NIKITA KAILAS DARADE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11176 OF 2024

Rakesh Ramesh Miraje ...Petitioner

vs.

Nilam Virchand Oswal and Ors. ...Respondents

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Mr. Kuldeep U. Nikam :-	Advocate for the Petitioner.

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CORAM : S. M. MODAK, J.

DATE : 23rd OCTOBER 2024

P. C. :-

1. Heard the learned Counsel Mr. Nikam for the Petitioner.

2. This matter was on board yesterday. However, it could not be reached and hence mentioned today.

3. The present Petitioner is Defendant No.16 in the original suit. There was a suit for partition. Defendant No.16-Rakesh is the purchaser of the part of the suit property from Defendant No.1. He has filed written statement.

4. Defendant No.23 to 28 have filed written statement, so also

they have filed counter claim. They also sought partition. The description of the property is given on page No.64. The property at Sr. No.11 belongs to this Defendant is the contention. On two occasions the Trial Court refused to accept the contention of this Petitioner.

a) Firstly he applied for filing written statement. It was rejected on 7th November 2023. One of the reason is that he is not a party to this counter claim (page No.86).

b) Secondly the Defendant No.24 to 28 (Plaintiff's as per the counter claim) applied for restraining this Defendant from examining the Plaintiffs in the counter claim. It was allowed on 7th November 2023 (page No.93).

c) The Petitioner applied for impleadment. It was rejected on 6th May 2024.

5. If the present petitioner is connected to a property described in the counter claim, the Defendant ought to have been granted opportunity to oppose that counter claim. Prima facie these orders are erroneous.

6. Issue notice before admission to Respondents, returnable on **4th December 2024.**

7. Additionally, private notice is allowed and service affidavit be

filed before the next date.

8. The Petitioner may apply for adjournment before the Trial Court for that date, Trial Court to consider it.

[S. M. MODAK, J.]