

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15591 OF 2019

ASHOK GULABRAO NEWASKAR
VERSUS
VIJAY GANGADHAR SALVE AND ANOTHER

...

Advocate for Petitioner : Mr. Satej S. Jadhav
Advocate for Respondents : Mr. A. B. Kadethankar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 11th JULY, 2022

PER COURT :

1. The petitioner by this petition filed under Articles 226 and 227 of the Constitution of India, has challenged the order passed by the learned 5th Joint Civil Judge Senior Division, Ahmednagar, below Exhibit-28 in Special Civil Suit No.111/2018, thereby permitting respondents to file counterclaim after filing of the written statement.

2. The point raised in the petition is no more *res integra* and is covered by the decision of the Hon'ble Supreme Court in *Ashok Kumar kalra Vs. Wing CDR. Surendra Agnihotri and Others, (2020) 2 SCC 394*, wherein it is held that:

"The purpose of introducing Rule 6-A in Order 8 of the Code of Civil Procedure 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.... At the same time, there cannot be a rigid and hyper-technical approach that the provisions stipulates that the counterclaim has to be filed along with the written statement and beyond that, the court has no power. 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 subserve the ends of justice.... However, the defendant cannot be permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially."

3. In the case in hand, admittedly the counterclaim is filed by the respondents before framing of the issues. Therefore, the trial Court has rightly granted permission to file same.

4. In that view of the matter, the writ petition being devoid of merits, is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)