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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.5900 OF 2019

Sayyed Akbar Sayyad Abdulla

... Petitioner

Versus

Vijaya Ashok Deshmukh

...Respondent

Mr. Tejas Kapre, for the Petitioner.

Mr. S. S. Panchpor, for the Respondent.

CORAM : REVATI MOHITE DERE, J.

DATE : 14th JANUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 27th November, 2018, passed by the learned 2nd Joint Civil Judge, Junior Division, Pimpri, below Exhibit – 44 in R.C.S. No.54 of 2009, by which, the learned Judge partly allowed the application i.e. the learned Judge allowed the prayer of the petitioner to file additional written statement, however, rejected the prayer for granting permission to file the counter-claim.

3. Learned Counsel for the Petitioner submits that the additional written statement filed by the petitioner (original defendant) and counter-claim are part and parcel of the entire additional defence of the petitioner. She submits that the learned Judge is in error in allowing the said application (Exhibit – 44) in piecemeal i.e. by granting the permission to file additional written statement, without allowing the petitioner's counter-claim. She submits that as a result of the same, the petitioner's valuable legal right to present his counter-claim has been denied.

4. Learned Counsel for the Respondent (original plaintiff) opposed the petition and submits that no interference is warranted in the impugned order. He submits that the learned Judge has rightly rejected the petitioner's prayer to file counter-claim, as there is no disclosure of the cause of action, limitation etc.

5. Perused the papers. The Respondent (original plaintiff) filed a Suit for declaration and injunction on 22nd April, 2009, in the Court of the learned Civil Judge, Junior Division, Pimpri, being R.C.S. No.54 of 2009. On 4th October, 2012, the Respondent (original plaintiff) filed an application and sought amendment of the plaint, which was allowed by the trial Court vide order dated 19th March, 2013. It appears that thereafter the

Suit was dismissed for want of prosecution in 2014 and was restored back to its original file on 28th November, 2015. Thereafter, the petitioner filed an application (Exhibit – 44) on 15th February, 2017 and sought permission to file additional written statement along with counter-claim. The trial Court vide order dated 27th November, 2018, was pleased to partly allow the said application filed by the petitioner, inasmuch as, the petitioner was permitted to file additional written statement, however the prayer to file counter-claim was rejected. It appears that the amendment was allowed in March 2013 and thereafter the Suit was dismissed for want of prosecution in 2014 and restored back to its original file in 2015 and thereafter the petitioner filed the application for filing additional written statement along with counter-claim on 15th February, 2017. The learned Judge has rightly allowed the petitioner's application for filing additional written statement in the facts and has also rightly refused the petitioner's application for permission to file counter-claim. The learned Judge in paragraph 6 of the impugned order has rightly observed that the petitioner has not given any specific date of cause of action and that the contentions are vague.

6. Considering the aforesaid, no infirmity can be found in the impugned order.

7. The petition being devoid of merit stands dismissed.
8. At this stage, learned counsel for the petitioner requests for stay of the proceedings. The said prayer is rejected.

REVATI MOHITE DERE, J.