

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

WRIT PETITION NO.1818 OF 2022

Sunil Nemchand Shah & Anr. Petitioners

Vs.

Sujaya Udayshil Mohite and Ors. Respondents

Mr. Drupad S. Patil a/w. Mr. Prasad Keluskar and Mr. Suyash Sule
for the Petitioners.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 22nd JUNE 2023.

P. C.

1. Heard.

2. Respondent-Defendant's application for amending their written statement for adding counter claim came to be allowed by the impugned order. The Suit i.e. RCS No.223/2015 was filed in the year 2015. Written Statement was filed on 18/3/2015 and on 23/7/2015 issues came to be framed. On 3/11/2017 defendants applied for amendment to written statement for the purpose of adding counter claim to the written statement. This application came to be allowed by the trial Court by the impugned order.

3. Perusal of the impugned order shows that the trial Court has considered the provisions of Order 6 Rule 17 of C.P.C. and has failed to appreciate the provisions of Order 8 Rule 6A of C.P.C. pertaining to filing of counter claim.

4. Although the respondents were served, none appeared for the Respondents. Taking into consideration the decision of the Apex Court in the case of *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri & Ors., SLP (C) No.23599/2018* that after the issues were framed the counter claim could not be filed, in my view, the counter claim could not have been permitted to be filed after the framing of issues. However, it appears that no submission in this regard was made before the trial Court. The impugned order came to be passed on the basis that amendment to the pleadings is permitted. As no submission in regard to provisions of Order 8 Rule 6A of CPC were advanced, it would be in the interest of justice to remand the application for consideration of the trial Court afresh in light of decision of the Apex Court in *Ashok Kalra (supra)*.

5. For the reasons as stated above, the impugned order dated 3/8/2018 is hereby quashed and set aside and Exhibit 49 in RCS No.223/2015 is restored to be considered afresh by the trial Court within a period of 4 weeks from the date the order is produced before the trial Court.

6. The writ petition stands disposed of in the above terms

SHARMILA U. DESHMUKH, J.