

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 534 OF 2024

Ramsunder Salikram Gupta (since deceased) .Applicants
through Lrs. & ors.

Versus

Nazir Bapamiya Kudai .Respondent

Ms. Anusha P. Amin a/w. Mr. Chintan Shah, Advocates, for the
Applicants
None for the Respondent

CORAM : S. M. MODAK, J.

DATE : 26.11.2024

P. C.

1. Heard learned Counsel for the Applicants.
2. There is a Counterclaim filed on behalf of the Defendant in the year 2016 which is at page No. 56. The Plaintiffs objected to the prayers made in the Counterclaim by way of an Application which is at page No. 58. One of the grounds is bar of limitation. This was rejected by the trial Court surprisingly after eight years on 02.07.2024. This is under challenge. The arguing Counsel, Mr. Patil

is busy before some other Court. Keep it in the afternoon session.
Let the Applicants/Plaintiffs to apprise the Court what is the status of the Suit.

Later on.

3. Heard Ms. Amin, learned Counsel for the Applicants.

4. She apprise me yet there are Interim Applications filed by the Defendant which are pending for decision before the trial Court.
This query was raised because an objection taken by the Plaintiffs on 19.07.2016 to the maintainability of the Counterclaim was decided after a period of eight years on 02.07.2024. One of the reasons for deciding the Application may be lackadaisical approach of the Plaintiffs.

5. There may be Interim Applications pending but the fact that the Application which was filed by the Plaintiffs was nothing but an Application filed under O. VII, Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC'). It is told that even the Defendant has also filed an Interim Application. This is also pending. **If such is a scenario, the Plaintiffs ought to have insisted for hearing of his Application. On this background alone, I am inclined to dismiss the**

Application but I have not done this for the reason the contentions raised in the Application were not decided by the trial Court on merits.

6. In the impugned order, the learned trial Judge has relied upon the observations in the case of *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri & ors.*, reported in *(2020) 2 SCC 394*. Learned trial Judge observed “Counterclaim can be filed even after filing of the Written Statement but earlier to framing of the issues”.

7. According to the learned Counsel, the trial Court has not considered the ratio of the said Judgment properly. She invited my attention to paragraph No. 17 onwards. She is right.

8. At the same time, it is true the Supreme Court has observed under the garb of Counterclaim, the Defendant cannot include the prayers which are barred by law of limitation. One of the objections raised in the Application is the prayers made in the Counterclaim were barred by law of limitation.

9. It is true while rejecting the Application, the learned Judge has not given any finding on this aspect. So the matter is to be remanded for fresh hearing. At the same time, I am imposing costs

of Rs. 5,000/- on the Applicants. I do not find any justifiable reason for not pursuing his objection diligently.

10. At the same time, it is clear that the Applicants while again agitating/pursuing their Application before the trial Court after remand should restrict themselves to the grounds which are permissible under the provisions of O. VII, Rule 11 of the CPC. It is made clear that the grounds which can be decided at the time of trial cannot be taken under the provisions of O. VII, Rule 11 of the CPC. One of the grounds taken in the Application is in respect of persons who are parties. In fact, this ground can be taken by way of Written Statement filed by the Applicants to the Counterclaim. Hence, the Applicants to restrict their grounds strictly which are falling within the purview of O. VII, Rule 11 of the CPC. Considering the limited issue involved and as I have not decided the Application on merits, I thought it to decide it without issuing of notice.

11. With these observations, I proceed to pass the following order.

O R D E R

(i) The Order dated 02.07.2024 passed by learned Civil Judge, Senior Division, Bhiwandi in Special Civil Suit No. 225 of 2023 is

hereby quashed and set aside.

(ii) The matter is remanded back for hearing the Plaintiffs' Application afresh.

(iii) The Plaintiffs are directed to restrict their grounds only to the grounds mentioned under O. VII, Rule of the CPC. The trial Court is at liberty to pass necessary directions, if required including power to strike out pleadings of the said Application.

(iv) The trial Court to decide the Application afresh.

(v) There are no observations about the merits of this Application.

(vi) An amount of Rs. 5,000/- be deposited with the office of the learned CJSD for crediting it in the account of the Legal Aid Fund.

(vii) The Applicants to appear before the trial Court on 16th December, 2024.

(viii) All concerned to act on the authenticated copy of this Order.

12. The Application stands disposed of.

(S. M. MODAK, J.)