



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

WRIT PETITION NO.875 OF 2024
PRATAP S/O PREMCHAND AGRAWAL
VS
DILIP S/O JETHALAL THAKER (DEAD) THR. LRS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri K.J. Rawandhe, Advocate for the Petitioner/s
Shri Chetan Sharma, Advocate for the respondent Nos.2, 3, 5 to 8

CORAM : N.R. BORKAR, J.
DATE : 06.09.2024

1. This petition takes exception to the order dated 01.09.2023 passed by 4th Joint Civil Judge Senior Division, Nagpur below Exhs.56 and 80 in Special Civil Suit No.1100 of 2006.
2. After framing of issues, in a suit filed by the respondents herein, the petitioner herein had filed an application at Exh.56 and sought permission to file counter-claim. The petitioner had thereafter, filed application at Exh.80 for amendment to the counter-claim. By the order impugned, the trial Court has rejected both the applications at Exhs.56 and 80.
3. I have heard the learned counsel for the petitioner and the learned counsel for the respondents. The learned counsel for the petitioner submits that the counter-claim was filed in view of the subsequent developments. It is submitted that to avoid multiplicity of judicial proceedings, the trial Court ought to have granted the permission as sought.

4. On the other hand, the learned counsel for the respondents submits that the trial has already commenced and the evidence of the respondents is already over. It is submitted that in view of the judgment of the Hon'ble Supreme Court, in the case of ***Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri and others*** (2020)2 SCC 394, counter-claim cannot be permitted to be filed after framing of issues and when the trial of suit has proceeded substantially.

5. It is not in dispute that the evidence of the respondents/plaintiffs is over. The Hon'ble Supreme Court in the case of ***Ashok Kumar Kalra*** (supra) has held thus:

“... We are of the considered opinion that the defendant cannot be permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially.”

6. In view of above dictum of the Hon'ble Supreme Court, I am not inclined to interfere in the impugned order. The petition is **dismissed**.

[N.R. BORKAR, J.]