

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1150 OF 2022

1. M/s. Gandhi Sales Corporation, A
Proprietary concern, through its
Proprietor, Shri Pramod Kumar
Gandhi, having its office at 13-14,
Yashwant Stadium, Dhantoli,
Nagpur.
2. Shri Pramod Kumar Gandhi, Aged
about 61 years, Occ. Business,
having its office at 13-14, Yashwant
Stadium, Dhantoli, Nagpur.

.... **PETITIONERS**

// **VERSUS** //

Ku. Premlata d/o Kishorilal
Banarasi, aged about 58 years, Occ.
Retired, R/o 701, Amar Palace,
Dhantoli, Nagpur.

.... **RESPONDENT**

Shri A.R. Prasad, Advocate for the petitioners.
Shri A.J. Mirza, Advocate for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 06.04.2022.

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petitions are heard finally.

2. The petitioners are assailing the order dated 02.12.2021

rendered by the 11th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit 30 of 2013, whereby the application preferred by the plaintiff-respondent herein, for grant of permission to file written statement to the counter claim filed by the petitioners-defendants, is allowed.

3. The plaintiff brought a Special Civil Suit 30 of 2013 for recovery of amount. The defendant filed counter claim along with the written statement on 21.06.2013. However, as is observed in the order impugned, the court fees on the counter claim were paid on 14.08.2015, with the result that the issues framed on 24.09.2014, do not consider the counter claim.

4. The plaintiff preferred an application seeking permission to file written statement to the counter claim. The plaintiff contended that as many as 7 suits are filed on or about 21.12.2012 and all are assigned to the same Court. The plaintiff contended that all the 7 suits involve similar facts and the defendant has filed written statement in all the 7 suits and it is only in the present suit, that the counter claim is filed.

5. In essence the plaintiff contended, that the filing of the counter claim in the present suit escape the notice of the plaintiff. The plaintiff contended that it was when the matter was fixed for evidence that the Counsel noticed that the written statement to the counter claim, was not filed. The defendant filed reply to the application seeking permission to file written statement to the counter claim. The reply does not bear the signature much less the verification of the defendants. The reply appears to have been

signed only by the learned Counsel appearing for the defendants. Be that as it may, the defendants contended that the application is barred by limitation and that in any event, since the plaintiff was not diligent, no case is made out for grant of permission to file written statement to the counter claim after passage of 8 years.

6. The learned Trial Court was alive to the position of law that the time for filing written statement to the counter claim, has to be fixed by the Court. The consideration by the learned Trial Judge reads thus :

“5] On perusal of record it appears that defendants filed their written statement alongwith counter claim on 18-07-2013 but there is no order passed by the court directing plaintiff to file written statement on counter claim. It also transpire from record that defendants filed court fees on counter claim on 14-08-2015 alongwith pursis Exh.20. Beside this, issues framed at Exh. 17 dated 24-09-2014 also appears to be framed in respect of plaint/suit and no issues appears to be framed on counter claim. So also till date no written statement order on counter claim is not passed. Thus, the reasons for not filing written statement to the counter claim by plaintiff as mentioned in the application appears justifiable and proper. For deciding the counter claim on merit, it is necessary to grant permission as prayed by plaintiff. No prejudice would cause to defendants, if the permission as sought by plaintiff is granted to her. Hence, following order is passe -”

7. In writ jurisdiction, I am not inclined to interfere with the order impugned, whereby the written statement to the counter claim is accepted on the record.

8. I see no perversity as such in the order impugned.

9. The petition is dismissed.

(ROHIT B. DEO, J.)

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