

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.768 OF 2018

Dharm Prant (Bishop) Pune
Through Rt. Rev. Sharad Yuvraj Gaikwad & Others Petitioners
[Ori. Defendants]

Versus

Heerabai Devdatta Patekar (Died) & Others Respondents
[Ori. Plaintiffs]

Mr. P.S. Chavan, Advocate for petitioners.
Mr. Manoj Shinde, Advocate for respondent Nos. 2A to 2C.
Mr. Dhananjay Deshpande, Advocate for respondent No. 3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd OCTOBER, 2023

ORDER :

1. Order passed by learned 4th Joint Civil Judge, Senior Division, Osmanabad, in Miscellaneous Civil Application No. 235/2015, is impugned in the present petition.

2. By the said application, petitioner/original defendants in Regular Civil Suit No. 96/2004 prayed for restoration of counter claim, which was dismissed in default. The application is rejected by the Trial Court on the ground that sufficient reason is not assigned for restoration of counter claim.

3. Heard learned advocate for petitioners and learned advocates for respondents. Perused the writ petition memo, annexures thereto and the impugned order.

4. Record reveals that suit filed by plaintiffs was dismissed in default on 20.07.2020. Thereafter, matter was kept on 28.07.2010 for hearing of counter claim. It is therefore clear that it was the first date after dismissal of suit. Ground given in restoration application by petitioners is that their advocate was admitted in hospital for about six months and his son was also an advocate since was looking after him, the matter went unrepresented on 28.07.2010. Trial Court has refused to accept this ground observing that there are three defendants in the counter claim and at least one of them ought to have been present on the date of hearing of counter claim.

5. Trial Court has adopted hypertechnical approach in rejecting the application filed by petitioners. In the counter claim petitioners have prayed for possession of the suit property, therefore, substantial rights of petitioners are involved in the counter claim and they must get fair opportunity to contest their counter claim on merits. Since, the impugned order denies the same, it cannot be sustained. In the result, following order:

ORDER

- (i) Writ petition is allowed.
- (ii) Impugned order dated 16.11.2017, passed by learned 4th Joint Civil Judge, Senior Division, Osmanabad, below Exhibit-39 in Miscellaneous Civil Application No. 235/2015, is hereby quashed and set aside.
- (iii) Civil Miscellaneous Application No. 235/2015 is allowed, subject to the petitioners paying cost of Rs. 10,000/- to plaintiffs in the Trial Court.

[NITIN B. SURYAWANSHI, J.]