

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 118 OF 2021

Dattatraya Sadekar	 Petitioner
Vs.	
Maharashtra Agro Industries Development Corporation Limited	 Respondents

Mr. Jamshed Ansari for the Petitioner.
Mr. V. P. Vaze for Respondent 1.

CORAM : ROHIT B. DEO, J.

DATE : 23rd JUNE 2022.

P. C.

The Petitioner is the Defendant in Suit 3623/2010 instituted by plaintiff for recovery of sum of Rs.10,18,825/- on the premise that the said sum is due and payable in lieu of certain commercial transactions. After framing of issues and the commencement of evidence, the Defendant lodged counterclaim. A Notice of Motion was moved by the Defendant seeking condonation of delay of 2762 days in lodging counterclaim.

2. The learned Trial Judge has noted that the written statement is filed on 26/8/2011 and it is after 9 years that the counterclaim is lodged. The learned Trial Judge then noted that the examination-in-chief of the plaintiff is over and the stage is the cross examination of the plaintiff. The counterclaim is held beyond limitation.

3. Even dehors the reasons recorded by the learned Trial Judge, controversy stands authoritatively covered by the decision in the case of *Ashok Kumar Kalra vs. Wind CDR. Surendra Agnihotri and Ors.*, (2020) 2 Supreme Court Cases 394. The majority judgment in *Ashok Kalra (supra)* articulates that the outer limit for filing the counterclaim is pegged till the issues are framed. Paragraph 21 of the decision in the case of *Ashok Kalra (supra)* reads thus:

" We sum up our findings, that Order VIII 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."

4. It is clear that while the Apex Court has enumerated illustrative cases in which discretion can be exercised, the outer limit is pegged till the stage of framing of the issues. Opinion of

Justice Mohan M. Shantanagoudar which is partly dissenting reads thus:

"60. Having considered the previous judgments of this Court on counterclaims, the language employed in the rules related thereto, as well as the intention of the Legislature, I conclude that it is not mandatory for a counterclaim to be filed along with the written statement. The Court, in its discretion, may allow a counterclaim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of a counter claim till the framing of issues for trial. To this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, I am of the view that in exceptional circumstances, a counterclaim may be permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff."

5. Even otherwise no case is made out for exercise of the discretion in favour of the defendant, and in any event such discretion does not appear to be available in view of the ratio in *Ashok Kalra's case (supra)* and the stage at which counterclaim was lodged.

6. The petition is dismissed.

(ROHIT B. DEO, J.)