



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6655 OF 2022

1. Vaishali Samratsingh Bais
Aged about 43 years, Occ.: Household
R/o Sonora (Dhok), Tah. Deoli, Dist.Wardha
At present R/o Hariram Nagar, Pulgaon, Tah. Deoli,
Dist. Wardha
2. Aryan Samratsingh Bais,
Aged about 12 years, Occ. Education
R/o: Sonora (Dhok)
Tah-Deoli, Dist-Wardha
At present R/o Chandrapur, Tah. and Dist.
Chandrapur
[Petitioner No.2 being minor through his natural
guardian mother plaintiff no.1]

...Petitioners

// VERSUS //

1. Viratsingh Ashoksingh Bais,
Aged about 40 years,
Occ. Agriculturist,
2. Nirmalabai Ashoksingh Bais,
Aged about 65 yeas,
Occ. Agriculturist
Both R/o : Sonora (Dhok), Tah. Deoli, Dist.Wardha
3. Sanyogita Ajaysingh Pawar,
Aged about 37 years, Occ. Household
R/o Sirihari Nagar, Galli No.1, Plot No.69, Near
Vidhyabhushar School, Manewada, Ring Road,
Nagpur.

... Respondents

Shri S.S.Sohoni, Advocate for the petitioner.
Shri S.A.Chaudhari, Advocate for the respondent nos. 1 and 2.

CORAM : ANIL S. KILOR, J.
DATED : 18th DECEMBER, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. In this writ petition, the challenge is raised to the Order Below Exhibit 31 dated 11th April, 2022, passed by the learned Joint Civil Judge, Junior Division, Pulgaon in Regular Civil Suit No. 37 of 2017 permitting the defendant to amend the written statement to incorporate the counter claim.

3. Admittedly, the counter claim was filed by the defendants after issues were framed. In this case the issues were framed on 5th June, 2018 and the application to incorporate the counter claim in the written statement by way of amendment was moved on 15th November, 2021.

4. Similarly, the Co-ordinate Bench of this Court in the case of Sau. Janibai W/o Bhaskar Tungare and others Vs. Umesh S/o Pundlikrao Mohod and others in Writ Petition No. 6813 of 2019

8. A perusal of the aforesaid judgment of the Hon'ble Supreme Court in the case of **Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri and others** (supra) shows that conflicting opinions of Benches of two Hon'ble Judges of the Supreme Court were taken into consideration by the Larger Bench, including the aforesaid judgment in the case of **Vijay Prakash Jarath v. Tej Prakash Jarath** (supra) and it was held as follows :-

“20 We sum up our findings, that Order 8 Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for

filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- i. Period of delay.*
- ii. Prescribed limitation period for the cause of action pleaded.*
- iii. Reason for the delay.*
- iv. Defendants assertion of his right.*
- v. Similarity of cause of action between the main suit and the counter -claim.*
- vi. Cost of fresh litigation.*
- vii. Injustice and abuse of process.*
- viii. Prejudice to the opposite party.*
- ix. and facts and circumstance of each case.*
- x. In any case, not after framing of the issues.*

21. We answer the reference accordingly. The instant Special Leave Petition may be placed before an appropriate Bench after obtaining orders from the Hon'ble Chief Justice of India, for considering the case on merits. ”

9. In view of the aforesaid authoritative pronouncement of the Hon'ble Supreme Court by a Larger Bench, clarifying the position of law and holding that no counter claim can be filed after framing of issues, it becomes evident that the impugned order passed by the Court below is unsustainable.

5. Thus, in light of above referred observations made by the Co-ordinate Bench of this Court, I have no hesitation to hold that the

order passed by the learned trial Court is erroneous and liable to be quashed and set aside. Accordingly, I pass the following order.

- i. Writ Petition is allowed.
- ii. The Order Below Exhibit 31 dated 11th April, 2022, passed by the learned Joint Civil Judge, Junior Division, Pulgaon in Regular Civil Suit No. 37 of 2017 is hereby quashed and set aside;

[ANIL S. KILOR, J.]

6. At this stage, Shri Chaudhari, learned counsel for the respondent nos. 1 to 2 seeks liberty to move an application for amendment to the written statement. As the application for amendment can be filed at any stage, I am of the opinion that no prejudice would be caused to the petitioner if such liberty is granted to file such application.

7. It is made clear that if such application is filed the learned trial Court shall decide the same in accordance with law.

[ANIL S. KILOR, J.]