

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

WRIT PETITION NO. 6045 of 2017

Sheikh Noor Sheikh Hussain and anr.

..VS..

Sheikh Yusuf @ Shahzad Abdul Kadar

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

Court's or Judge's orders

Shri Mir Nigman Ali, Adv. for the petitioners.
Shri V.B. Bhise, Adv. for the respondent.

CORAM : Z.A.HAQ, J.

DATED : 30th July, 2019

Heard.

The learned Advocate for the respondent submits that the defendants have filed the written statement on 20.05.2016 and then later on filed counter claim on 05.07.2017 seeking several reliefs against the plaintiff. It is pointed out that the claim in paragraph No. 21 of the counter claim shows that according to the defendants, cause of action for filing the counter claim arose on 23.02.2017, when the defendant received the measurement report from the office of Taluka Inspector of Land Records.

It is submitted that as the counter claim is filed in view of the cause of action which has arisen after filing of the written statement, the trial Court has rightly refused to accept the counter claim. To support the submission, the learned Advocate for the respondent/ plaintiff has relied on the judgment given in the case of Maruti S/o Laxman Zhipare (Gawali) -Vs- Rahul S/o Arjun Sarang and anr. reported in 2008(3) Mh.L.J. at page no. 821 and the judgment given in the case of Mahendra Kumar and anr -Vs- State of Madhya

Pradesh and ors reported in (1987) 3 S.C.C. 265.

In view of the submission made on behalf of the respondent/plaintiff, the learned advocate for the petitioner/defendant, on instructions, sought permission to withdraw the petition with liberty to file separate civil suit. It is pointed out that the learned trial Judge has also kept this avenue open for the petitioners/defendants.

Considering the facts of the case, petitioners are permitted to withdraw the petition with liberty to file fresh civil suit, if so advised.

The writ petition is **disposed** as withdrawn. In the circumstances, the parties to bear their own costs.

JUDGE

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