

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11415 OF 2018**

LUMENS AIRCON PVT LTD THROUGH DIRECTOR
VERSUS
M/S GALCO EXTRUSION PVT LTD THROUGH DIRECTOR

...

Mr. Sushant V. Dixit, Advocate for the Petitioner.

Mr. A. P. Bhandari, Advocate for Respondent.

...

**CORAM : SANDEEP V. MARNE, J.
DATED : 16th DECEMBER, 2022.**

PER COURT:-

1. By this petition petitioner challenges order dated 28.02.2018 passed by the 3rd Joint Civil Judge, Senior Division, Ahmednagar rejecting the application filed by petitioner/defendant under Order 8 Rule 6 of the Code of Civil Procedure, 1908 (for short 'the Code of 1908') for raising a set off against the claim raised by plaintiff in the plaint.

2. Under the provisions of Order 8 Rule 6 of the Code of 1908, defendant can present the written statement containing particulars of dues sought to be set off at the first hearing of the suit. Defendant filed his written statement on 14.08.2013, but did not claim any set off. The application to claim set off was filed four years later on 26.10.2017.

3. Mr. Dixit, learned counsel would contend that the provisions of Order 8 Rule 6 of the Code of 1908 also use the expression 'but not afterwards unless permitted by the Court' and submits that the Court ought to have permitted defendant to present the set off in the peculiar facts and circumstances of the case.

4. I have gone through the written statement filed by defendant. In the written statement specific plea is raised that some portion of the material supplied was defective and that defendant is not liable for the pay for such a defective material. His defence can be proved by defendant during the course of evidence. In the event, defendant is in a position to prove that the material was indeed defective, that he raised the issue about the material being defective immediately upon receipt of the material and that the terms of agreement between the parties exempt defendant from paying for defective material, plaintiff's claim is automatically bound to be reduced to the extent of such a defective material.

5. The application for claiming set off filed four years after presentation of written statement was clearly not tenable. The Trial Court has rightly rejected the application.

6. The petition is devoid of merits. The same is dismissed without any orders as to cost.

7. On account of interim order passed by this Court the proceedings of the suit are stayed. The suit is of the year 2012 and the same is filed for recovery of money. The hearing of the suit is, therefore, expedited and the Trial Court shall make an endeavour to decide the suit as expeditiously as possible and preferably within a period of one year from today. Petitioner shall be entitled to withdraw the amount of Rs.25,000/- deposited before this Court with interest accrued thereon.

(SANDEEP V. MARNE)
JUDGE