

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4635 OF 2019

(NAGALLA SURESHBABU KASHIPATI...VS.. RAJESH RAMBHAU DEVINENI & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.R.Joharapurkar, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : JULY 16, 2019.

Heard.

The petitioner/ original defendant No.1 filed his written statement and along with it also submitted counter claim seeking relief against the co-defendant. As the written statement was not filed within time, the petitioner/ defendant No.1 had filed application praying that delay in filing the written statement be condoned and written statement be taken on record. By the impugned order, the learned trial Judge accepted the written statement of the defendant No.1 on record, however, refused to accept the counter claim made by the defendant No.1.

Relying on the judgment given by this Court in the case of *Nagnath Jagannath Lomate & anr. Vs. Narsing Sambha More & ors.*, reported in **2009(3) Mh.L.J. 564**, the learned trial Judge held that the counter claim against the co-defendant is not maintainable.

Being aggrieved by that part of the order, by which the trial Court has refused to take on record the

counter claim submitted by the defendant No.1, this petition is filed.

I find that the impugned order is in consonance with the legal position. It cannot be said that there is any illegality or error of jurisdiction which necessitates interference by this Court in extraordinary writ jurisdiction.

Hence, the writ petition is **dismissed**. No costs.

If the petitioner/ defendant No.1 is entitled for refund of court fees as per Rules, the same shall be refunded to him accordingly.

JUDGE

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