

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9123 OF 2023

Jayashri Daulatsing Rajput & Anr.

...Petitioners

Versus

Govind Laxman Tamhankar

...Respondent

Mr. Vaibhav Gaikwad i/b Mr. Shriram S. Chaudhari, for the
Petitioners.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 31st JULY, 2023.

P.C.:

. Heard.

2. The challenge in the petition is to the order dated 7th January, 2023 allowing the respondent/plaintiff's application for excluding the counter-claim filed by the petitioners/defendants as the same has been filed after the framing of issues.

3. The issue is no longer *res integra* and is covered by the decision of the Apex Court in the case of ***Ashok Kumar Kalra V/s.***

*Wing CDR. Surendra Agnihotri & Ors.*¹, where the Apex Court had analyzed the provisions of Order 8 Rule 6-A of the Code of Civil Procedure, 1908 and has held that the counter-claim cannot be filed after framing of the issues.

4. In view of the law laid down by the Apex Court. There is no warrant for interference with the impugned order dated 7th January, 2023. The trial Court by the impugned order has held that as the issues have been framed, the counter- claim filed cannot be entertained, however, the Petitioners are at liberty to avail other remedies for their prayer. In view of the fact that the liberty has been given for the Petitioners to avail other remedies, there is no necessity for fresh liberty to be granted by this Court. The petition is dismissed.

(SHARMILA U. DESHMUKH, J.)

¹ (2020) 2 SCC 394.