

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2314 OF 2023

Purshottam Chhagan Saindane and Ors.	...	Petitioners
<i><u>Versus</u></i>		
Chandrabhaga Waman Pawar and Ors.	...	Respondents

— —
Mr. Lakshyaved R. Odhekar, for the Petitioners.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : July 07, 2023.

P. C. :

1. The challenge in the petition is to the order dated 8th September, 2022 rejecting the petitioner's application seeking the stay to the counter claim till the application being Civil Application No.553 of 2022 is decided.

2. The facts of the case is that Special Civil Suit No.363 of 2009 was instituted by the petitioner for specific performance of the sale deed. In the said proceedings a counter claim came to be filed by the some of the defendants, after the affidavit of evidence has filed. Due to the reason of non-availability of the witness the learned Civil

Judge dismissed the suit for non-prosecution, as against which an application for restoration came to be filed being Civil Application No.553 of 2022.

3. The adjudication on the application for restoration is pending and in the meantime, the counter claim which is being filed by the defendant is being prosecuted, which led to the filing of application, which came to be rejected giving rise to the present petition.

4. Heard.

5. Learned counsel appearing for the petitioner submits that the counter claim is filed in the suit arising out of the same cause of action. He would further submit that the application for restoration being pending, it would be prudent to stay the counter claim.

6. Considered the submissions.

7. The counter claim is filed under the provisions of Order 8 Rule 6D of the Civil Procedure Code, 1908 and beneficial reference be made to the provisions of Rule 6D of Order 8, which reads as under:

“6D. Effect of discontinuance of suit.— If in any case in which the defendant sets up a counterclaim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.”

8. The provisions of the Order 8 Rule 6D is very clear which says that even if the suit of plaintiff is dismissed, the counter claim nevertheless be proceeded with, for the reason that counter claim is treated as an independent suit and only for the purpose of convenience that the same is permitted to be filed alongwith the written statement, if arising out of the same cause of action and the parties fill the same character.

9. There is no reason stated in the application for stay of the counter claim apart from stating that the civil application for restoration is pending and as such, the counter claim being stayed. Considering the provisions of Order 8 Rule 6D of the CPC, no case is made out.

10. Writ Petition stands dismissed.

(Sharmila U. Deshmukh, J.)