

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1014 OF 2019
IN
SUIT NO. 1821 OF 2004

Bakul Maganlal Vyas & Ors	...Plaintiffs
<i>Versus</i>	
Mahesh Govindji Trivedi	...Defendant

Ms Sarika Mehra, i/b LJ Law, for the Plaintiffs.
Mr Cherag Balsara, with Mr Y Chaudhary, i/b Reena Salunkhe, for
the Applicant/Defendant.

CORAM: G.S. PATEL, J
DATED: 2nd May 2019

PC:-

1. The Suit is for specific performance. The Defendant filed a Written Statement on 16th November 2005. He did not file any Counter Claim. Leaving aside the very many interim orders, on 5th December 2018 the suit was notified for framing issues. I found that the Defendant had purported to lodge a Counter Claim. I held that Rule 95 of the Bombay High Court (Original Side) Rules is in pari materia with the provisions of Order VIII Rule 6-A of the Code of Civil Procedure 1908. If a Counter Claim was not filed before the Defendant delivered its defence, then leave of the Court would be required. In paragraph 3 of my order of 5th December 2018, on an

interpretation of Rule 95 of the Bombay High Court (Original Side) Rules, I held that the Counter Claim required an order of the Court. I directed the existing Counter Claim to be returned. The Defendant carried the matter in Appeal. The appellate order of 29th March 2019, without going in to the merits permitted the Defendant to present an application seeking leave along with the Counter Claim. This Motion is that application. It seeks precisely that leave under Order 8 Rule 6-A and Rule 95 read with Order VIII Rule 9 of the Code of Civil Procedure 1908.

2. This having been done, I can see no reason to refuse the leave. The Defendant could as well have instituted a separate suit. Had he done so, the cross suit would have been tagged with the present suit. The subject matter of the two suits is the same. The Counter Claim will serve as a convenient method of disposing of both rival claims together and possibly even with common evidence, thus preventing multiplicity of proceedings. The Defendant has also to pay the full Court fee on the Counter Claim.

3. In these circumstances, the Notice of Motion is made absolute in terms of prayer clause (a) with a clarification that all defences of the Plaintiff including as to limitation are specifically kept open. The Counter Claim has already been lodged. It will be numbered within a week from today. A copy has been served.

4. The Plaintiff waives service of the Writ of Summons of the Counter Claim. She agrees that the Written Statement will be filed and served on or before 21st June 2019.

5. List the Counter Claim for framing issues on 28th June 2019.

(G. S. PATEL, J)