

Santosh.

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.8 OF 2020**

NEELESH NARAHARI SHETYE.

S/o. Narahari Shripad Shetye,
aged about 47 years, occupation business,
R/o. Flat No.19, B-2 Building, Sapna Woods
Complex, Near Swaruchi Saree Shop,
Borda, Margao, Goa.

....Appellant

Versus

ASHA DILIP HEDE Changed to SAKSHI
NEELESH SHETYE.,

d/o. Dilip Vasant Hede, aged about
37 years, Occupation: Housewife,
r/o. C/o. Dilip Vasant Hede,
H.No.S-4, D-Building, Kurtarkar
Township, Ambaji, Fatorda, Goa.

... Respondent.

Ms. A.A. Agni, Senior Advocate with Ms. Jay Sawaikar,
Advocate for the Appellant.

Mr. J.J. Mulgaonkar, Advocate for the Respondent.

CORAM: M. S. SONAK, J

DATED: 27th July 2021

ORAL JUDGMENT :-

1. Heard Ms. Agni, the learned Senior Advocate who appears along with Ms. Jay Sawaikar for the Appellant and Mr. J. Mulgaonkar for the Respondent.

2. With the consent of the learned Counsel for the parties, the Appeal is taken up for final disposal at this stage itself.

3. This appeal is directed against the order dated 22/1/2020 below Exhibit 15, by which the learned Trial Judge has rejected the counter-claim instituted by the Appellant, *inter alia*, on the ground that the same is barred under Article 1470 of the Portuguese Civil Code (Code) prevailing in Goa. The rejection is based on the principles applicable to consideration of applications under Order XII, Rule 11(a) of the CPC.

4. According to me, though the contention based on Article 1470 of the Code was required to be considered by the learned Trial Judge, the same concerns more with the issue of dismissal or rejection of a counter-claim. Therefore, by specifically leaving the contention about maintainability of the counter-claim open, the impugned order is set aside. This means that the counter-claim, together with the objection with regard to its maintainability, having regard to the provisions of Article 1470 of the Code, will have to be considered by the Trial Court, since, such issues are expressly kept open.

5. This Court has not expressed any opinion one way or the other. The interference is on the short ground that in the facts of the present case, drastic power of rejection at the threshold ought not to have been exercised. However, it is once again made clear that all contentions of all parties, on merits, as well as on maintainability, are expressly left open.

6. The appeal is allowed to the aforesaid extent. There shall be no order as to costs.

7. At the request of Mr. Mulgaonkar, the Respondent is granted 4 weeks' time to file her written statement to the counter-claim raising all permissible defences.

8. The proceedings before the Trial Court are ordered to be expedited.

9. All concerned to act based on an authenticated copy of this order.

M. S. SONAK, J.

SANTOSH S MHAMAL

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Date: 2021.07.27 17:29:31 +05'30'