

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10945 OF 2019

OMKAR CHOKHA MORE THROUGH GPA SHASHIKANT
OMKAR MORE
VERSUS
BUDHO ZENDU MORE THROUGH LRS MADHUKR BUDHO
MORE AND OTHERS

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Advocate for the Petitioner : Shri V. B. Patil
Advocate for Respondent No. 7 : Shri H. P. Kshirsagar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 24th SEPTEMBER, 2019.

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PER COURT :

1. On 04/09/2019, I had passed the following order :-

"The petitioner is the original plaintiff in RCS No. 261/2012. He carries an impression that since a counter claim has been filed by the defendants, the plaintiffs will first lead evidence in the suit followed by evidence of the defendants. The parties would then close their evidence to the extent of the suit. The defendant, who is a plaintiff in the counter claim, will then start recording his evidence and the plaintiff, who is the defendant in the counter claim, will then follow by leading his evidence.

2. *The learned Advocate for the petitioners prays for time to research as to whether any rules or the Civil*

Manual or judicial pronouncement supports such a contention of the petitioners. On his request, stand over to 24/09/2019 in the "Urgent Admissions Category".

3. *In the meanwhile, the petitioners are at liberty to serve the respondents by Advocate's notice alongwith a copy of this order."*

2. The learned Advocate for the petitioner would rely upon a decision delivered in the matter of ***Teofilo Barreto Vs. Sadashiva G. Nasnodkar & ors., 2007 (3) Mh.L.J. 850*** in support of his contention.

3. I have heard the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.

4. Neither the petitioner nor the appearing respondent are able to state as to whether in a suit wherein a counter claim has been filed, the plaintiff has to lead evidence first to the extent of the plaint, to be followed by the evidence of the defendants in their capacity of being the defendant in the suit, to be followed by fresh evidence of the defendants in their

capacity of being the plaintiffs in the counter claim and this is to be followed by the evidence on behalf of the original plaintiff, in the capacity of the respondent/defendant in the counter claim. None of them have been able to point out any provision from the Code of Civil Procedure or the Civil Manual or any judicial pronouncement as regards whether such a procedure is to be followed.

5. The fact remains that in a suit in which a counter claim has been filed, all the issues are framed together. It is only that the onus and burden of proving a particular aspect is cast by the Court on a litigant depending upon the pleadings in the plaint and the counter claim.

6. In the instant case, the petitioner had filed Exhibit 104 seeking an adjournment by stating that the GPA holder of the plaintiff is unwell. It was indicated in Exhibit 104 that the plaintiff desires to lead evidence in the counter claim separately after the defendant leads the evidence. The Trial Court has recorded that the plaintiff filed an affidavit in lieu of examination in chief at Exhibit 82 and from paragraph 7

onwards, in addition to the evidence in support of the plaint, the plaintiff has specifically led evidence even on the pleadings of the written statement to the counter claim.

7. Considering the above, I do not find that the impugned order by the Trial Court could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-