

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION 7377 OF 2013

Smt. Usha Balasaheb Swamy
(since deceased) through LRs.

..Petitioner

V/s.

Shri. Kiran Appasaheb Swamy
and Ors.

..Respondents

Mr. Prashant Bhavake for the Petitioner.

Mr. Kevin Pereira a/w Chinmany Acharya i/b for the
Respondent.

CORAM : ROHIT B. DEO, J.

DATE : 17 JUNE 2022

P.C.

1. The Petitioners are Defendants 8 to 14 in Special Civil Suit 503 of 1996, who are aggrieved by the order dated 03.07.2007 whereby the learned Joint Civil Judge, Senior Division, Kolhapur declined to admit the counter claim on record.

2. The order of rejection of counter claim which is impugned herein is on the premise that the cause of action which is alleged has arisen after the submission of the written statement.

3. In addition to the reasons which are spelt out by the learned Trial Judge for rejecting the counter claim, the contesting

Respondents to the petition contend that the petition is liable to be dismissed on the ground of delay.

4. It is common ground that after the order impugned was passed, the Plaintiff has withdrawn the suit.

5. The limited submission of the learned counsel for the original Defendants 8 to 14 is that this petition be disposed of with the clarification i.e. if the defendants 8 to 14 institute substantive suit for partition on the basis of the cause of action pleaded in the counter claim or on the basis of any subsequent development furnishing cause of action, the proceedings shall not be influenced by the observations in the order impugned.

6. In my considered view, no clarification as such is necessary. It is well settled, that refusal of the Trial Judge to admit the counter claim does not prevent the litigant from instituting substantive suit. Such suit can be instituted, subject of course to the law of limitation. Leaving all contentions open, the petition is disposed of with the clarification above.

7. Needless to observe, if the substantive suit is otherwise legally tenable, the observations in the order impugned would obviously not be relevant.

(ROHIT B. DEO, J.)