

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9343 OF 2021

Krishnaji Amarlal Kruplani,
Age : 78 years, Occupation : Business,
R/o 6, Third Floor, Navi Peth,
Jalgaon.

...PETITIONER

-VERSUS-

1. Smt.Kalindi Jayant Choudhari,
Age : 64 years,
Occupation : Legal Practitioner.
2. Bharat Jayant Choudhari,
Age : 37 years, Occupation : Business.
Both R/o 6, Navi Peth,
Jalgaon.

...RESPONDENTS

...

Advocate for the Petitioner : Shri Bhadgaonkar Umesh A.
Advocate for the Respondents : Shri Patil Vinod Prakash

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 03rd January, 2022

ORAL JUDGMENT:

1. The petitioner, original plaintiff in RCS No.168/2008 filed by him in the year 2008, is aggrieved by the decision of the learned Second Joint Civil Judge, Senior Division, Jalgaon, dated 12.07.2021 whereby, the counterclaim filed by the defendants has been allowed subject to payment of costs of Rs.8000/- to be paid to the petitioner/ plaintiff.
2. I have heard the learned counsel for the petitioner and the

learned counsel for the respondents.

3. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

4. Before ruling upon the correctness of the impugned order, few facts are necessary to be narrated. The petitioner/ original plaintiff is the tenant in the suit premises owned by the predecessor of the defendants Nos.1 to 5. The case of the plaintiff, as pleaded in the plaint, is that the plaintiff was inducted as a tenant in Block No.6, on the third floor of the building for the last 53 years on payment of monthly rent and the receipts to that effect are also passed. The plaintiff specifically pleaded that the building, which consisted of four floors, has become dilapidated and it requires repairs on some portions including the terrace, slabs and the gallery. Time and again, the petitioner/ plaintiff requested the landlord to carryout repairs, but there was no response, which constrained him to issue the notice to permit him to carryout necessary repairs. Being unsuccessful in his attempt, the plaintiff filed RCS No.168/2008 seeking mandatory injunction permitting him to have an access upto the top floor of the building so that he can carryout necessary repairs to the dilapidated portion. The declaration was also sought to the effect that the defendants shall not obstruct the plaintiff in carrying out required construction.

5. In the backdrop of the said suit, the respondents/ defendants

put their appearance and filed their Written Statement and also additional written statement on deletion of some of the defendants. The issues were settled by the learned Trial Court on 27.03.2017. On 10.02.2021, the plaintiff filed his evidence affidavit and being in the box, was cross-examined by the advocate for the defendants on two dates being 15.03.2021 and 20.03.2021.

6. While the cross-examination was in progress, on 08.06.2021, an application (Exhibit-133) was taken out by the defendants by invoking Order VIII Rule 6-A of the Code of Civil Procedure, under which, the counterclaim was raised under Section 16 of the Maharashtra Rent Control Act against the plaintiff. The application was vehemently opposed by the plaintiff on the ground of delay and by submitting that the trial has reached at an advanced stage where, the plaintiff is already under cross examination, therefore, the purport of Order VIII Rule 6-A would not permit the counterclaim to be raised at the time when the defendants have already delivered their defence.

On consideration of the rival contentions, the application came to be allowed under the impugned order dated 12.07.2021, which has been assailed in the present Writ Petition.

7. The learned Judge has placed reliance on the decision of the Honourable Supreme Court in the case of *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others*, reported in (2020) 2 SCC 394 and

by noting that the aforesaid judgment is an authoritative pronouncement on the subject, the learned Judge held that in order to avoid multiplicity of the proceedings, the counterclaim and the suit ought to be decided together and therefore, has allowed the counterclaim vide the impugned order, subject to payment of costs of Rs.8000/-.

8. Rule 6-A of the Order VIII, which contains a provision for filing of the counterclaim along with the Written Statement, reads thus:-

“6A. Counter-claim by defendant:-

(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”

9. By virtue of the said provision, it is permissible for the defendant in the suit, to set up a counterclaim against the claim of the plaintiff, which ought to be done either before or after the filing of the

suit, but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. On the counterclaim being raised, it is imperative to be treated as the plaint and shall be governed by the rules applicable to the plaints. Though it is permissible to raise the counterclaim at any point of time, when the suit is in progress and when the issues are specifically framed by considering the rival claims of the parties, on perusal of the plaint and written statement, the Trial Court is expected to be slow in entertaining the counterclaim when it is filed at belated stage, unless and until exceptional circumstances are pointed out.

10. The Honourable Supreme Court, while answering the reference placed before it as regards interpretation of Order VIII Rule 6-A, in the case of ***Ashok Kumar Kalra (supra)***, formulated the issues for consideration to the following effect :-

“6.1 (i) *Whether Order 8 Rule 6-A CPC mandates an embargo on filing the counterclaim after filing the written statement?*

6.2 (ii) *If the answer to the aforesaid question is in the negative, then what are the restrictions on filing the counterclaim after filing of the written statement?”*

On consideration of various judicial precedents on the aspect of limitation in filing the counterclaim, their Lordships have observed as under :-

“17. *The time limitation for filing of the counterclaim, is not explicitly provided by the Legislature, rather only limitation as to the accrual of the cause of action is*

provided. As noted in the above precedents, further complications stem from the fact that there is a possibility of amending the written statement. However, we can state that the right to file a counterclaim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order 8 Rule 6A. Having said so, this does not mean that counterclaim can be filed at any time after filing of the written statement. As counterclaim is treated to be a plaint, generally it needs to first of all be compliant with the limitation provided under the Limitation Act, 1963 as the time barred suits cannot be entertained under the guise of the counterclaim just because of the fact that the cause of action arose as per the parameters of Order 8 Rule 6A.”

