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

WRIT PETITION NO.14231 OF 2023

Ashok Umaji Rathod

... Petitioner

V/s.

Bhalchandra Keshav Phadnis & Ors

... Respondents

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Mr. Hrishikesh S. Shinde, for Petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 28, 2023

P.C.:

1. The petitioner/original defendant No.4 is challenging order passed by the Trial Court dated 18 August 2023 rejecting petitioners application under Order 8, Rule 1 of the Code of Civil Procedure, 1908.

2. The respondent No.1/original plaintiff filed Regular Civil Suit No.177 of 2018 seeking possession, declaration and injunction of the suit property. The declaration is to the effect with the sale deed dated 15 September 2017 executed by defendant No.4 (petitioner) in favour of defendant Nos.1 and 2, is not binding on the plaintiff and direction to deliver possession of suit property to the plaintiff is also sought.

3. Defendant Nos.1 and 2 contested the suit by filing written statement. However, the petitioner could not file written statement within the period of 60 days from the date of service of summons.

After laps of 2 years and 5 months, defendant No.4 filed written statement along with counter claim.

4. The Trial Court by the impugned order rejected the application of petitioner seeking permission to file written statement.

5. The reason pleaded in the plaint by the petitioner is that the Advocate engaged by the petitioner did not inform the petitioner about filing of written statement. The petitioner got information of absence of written statement recently.

6. The Trial Court rejected the application by recording a finding that the petitioner has failed to make out a case of exceptional circumstances.

7. In view of judgment of the Apex Court in the case of **Kailash Vs. Nanhku & Ors** reported in (2005) 4 SCC 480, the view taken by the Trial Court cannot be faulted. However, the petitioner filed counter claim along with written statement. Such counter claim needs to be entertained based on parameters contained in Order 8, Rule 6-A of CPC.

8. In the light of judgment in the case of **Ramesh Chand Ardawatiya Vs. Anil Panjwani** reported in (2003) 7SCC 350, such counter claim can be entertained by the Trial Court provided the right or claim in respect of cause of action accrued to the plaintiff either before delivery of defence or before the time limit for delivery of his defence has expired.

9. From the impugned order, it does not appear that the Trial

Court has taken into consideration the parameters of Order 8, Rule 6-A of CPC. Therefore, it is necessary that the Trial Court shall consider the request of the petitioner to entertain the counter claim filed along with written statement. If, the Trial Court comes to the conclusion, after giving opportunity of hearing to the plaintiff, that the counter claim filed by the petitioner satisfies the parameters of Order 8, Rule 6-A of CPC, the Trial Court shall pass appropriate orders on the question as to whether to entertain the claim or not.

10. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)