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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

49 WRIT PETITION NO. 2826 OF 2025

KASHINATH VIRBHADRA BANALE

....Petitioner

VERSUS

CHAKRADHAR VIRBHADRA BANALE AND OTHERS

.....Respondents

Mr. Vinesh Solshe, Advocate for the petitioner

Mr. Manoj G. Biradar, Advocate for the respondent No.1

CORAM : KISHORE C. SANT, J.

DATE : 05th MARCH, 2025

P. C.

1. Heard the parties at length.

2. The petitioner is the original defendant No.1 in the suit i.e. Special Civil Suit No.67/2019 instituted by the present respondent No.1. Suit is for partition and separate possession. Present petitioner, alongwith defendants, filed their written statement. It is the contention in the written statement that the plaintiff has not included all the properties belonging to the joint property. There are certain properties situated at Pune. However,

details were not available. Therefore, it was directed to provide the details of the property which are not included in the plaint. Even issue came to be framed on 19-07-2024. On 19-07-2024 at that stage the defendants filed a counter claim who has filed application Exh.88, i.e. after framing of the issues. The learned trial court passed the order and discarded the counter claim considering the order Rule 6-A. Therefore, the petitioner is before this court.

3. Mr. Solshe, learned advocate for the petitioner vehemently argued the petition. He submits that though the plaintiff was aware of the details of the property situated at Pune, he did not provide the same in the court in spite of request. It is only after framing of issues he provided the details of those properties. Till the details were given, there was no occasion and cause for the petitioner to file counter claim. He submits that it is due to lapses on the part of the plaintiff the counter claim could not be filed earlier. He relied on the judgment in the case of Ashok Kumar Karla Vs Wing CDR.

Surendra Agnihotri and Others¹. The Hon'ble Apex Court in the said case considered the order 8 Rule 6-A. Para NO. 21 of the said judgment which reads as under:-

21. We sum up our findings, that Order 8 Rule 6-A 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 counterclaim 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 counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, 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] Defendant's assertion of his right.*
- v] Similarity of cause of action between the main suit and the counterclaim.*
- vi] Cost of fresh litigation.*
- vii] Injustice and abuse of process.*
- viii] Prejudice to the opposite party.*
- xi] And facts and circumstances of each case.*
- x] In any case, not after framing of the issues.*

4. The learned advocate relies on clauses- ii, iii & x. He, thus, prays for allowing the writ petition by directing the trial court to accept the counter claim.

5. Mr. Biradar, learned advocate for the respondent vehemently opposed the petition. He submits that in view of order 6-A Rule 8 no counter claim can be accepted after limitation. In the present case the petitioner filed written statement in 2020. He has filed written statement raising various contention including that the properties situated at Pune are not included in the suit and prayed to dismiss the suit on that ground and therefore, no reason was for him to wait till October, 2024 to file this counter claim. He relies upon the judgment *in the case of Rohit Singh and Ors Vs State of Bihar another*² & judgment *in the case of Ramesh Chand Ardawatiya Vs Anil Panjwani*³. The Hon'ble Apex court in both the cases observed that counter claim cannot be accepted after suit proceeds beyond framing of issue and at the stage of evidence.

² AIR 2007 SC 10

³ (2003) 7 SCC 350

6. This court has considered both the arguments of both the sides and the judgments. In the judgment in the case of Ramesh Chand Ardawatiya (supra) some portion of Para 28 reads as under:-

28. ***. *If the consequence of permitting a counter-claim either by way of amendment or by way of subsequent pleading would be prolonging of the trial, complicating the otherwise smooth flow of proceedings or causing a delay in the progress of the suit by forcing a retreat on the steps already taken by the court, the court would be justified in exercising its discretion not in favour of permitting a belated counter-claim. The framers of the law never intended the pleading by way of counter-claim being utilized as an instrument for forcing up a reopening of the trial or pushing back the progress of proceeding. Generally speaking a counter-claim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case set down for trial, and more so when the trial has already commenced.****

7. Thus this court finds substantial force in the submission of the learned advocate for the respondent that in this case allowing the counter claim would be only amount prolonging the suit.

8. Looking to the judgment in the case of Ashok Kumar Karla (supra) this court finds that clause 'x' the Hon'ble Apex Court has clearly stated that no counterclaim can be filed in any case after framing of the issue. Clause Nos. i to ix are only directory whereas wording of clause No. x shows that it is mandatory. In the present case issue is already framed long back.

9. Considering all above, this court finds that accepting the counter claim at this stage would only result in prolonging the matter and it is also not permissible considering the mandate of order 8 Rule 6-A. The learned trial court while passing the order has also considered this aspect. This court does not find any perversity or illegality in the order passed by the learned trial judge. This court does not find any merit in the petition and writ petition therefore, stands dismissed. No order as to costs. Needless to say that the petitioner would be at liberty to take appropriate steps as provided under the law.

[KISHORE C. SANT, J.]