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

**WRIT PETITION 5012 OF 2019**

Somcrete Constructors through partners ... Petitioners  
*Versus*  
M/s. Habitat India Pvt. Ltd.  
Through Directors and Ors. ... Respondents

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Mr. G. R. Agrawal for the Petitioners.  
Mr. Surel S. Shah for the Respondent 6.

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**CORAM: ROHIT B. DEO, J.  
DATE : 19<sup>th</sup> JULY, 2022**

**P.C. :-**

. Petitioners are plaintiffs in Regular Civil Suit 1014 of 1991 which is brought for decree of perpetual injunction.

2. The defendant 6 preferred written statement on 11<sup>th</sup> January, 1993.

3. It appears that defendant 6 had instituted Regular Civil Suit 978 of 1991 which was dismissed in default on 27<sup>th</sup> November, 1997.

4. Regular Civil Suit 1014 of 1991 was decreed in favour of the plaintiffs-petitioners herein on 9<sup>th</sup> August, 2006 and the defendants 1 to 3 preferred Regular Civil Appeal 243 of 2006.

5. In the Regular Civil Appeal, defendant 6 preferred counter claim (exhibit 49) on the premise that the cause of action arose since Regular Civil Suit 978 of 1991 is dismissed on 27<sup>th</sup> November, 1997.

6. By order dated 13<sup>th</sup> March, 2019 in Regular Civil Appeal 243 of 2006 the defendant 6 is permitted to lodge the counter claim, which order is impugned herein.

7. Although, the learned counsel for the defendant 6, Mr. Shah, vehemently supports the order impugned, in my considered view, the order impugned is manifestly erroneous in law. Apart from the fact that on the own showing of the defendant 6 the cause of action accrued after filing of the written statement, in view of the decision of the Apex Court in ***Ashok Kumar Karla v/s. Wing CDR Surendra Agnihotri and Ors., (2020) 2 SCC 394*** the outer limit for lodging counter claim is pegged at the stage of framing of issues. The effect of the order impugned is that the defendant 6 is permitted to lodge counter claim, 27 years after the institution of the suit and in that too in appeal.

9. The order is impugned is set aside.

10. Needless to observe, the dismissal of the counter claim shall not prejudice any other remedy which the defendant 6 may have in law.

**[ROHIT B. DEO, J.]**