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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.24744 OF 2018

Shailesh N. Shetty	...Petitioner
V/s.	
Chandrika B. Shetty & Ors.	...Respondents

Mr.Kishor V. Tembe for the Petitioner.

Mr.G.S. Godbole I/b Ms.Ketki Gadkari for the Respondent No.1.

Mr.K.P. Jain with Mr.Priyal Chheda, Mr.Dileep Satale and Mr.Vikas Saindane I/b Mr.Amit A. Gharte for the Respondent Nos.4 and 5.

CORAM : R.D. DHANUKA, J.
DATE : 3RD OCTOBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioner (original applicant to the counter claim) has impugned the order dated 20th July, 2018 passed by the learned Trial Judge thereby partly allowing the Notice of Motion No.1803 of 2015 filed by the defendant Nos.4 and 5 and excluding the Counter Claim No.6 of 2014 from the suit.

2. It is an admitted position that the valuation of the counter claim was much more than the pecuniary jurisdiction of the City Civil Court. In view of this position, the defendant nos.4 and 5 filed a Notice of Motion No.1803 of 2005 *inter-alia* praying to frame, settle

and thereafter decide the preliminary issue of maintainability of the counter claim and reject or dismiss the same on the ground of maintainability, barred by the provisions of the Limitation Act, Order II Rule 2 of the Code of Civil Procedure, 1908 and in the alternate reject and/or dismiss the counter claim under Order VII Rule 10 and 11 read with section 151 of the Code of Civil Procedure, 1908 as being barred by law of limitation and on the ground of valuation.

3. Learned trial Judge has allowed the said notice of motion partly and has recorded a finding that even in the Suit No.722 of 2004 filed by the plaintiffs to the counter claim had valued one of the properties at Rs.6.00 crores. Learned Trial Judge has accordingly granted liberty to the petitioners (original plaintiffs to the counter claim) to file a civil suit and ordered that the counter claim be excluded from the suit.

4. Mr.K.P. Jain, learned counsel for the respondent nos.4 and 5 invited my attention to Order VIII Rule 6(C) of the Code of Civil Procedure, 1908 in support of the submission that if the counter claim is set up by the defendant which could not have been entertained by the Trial Court on the ground of pecuniary jurisdiction and a separate suit could have been filed in the Court having the jurisdiction to entertain such counter claim, such counter claim can be excluded from the said suit.

5. In my view, in these circumstances and more particularly in view of the fact that admittedly the counter claim was beyond the pecuniary jurisdiction of the City Civil Court, the learned Trial Judge was justified in exercising the powers under Order VIII Rule 6(C) of the Code of Civil Procedure in excluding the counter claim from the suit.

6. I am not inclined to accept the submission of Mr. Tembe, learned counsel for the petitioner that there was no prayer for exclusion of the counter claim under Order VIII Rule 6(C) of the Code of Civil Procedure, 1908. A perusal of the prayers in the notice of motion clearly indicates that the prayers were for dismissal of the counter claim on various grounds. The Court has power to mould the relief and to grant smaller relief as against the larger relief claimed by the party. In these circumstances, I do not find any infirmity in the impugned order passed by the learned Trial Court. The writ petition is devoid of merits and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)