



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

901 WRIT PETITION NO. 3756 OF 2024

ARUN DHONIBA MALI
VERSUS
SAMBHAJI NANASAHEB JADHAV

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Advocate for Petitioner : Mr. Doke Kishor R.

Advocate for Respondent : Mr. Gangakhedkar Shailendra S.

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CORAM : ROHIT W. JOSHI, J.

DATED : 12th June, 2025

PER COURT :

1. The present respondent-original plaintiff filed suit, being Special Civil Suit No.7/2016, for recovery of Rs.19,00,000/- against the present petitioner/sole defendant. The petitioner and respondent will be hereinafter referred to as “defendant” and “plaintiff” respectively. In the said suit, which was registered as Special Civil Suit No.7/2016, the defendant filed application vide Exhibit-51 seeking condonation of delay in filing counter claim for recovery of amount of Rs.4,82,000/-. The said application is rejected by the learned Trial Court vide order dated 13.12.2023. The present petition is filed challenging the said order dated 13.12.2023.

2. The learned counsel for the defendant contends that it is a settled legal position that counter claim can be filed after filing of the written statement subject to condition that cause of action arose prior

to filing of the written statement. There can be no quarrel with respect to this proposition.

3. However, perusal of the order passed by the Trial Court will demonstrate that the defendant had filed written statement in the month of June, 2016 and issues were framed in the matter in July, 2016. Thereafter, the plaintiff filed his affidavit in lieu of examination-in-chief in August, 2016 and since the defendant did not conduct cross-examination of the plaintiff, order to proceed without cross-examination was passed in October, 2018. Thereafter, on an application filed by the defendant, the said order to proceed without cross-examination was set aside vide order dated 14.01.2019.

4. In October, 2019, the defendant filed application vide Exhibit-42 seeking permission to amend the written statement and to file counter claim for recovery of Rs.4,82,000/-. The said application came to be rejected vide order dated 15th September, 2022.

5. The matter was again posted for cross-examination of the plaintiff. However, the defendant again filed similar application on 17.01.2023 vide Exhibit-51. This application filed vide Exhibit-51 is rejected vide order dated 13.12.2023, which is impugned in the present petition.

6. The learned counsel for the petitioner has placed reliance on several judgments of the Hon'ble Supreme Court to contend that a counter claim can be filed after filing of the written statement. As stated above, there is no quarrel with the said proposition and the said contention of the learned counsel for the petitioner deserves to be accepted.

7. The learned counsel for the petitioner does not dispute that similar application filed vide Exhibit-42 was rejected earlier. It is also not disputed that the plaintiff had indeed filed his affidavit of examination-in-chief as early as in August, 2016. Having regard to the progress of the suit, in the considered opinion of this Court, the learned Trial Court has not committed any error in rejecting the application. The suit is filed in the year 2016 in which after a period of around six years and nine months, the defendant was seeking permission to file counter claim. The learned Trial Court has not committed any error in rejecting the application seeking permission to file counter claim.

8. The counter claim is not filed on record, however, the learned counsel for the defendant has handed over a copy of the counter claim for perusal, which is now taken on record and marked as "X" for identification.

9. Perusal of the counter claim will demonstrate that according to the defendant cause of action for recovery of amount of Rs.4,82,000/- arose on 28th March, 2016. The counter claim is placed on record along with the application for permission to file the same on 17.01.2023. Taking the contents of the counter claim on its face value, the counter claim is obviously barred by limitation. It goes without saying that the counter claim is an essence a suit and as such, Section 5 of the Limitation Act will not be applicable to the counter claim. There is no question of condonation of delay caused in filing of counter claim.

10. In the light of reasons recorded above, the petition is liable to be dismissed and is accordingly dismissed with no order as to costs.

[ROHIT W. JOSHI]
JUDGE

sga/