

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

WRIT PETITION NO.12227 OF 2016

BHAGWAN DAYARAM KADAM  
VERSUS  
SHAILEJA DURGAJI WAGHMARE

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Advocate for Petitioner : Mr. Amol Gandhi  
Advocate for Respondent : Mr. D A Mane h/f. Mr. Milind Patil

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**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 5<sup>th</sup> APRIL, 2022**

**ORDER :**

1. The petitioner is aggrieved by the order passed by learned Civil Judge Senior Division, Kopergaon, below Exhibit-75 in Special Civil Suit No. 60/2012, thereby partly allowing the application filed by the petitioner for amendment in written statement and rejecting the prayer of the petitioner for accepting the counter claim.

2. Admittedly, in earlier round of litigation, a co-ordinate bench of this Court in Writ Petition No. 6396/2013, has observed thus:-

*“4. While filing the application for amendment along with counter claim, the cause of action for filing the counter claim is shown as subsequent to the filing of Written Statement. The same is not permissible. The aspect of counter claim can not be considered in the present matter as the cause of action for filing counter claim is subsequent to filing of Written Statement. Such a counter claim can not be allowed. In the light of that, order rejecting the counter claim can not be interfered with. The same is upheld.*

*5. As far as amendment in Written Statement is concerned, the said aspect has not been considered by the Court. The impugned order is passed only considering the counter claim being filed.*

*6. In light of the above, the Court shall consider the application [Exh.59] to the extent of amendment afresh on its own merits.*

*7. The Writ Petition is disposed of. No costs.”*

3. After remand by this Court, the trial Court has passed an order thereby allowing the application of the petitioner to the extent of amendment of the written statement, however, rejected the prayer of the petitioner for filing counter claim. While rejecting the prayer of the

petitioner in respect of counter claim, the trial Court has relied on above observations of this Court. Admittedly, the order passed by this Court is not challenged by the petitioner before the Apex Court. In that view of the matter, the trial Court was justified in passing the impugned order, rejecting the prayer of the petitioner for filing counter claim.

4. The learned advocate for the petitioner by relying on the decision in *Mahendra Kumar Vs. State of Madhya Pradesh* (1987 AIR (SC) 1395) submitted that Rule 6A(1) of Order VIII, Code of Civil Procedure, does not bar counter claim after filing of the written statement. What is provided therein is counter claim can be filed, provided the cause of action had accrued to the defendant before the defendant had delivered his defence or before the time limit for delivering his defence has expired.

5. In the present case, issues are framed in the year 2010 and so far two witnesses of plaintiff are examined in the year 2013 and the suit is posted for cross examination of plaintiff's witnesses. In that view of the matter and in view of the fact that earlier this Court has rejected

the prayer of the petitioner for filing counter claim, the said ruling would not help the case of the petitioner.

6. For the aforestated reasons, no merit is found in the challenged raised in the present petition. The writ petition is, therefore, dismissed. No costs.

7. At this stage, the learned advocate for the petitioner prays that the stay operating in favour of the petitioner may be continued for a period of four weeks. The stay granted in favour of the petitioner is continued for a period of four weeks from today.

**[NITIN B. SURYAWANSHI]**  
**JUDGE**