

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 435/2018

(SADIKABAI AMANULLAKHAN & OTHERS **VERSUS** ANUSAYABAI PUNJAJI KAWASKAR & OTHERS)

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

Court's or Judge's orders

Shri A.V. Bhide, counsel for petitioners.
Smt. B.M. Kasare, counsel for R-2 to 8.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 17, 2019.

Heard finally with consent of counsel for the parties.

The petitioners who are the original defendants are aggrieved by the order passed by the trial Court below Exhibit 102 by which the application preferred by the petitioners under provisions of Order VIII Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 has been rejected.

The facts in brief are that the respondents had filed a suit for declaration alongwith relief of perpetual injunction in which it was stated that the suit property bearing field Gat No.1112 was in their possession and that the defendant nos.1 and 2 had no right to disturb their possession. The basis for claiming such relief was that the name of the predecessor Punjaji was recorded as a tenant of the said field prior to the year 1958. On that premise the suit filed on 29.10.2005. Written statement was filed by the petitioners herein on 11.11.2005 denying the case as pleaded. During pendency of the suit, the tenancy proceedings between the parties were decided by the Maharashtra Revenue Tribunal on 22.08.2011. The said

proceedings came to be dismissed by confirming the finding that Punjaji was not the tenant of field Gat No.1112. That order was challenged by the legal heirs of Punjaji by filing Writ Petition No.675 of 2012. Said writ petition was withdrawn on 17.12.2012. Thereafter the petitioners sought to place on record additional written statement alongwith a counter claim. Application to that effect was moved in the year 2016. This application was opposed by the original plaintiffs and the trial Court by the impugned order rejected the said application by observing that the limitation for filing the counter claim had expired. That order is challenged in the present writ petition.

Shri A.V. Bhide, learned counsel for the petitioners referred to the provisions of Order VIII Rule 9 of the Code and urged that an additional written statement could always be filed. According to him as the plaint had been amended the defendants chose to file additional written statement instead of carrying out consequential amendment. He further submitted that the trial Court erred in observing that the limitation for filing the counter claim in view of provisions of Article 137 of the Limitation Act, 1963 was three years and that said period had expired. It was his submission that the cause of action arose after withdrawal of the writ petition by the original plaintiffs. In the light of provisions of Article 65 of the Act of 1963, the limitation did not come to an end. He therefore submitted that the impugned order was liable to be set aside.

Smt. B.M. Kasare, learned counsel for the respondent nos.2 to 8 supported the impugned order. It was submitted that there was no provision for filing additional written statement.

Similarly, the counter claim was belatedly filed and no relief could have been prayed for after expiry of the period of limitation. Hence, no interference was called for.

Perusal of the application moved by the petitioners indicates that it is in two parts. The first part is in the form of an additional written statement. In the light of provisions of Order VIII Rule 9 of the Code, additional pleadings can be placed on record with the permission of the Court. Since according to the defendants, the additional written statement was based on the averments made in the plaint as amended, filing of the additional written statement deserves to be permitted. There is no reason to deny such permission to the defendants.

At the same time, insofar as the counter claim is concerned, it is seen that the written statement was filed in the year 2005. On the showing of the petitioners themselves, the cause of action for filing the counter claim arose on 17.12.2012 when the writ petition was withdrawn by the original plaintiffs. Thus, the cause of action for filing the counter claim arose much after the written statement was filed by the defendants. The requirements of the provisions of Order VIII Rule 6A of the Code therefore do not appear to be satisfied.

It is however to be noted that the observations as to the counter claim being barred by limitation under Article 137 of the Act of 1963 were uncalled for. The defendants seek to rely upon the provisions of Article 65 of the Act of 1963 to substantiate their claim. Limitation being a mixed question of law and fact it was not necessary for the trial Court to have recorded a finding in that regard.

In that view of the matter, the order dated 28.09.2017 is partly modified. The additional written statement till paragraph 21 is permitted to be taken on record. The defendants are always at liberty to file a separate suit for seeking reliefs as made in the counter claim in accordance with law. The observations in paragraph 11 of the impugned order would not come in the way of the defendants if such suit is filed.

With these observations, the Writ Petition is disposed of. The parties shall bear their own costs.

JUDGE

APTE