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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9582 OF 2015

Sanjay Trymbak Kulkarni ..Petitioner.

V/s.

Balwant Ganesh Kulkarni (deceased)
through LRs. & Ors. ..Respondents.

Mr.Milind M.Sathaye for the petitioner.

Mr.N.R.Bubna, for respondent Nos.1D to 1F.

CORAM : M.S.SONAK, J.

DATE : APRIL 10, 2019

P.C.:-

Heard Mr.Sathaye, learned counsel for the petitioner and
Mr. Bubna, learned counsel for the respondents.

2. Challenge in the petition is to the order dated March 5,
2015 by which learned trial Judge has rejected the petitioner's
application for leave to amend the written statement and to raise a
counter-claim.

3. Mr.Sathaye, learned counsel for the petitioner points out
that the suit relates to the year 1991, proviso to Order 6 Rule 17 of the
Code of Civil Procedure ('the CPC' for short) will not apply. He points
out that in the year 2006, the plaint was amended and the plaintiffs for
the first time asserted their exclusive ownership and possession of some

of the suit properties. He submits that it is for this reason, amendment to the written statement and raising a counter-claim is necessary. He submits that the recovery of possession sought for, the limitation would be 12 years and not three years as held in the impugned order. He submits that if the amendment application is allowed, it will be avoiding multiplicity of proceedings. He, therefore, submits that the impugned order may be set aside.

4. Mr.Bubna, learned counsel for the respondents defends the impugned order on the reasoning reflected therein. He points out that the evidence in this suit is already commenced. He points out that the petitioner in lieu of examination-in-chief was filed way back in the year 2007 and the petitioner was delaying the matter for one reason or another. He points out that proposed amendment is wholly barred by limitation and, therefore, he submits that the petition be dismissed.

5. In the present case, although the proviso to Order 6 Rule 17 of the CPC' may not apply for the delay in seeking leave to amend the written statement and to raise a counter-claim, this appears to be irrelevant consideration.

6. The evidence in the suit has already commenced, the suit is of the year 1991. Ordinarily, it could have been disposed of by now. There is really no explanation for the inordinate delay in seeking leave to amend the written statement and to raise a counter-claim.

7. The observations in the context of the limitation was obviously made in the context of the considering an application under Order 6 Rule 17 of the CPC. Such observations need not come in the way of the petitioners, in instituting a fresh suit to seek recovery of possession of any property. With this clarification, there is no necessity to interfere with the impugned order in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

8. At this stage, if the written statement is permitted to be amended and counter-claim is permitted to be raise, then, the entire proceedings in the suit, which was instituted in the year 1991, are bound to be delayed. In the present case, there being no cogent explanation for the delay, the petitioner cannot be permitted to delay the proceedings in the suit. There is no necessity to interfere with the impugned order. The petitioner is protected by clarifying that the issue of limitation need not be held as concluded against the petitioners in case the petitioners chose to take out independent proceedings to assert their alleged right in the suit property.

9. With the clarification as aforesaid, the petition is dismissed. There shall be no order as to costs.

10. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)