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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.36 OF 2022

Bhagwat Ganpati Shingare
and another

... Applicants

Versus

Bhujang Nagurao Gayke
and others

... Respondents

...

Mr.C.A. Shingare – Advocate for Applicants

Mr.D.P. Munde – Advocate for Respondent Nos.1 and 2.

....

CORAM : GAURI GODSE, J.

DATE : 21st February, 2023

PER COURT :

1. This civil revision application is filed for challenging order dated 1st February, 2022 passed by learned Joint Civil Judge, Junior Division, Dharur below Exhibit-27 in Regular Civil Suit No.246 of 2020. The present applicants were added as party defendant nos.2 and 3 to a counter claim, that was filed by respondent nos.1 and 2. Since the applicants were not party to the original suit, they filed application at Exhibit-27 for dismissing the counter claim against them. The said application

is rejected by the impugned order.

2. Learned advocate for the applicants submit that under Rule 23 of Order VIII of the Civil Procedure Code, 1908 (“CPC”), there is procedure prescribed for filing the counter claim against third party. He submits that there is procedure prescribed for serving notice on the third party at the time of filing counter claim, however, the applicants were not served with any notice before filing the counter claim. He, therefore, submits that the applicants are third parties to the suit and hence the counter claim as filed by respondent nos.1 and 2 against the applicants can not be entertained.
3. Learned advocate for respondent nos.1 and 2, on instructions, state that respondent nos.1 and 2 may be permitted to delete the applicants arrayed as defendant nos.2 and 3 to the counter claim filed by respondent nos.1 and 2 in Regular Civil Suit No.246 of 2020 with liberty to take out appropriate proceedings as against present applicants.
4. Since the application filed by the applicants at Exhibit-27 was for setting aside the counter claim filed against them on the ground that they are third parties to the suit, I do not find any

impediment in granting leave as prayed for by learned advocate for respondent nos.1 and 2. Hence the following order is passed :

(a) Respondent Nos.1 and 2, who are defendant nos.1 and 2 in Regular Civil Suit No.246 of 2020 are permitted to delete the present applicants, who are defendant nos.2 and 3 in the counter claim filed in the said suit, by carrying out necessary amendment in the counter claim within a period of four weeks from today.

(b) On carrying out such amendment and deleting defendant nos.2 and 3 from the counter claim, respondent nos.1 and 2 i.e. original defendant nos.1 and 2 will be at liberty to take out appropriate proceedings as against the present applicants in accordance with law.

5. Civil Revision application is disposed of in above terms.

[GAURI GODSE, J.]