

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

WRIT PETITION NO. 8765/2018

(SATISH BANWARILAL GADODIA & OTHERS VERSUS DR.(MRS.) RANJANA GOPALKRISHNA
WAGHRALKAR)

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

Court's or Judge's orders

Shri Shashikant Borkar, counsel for petitioners.

CORAM : A.S. CHANDURKAR, J.

DATE : AUGUST 30, 2019.

The challenge raised in the present writ petition is to the order dated 17.11.2018 passed below Exhibit 61 thereby rejecting the application that was moved by the defendants seeking to amend the written statement so as to raise a counter claim.

The respondent herein is the original plaintiff who has filed suit for declaration that various documents styled as Agreement of Sale, Power of Attorney, Possession Letter that were got executed by the defendants from the plaintiff were null and void. In that suit, it is the case of the plaintiff that on 04.05.2012, she was confronted with certain documents to indicate that she had entered into a transaction of sale with the defendants. Treating that as cause of action she filed the aforesaid suit on 11.06.2012. The defendants filed their written statements denying the case as pleaded by the plaintiff. The plaintiff then examined herself at Exhibit 39. In her cross-examination that was conducted in February-2016, she admitted that she had put her signatures on the document in question on 11.05.2012 not under force but due to trust and confidence on the defendants. She further admitted that the documents were executed at her hospital. The said agreement

was accordingly marked as Exhibit 51. The defendants thereafter in April-2017 filed an application so as to amend the written statement and raise a counter claim. In that counter claim, the defendants sought the relief of specific performance of the agreement dated 04.05.2012. The cause of action was stated to have arisen from 04.05.2012. It was further stated that as the plaintiff had admitted in her cross-examination which was recorded in February-2016 that the said agreement was voluntarily signed by her, the cause of action was continuous. The trial Court recorded a finding that since the agreement in question was dated 04.05.2012, the relief of specific performance sought after more than five years was barred by limitation. The application as moved was therefore rejected.

Shri Shashikant Borkar, learned counsel for the petitioner submitted that though the defendants were seeking leave to raise a counter claim on the basis of the agreement dated 04.05.2012, the cause of action was continuous especially in the light of admissions of the plaintiff in her deposition in February-2016. As the plaintiff had admitted that such agreements were voluntarily entered into, the trial Court ought to have permitted the defendants to raise the counter claim. Relying upon the decision in *Vijay Prakash Jarath Versus Tej Prakash Jarath* [2016 All SCR 625] and *Maruti Vithoba Kulal & Another Versus Nivrutti Deoram Kulal & Others* [2019(2) All MR 723], it was submitted that the trial Court ought to have allowed that application. He further submitted that the question of limitation could be directed to be considered by the trial Court.

Perusal of the plaint and the written statement indicates that while it is the case of the plaintiff that certain documents were

got signed from her, it is the case of the defendants that on 04.05.2012 the plaintiff had entered into an agreement to sell the suit property. According to the defendants, the cause of action for seeking the relief of specific performance arose on 04.05.2012. It is only on account of the admissions of the plaintiff in her cross-examination that the counter claim is sought to be raised in April-2017. The cause of action having arisen on 04.05.2012 and the entire sale consideration of Rupees Thirty Lakhs having been paid on 10.05.2012, it is obvious that the cause of action when it started running in May-2012 began to run continuously. Merely because the plaintiff in her cross-examination in February-2016, which is beyond the period of three years from 10.05.2012 admitted that such documents were executed by her, it would not result in extending the period of limitation. The trial Court therefore was justified in observing that the relief of specific performance by seeking permission to raise the counter claim was after about five years especially when according to the defendants the entire consideration of Rupees Thirty Lakhs had been paid. The decisions relied upon by the learned counsel for the petitioners relate to the manner in which a counter claim can be raised. In the present case, on the defendants own showing that the cause of action arose in May-2012, the permission to raise the counter-claim sought in April-2017 was clearly beyond the period of three years from the date the cause of action had first arisen. The trial Court therefore did not commit any error in rejecting the application.

The Writ Petition is dismissed with no order as to costs.

JUDGE