

VRJ

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

WRIT PETITION NO.2975 OF 2022

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Changdeo Rambhau Ghumare

... Petitioner

V/s.

Madhu Maruti Jadhav, Since Deceased

Through his LRs. & Ors.

... Respondents

Mr. Pradeep D. Dalvi for the petitioner.

Mr. Rohan D. Kaiche for respondent Nos.3 to 7.

Mr. Vivek Salunke i/by Mr. Ajinkya J. Jaibhave for
respondent Nos.8 to 11.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 23, 2023

P.C.:

1. Challenge in this petition is to the Order 22nd September 2021 allowing plaintiffs to file written statement to the counter claim on record by condoning delay.

2. The petitioner is original defendant No.5. The respondent Nos.1 to 7 are original plaintiffs who initially filed Special Civil Suit No.228 of 1996 which was re numbered as Regular Civil Civil Suit No.777 of 2000. In the said suit defendant No.5 filed a counter claim claiming relief of specific performance in relation to agreement dated 18th December 2001. The counter claim was filed on 13th August 2013. It appears that the plaintiffs filed written

statements to the said counter claim on 4th February 2014 below Exhibit-114.

3. However, the plaintiffs on 20th February 2021, filed an application alleging ignorance of filing of counter claim dated 13th August 2013 and prayed for permission to file written statement by condoning delay in filing written statement. The trial Court by order dated 22nd September 2021 allowed the application. The trial Court refers to the written statement filed by the plaintiffs below Exhibit-114. However, it is stated that defendant Nos.5 and 6 have amended their counter claim and, therefore, plaintiffs are entitled to file their written statements.

4. On perusal of the order, it appears that the reason mentioned in the application seeking permission to file written statement is factually incorrect in as much as the plaintiffs claimed ignorance of filing of written statements as the plaintiffs had already filed their written statements on 5th February 2014. The reason that the original written statement was filed by the power of attorney and the plaintiffs are now appearing personally would not confer more rights to the plaintiffs than the rights available to the plaintiffs pursuing suit through power of attorney. Ultimately, power of attorney is the agent of the plaintiffs whose acts are binding on the plaintiffs. Moreover, plaintiffs are not entitled to raise plea of ignorance of filing of counter claim in the year 2013. Therefore, it appears that the reason mentioned in the application seeking permission to file written statement being factually incorrect, the trial Court could not have allowed such application. Therefore, impugned order cannot be sustained. Hence, following order:

- a) Order dated 22nd September 2021 passed by the 2nd Joint Civil Judge, Senior Division, Nashik in Regular Civil Suit No.777 of 2000 is quashed and set aside.
5. Since the suit is of the year 1996, the trial Court is directed to decide the suit within one year from today.
6. Learned advocate for the respondent Nos.3 to 7 states that he filed his appearance through power of attorney of respondent Nos.3 to 7. Since the original suit was filed through power of attorney, the respondent Nos.3 to 7 are described through their power of attorney. Therefore, knowledge of pendency of present application needs to be attributed to respondent Nos.3 to 7.
7. The civil writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)