The purpose of introducing Rule 6A in Order VIII of the CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. Noting that if the provision is to be interpreted in such a way, it would allow delayed filing of the counterclaim, it has been held that the provision itself becomes redundant and the purpose for which the amendment was introduced to Order VIII Rule 6A would be defeated and ultimately, it would lead to flagrant miscarriage of justice. It has been held that there cannot be a rigid and hyper-technical approach that the provision stipulates that the counterclaim has to be filed along with the written statement and beyond that, the Court has no power. The position revolving around Rule 6-A has been clarified by issuing the direction to the effect that the Courts, taking into consideration the reasons stated in support of the counterclaim, should adopt a balanced approach keeping in

mind the object behind the amendment and to sub-serve the ends of justice. The following observations would conclusively determine the issues referred to the Three Judges Bench :-

“There cannot be any hard and fast rule to say that in a particular time the counterclaim has to be filed, by curtailing the discretion conferred on the Courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counterclaim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to the CPC.”

In paragraph 21, the findings are summarized as under :-

- “21. We sum up our findings, that Order 8 Rule 6A of the CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:
- i. Period of delay.
 - ii. Prescribed limitation period for the cause of action pleaded.

- iii. *Reason for the delay.*
- iv. *Defendant's assertion of his right.*
- v. *Similarity of cause of action between the main suit and the counterclaim.*
- vi. *Cost of fresh litigation.*
- vii. *Injustice and abuse of process.*
- viii. *Prejudice to the opposite party.*
- ix. *And facts and circumstances of each case.*
- x. *In any case, not after framing of the issues."*

11. The impugned order will, therefore, have to be tested on the parameters determined by the Honourable Supreme Court in paragraph 21 in ***Ashok Kumar Kalra (supra)***. The period of delay, reasons for delay and similarity of the cause of action in the plaint and in the counterclaim, will have to be looked into minutely.

As far as the present case is concerned, the counterclaim is filed after a gap of 13 years of the institution of the suit and the defendants are attempting to bring the counterclaim by pleading their case under Section 16 of the Maharashtra Rent Control Act. On perusal of the application, it reveals that only justification offered for launching the counterclaim after a gap of 13 years after the suit is instituted, is that the counterclaim is based upon the information divulged by the plaintiff in the cross-examination and this has been assumed to be the basis for launching the counterclaim. The suit filed by the plaintiff seeks the relief in the nature of mandatory direction to permit him to carryout repairs, whereas, the counterclaim seeks vacation of premises by the plaintiff on the ground

of bonafide need and that the plaintiff/ tenant is in possession of his own premises. It is not the case that the defendants will not be able to institute a fresh suit on these grounds. It is not the case that the suit, if instituted, would be hit by the point of limitation. As such, there would be no prejudice caused to the defendant if the counterclaim is disallowed.

12. As far as the plaintiff is concerned, the plaintiff would suffer prejudice since he pleads that the premises are in dilapidated condition and it requires immediate repairs. If the relief as prayed by the plaintiff is not granted, there would be danger to the life of the petitioner/ plaintiff as the dilapidated building is occupied by him. In the aforesaid circumstances, the balance of convenience lies in favour of the plaintiff/ petitioner and therefore, the counterclaim needs to be disallowed.

13. However, the learned Judge has missed the ratio flowing from *Ashok Kumar Kalra (supra)* wherein, the Honourable Supreme Court has categorically held in paragraph 24 that no injustice or irreparable loss be caused to the defendant due to refusal of the counterclaim or to the plaintiff by allowing the same. The learned Judge has allowed the counterclaim by imposing meager costs of Rs.8000/-. In my view, the principle underlying for entertaining of the counterclaim has been thrown to the winds by the learned Judge, by being liberal in allowing the counterclaim after a gap of 13 years of the institution of the suit, without any justification and particularly when the explanation offered by the

defendants would not make out an exceptional case for allowing the counterclaim. The period of delay, delay in launching the counterclaim without being sufficiently justified and divergence in the nature of the proceedings sought to be tried by raising the counterclaim, is sufficient enough to deny the counterclaim. The stage when such claim has been instituted is also relevant in the present case as the issues have been settled long back and thereafter, evidence of the plaintiff is also over. The discretion exercised by the learned Judge cannot be justified taking into consideration the factor of delay, the stage at which the counterclaim is launched and the distinct nature of the counterclaim, which does not go hand in hand with the main suit, but runs alien to it.

14. For the aforesaid reasons, the impugned order cannot be sustained and is quashed and set aside by allowing the Writ Petition. The counterclaim filed by the defendants stands rejected.

The suit filed by the plaintiff shall proceed expeditiously and the learned Judge is requested to culminate the proceedings in the suit filed by the plaintiff/ petitioner within a period of SIX MONTHS from today.

15. The Writ Petition is allowed in the aforesaid terms. Rule is made absolute accordingly.