they issued notice to the petitioner in 2016 which is formed to be a basis for initiating counter claim. Vide

impugned order, the learned Civil Court allowed the application for amendment to written statement so as to incorporate counterclaim pursuant to the provisions of Order VII and Order VIII of the Code of Civil Procedure. As such, this petition.

3 The learned counsel for the petitioner would urge that the trial in the main suit for specific performance has already commenced as evidence of the respective parties is being recorded.

4 According to him, if the nature of counterclaim made is appreciated, it needs to be noted that the defence that was already raised is sought to be established through counterclaim. According to him, the learned Court below has committed an error of law in granting permission to amend the written statement pursuant to provisions of Order VIII Rule 6 by incorporating counterclaim. He therefore, sought quashing of the impugned order below Exhibit 66 to the above extent.

5 The fact remains that the suit is of 2016 for specific

performance. Even if there was earlier amendment allowed to the written statement that *ifso facto* will not operate as an embargo on the right of the respondent/defendant to file counterclaim.

6 Needless to say that counterclaim though appears to have been filed at somewhat belated stage, i.e. recording of evidence has already commenced, in my opinion, the Court below having exercised a discretion in favour of the respondent/defendant in permitting him to amend the written statement to insert his counterclaim does not warrant any interference. The discretion exercised by the Court below does not appear to be arbitrary one.

7 However, the equities can be worked out by directing the respondent to pay cost of Rs. 5000/- to the present petitioner for belatedly filing the counterclaim.

8 With above observation, petition stands dismissed.

[NITIN W. SAMBRE, J.]