

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

**WRIT PETITION 7781 OF 2013**

Petro Corporate Agency Pvt. Ltd.  
through Om Consultancy ..... Petitioner  
Vs.  
Shri Abbas Chand Shikalgar ..... Respondent

Ms. Rui Danawala i/b Mr. Umesh R. Mankapure for the Petitioner.  
Mr. Vivek B. Rane i/b. Mr. A. R. Kapadnis for Respondent.

**CORAM : ROHIT B. DEO, J.**

**DATE : 28<sup>th</sup> JUNE 2022.**

**P. C.**

The petitioner is the plaintiff in R. C. S. 174/2010 which is brought for recovery of money.

2. The learned Trial Court framed the issues and the petitioner entered the witness box and was cross examined on 6/4/2011. The defendant preferred an application seeking lodgment of counter claim on 1/1/2013. The counter claim is blissfully vague. What I could decipher is that according to the defendant certain amount of commission and incentive is due and payable by the plaintiff and prayer is that said dues be quantified by the Court.

3. The learned Trial Judge permitted the defendant to

lodge the counter claim vide order dated 2/3/2013 which is impugned.

4. The order impugned is manifestly erroneous and is indeed illegal.

5. The issue is not *res integra*. The outer limit for filing the counter claim is framing of issues. It would suffice to note that majority opinion in *Ashok Kumar Kalra vs. Wing CDR Surendra Agnihotri*<sup>1</sup> 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."

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1 (2020) 2 SCC 394

6. In any event the cause of action is not spelt out. It appears that according to the defendant the cause of action is disclosure by the plaintiff in the cross examination. Since the cause of action even according to the plaintiff accrued after filing of the written statement, the learned Trial Court could not have permitted the defendant to lodge the counter claim. The order impugned is set aside.

7. The Petition is allowed in the aforesaid terms.

**(ROHIT B. DEO, J.)**