



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

CIVIL REVISION APPLICATION NO.106 OF 2024

1. Miss. Gauri d/o Avadhut Karjatkar,
Age: 22 yrs., Occ: Household,
R/o Plot No.1/A, Rokdiya Hanuman Colony,
aurangabad through GPA
Mrs. Vaishali w/o Avdhut Karjatkar.
2. Miss. Vaishali w/o Avadhut Karjatkar,
Age: 48 yrs., Occ: Service,
R/o Plot No.1/A, rokdiya,
Hanuman Colony, Aurangabad. ..Applicants
(Defendant Nos.1 and 2)

Versus

Mr. Sameer s/o Ramchandra Gaikwad,
Age: 48 Years, Occ: Service,
R/o Sawant Nagar, Nachane, Ratnagiri,
Through his Power of Attorney holder
Mr. Aditya Shivnath Kandi,
Age: 22 Years, Occ: Household,
R/o Rokdiya Hanuman Colony, Aurangabad ..Respondent
(Original Plaintiff)

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Mr. M. K. Deshpande, Advocate for Applicants.
Mr. A. S. Gandhi, Advocate for Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 27th JANUARY, 2025.
PRONOUNCED ON : 12th FEBRUARY, 2025.

ORDER:-

1. The applicants impugn order dated 05.03.2024 passed by 10th Joint Civil Judge, Junior Division, Aurangabad below Exhibit-29 in Regular Civil Suit No.899/2023, by which prayer of the applicants to accept counter claim has been declined. (Hereinafter, parties are

referred to by their original status for the sake of convenience and brevity).

2. The respondent/plaintiff filed Regular Civil Suit No.899/2023 against applicants/original defendants seeking relief of perpetual injunction in respect of house property CTS No.13009, more particularly specified in plaint. On 22.11.2023, defendants uploaded written statement, but could not upload counter claim. Thereafter on 25.01.2024 defendants filed application seeking permission for taking counter claim on record. The plaintiff replied application and opposes filing of counter claim on the ground that counter claim filed after presentation of defence cannot be accepted. According to him, counter claim should have been part of the written statement. It is further contended that valuation of counter claim is beyond pecuniary jurisdiction of the Court. Hence, such counter claim cannot be accepted.

3. The Trial Court after considering rival submissions noted that defendants have prayed for cancellation of sale deed having valuation of 66,58,000/- and the same is beyond pecuniary jurisdiction of the Court. Consequently, rejected the application.

4. Mr. Deshpande, learned Advocate appearing for the applicants submits that the Trial Court has mechanically rejected the application. At the most, counter claim could have been

returned for presentation to the appropriate Court for decision on merit, if valuation exceeded pecuniary jurisdiction of the Court. Mr. Deshpande invites attention of this Court to the provision of Order VIII Rule 6(A) of the Code of Civil Procedure and submits that counter claim has same effect as cross-suit and counter claim needs to be treated as plaint and governed by Rules applicable to the plaint. He would, therefore, urge that Trial court could have at the most returned the counter claim for presentation to the appropriate Court.

5. Per contra, Mr. Gandhi, learned Advocate appearing for the respondent/original plaintiff submits that counter claim was not filed alongwith suit. Even, Court Fees was not paid on the counter claim. By inviting attention of this Court to the E-challan as to the deposit of Court Fees he submits that E-challan was uploaded on 06.03.2024 i.e. after passing of impugned order dated 05.03.2024.

6. Having considered submissions advanced, it can be observed that suit has been instituted seeking decree of permanent injunction against defendants in the month of August 2023. The written statement appears to have been filed on 22.11.2023, but counter claim was not presented on the same day. The E-challan as to the deposit of Court Fees shows that same has been deposited on 06.12.2023. However, there is dispute as regards to the date of uploading E-challan. The impugned order depicts that application

seeking acceptance of counter claim has been filed on 25.01.2024 and the same has been rejected on the ground that counter claim exceeds pecuniary jurisdiction of the Court.

7. Pertinently, as rightly pointed out by Mr. Deshpande, learned Advocate appearing for the applicants, the counter claim needs to be treated as plaint and is governed by Rules applicable to the plaint. The Sub-Clause (2) of Rule 6(A) of Order VIII provides that counter claim shall have same effect as cross-suit. In that view of the matter, if valuation of the counter claim exceeds pecuniary jurisdiction, Trial Court ought to have followed procedure contemplated under paragraph 233 of the Civil Manual, which reads thus:

“When a suit assigned for disposal by a Civil Judge of the Senior Division to his Joint Civil Judge of the Junior Division is found by the latter to be beyond his pecuniary jurisdiction, he should request his District Judge to transfer the suit administratively to the Civil Judge of the Senior Division, and not return the plaint to the Plaintiff for being judicially presented to the proper Court or return it to the Civil Judge of the Senior Division.”

8. The plain reading of aforesaid paragraph shows that there is no reason for refusal for acceptance of counter claim. It is, therefore, clear that Trial Court has committed jurisdictional error.

ORDER

- a. Civil Revision Application is allowed.
- b. The impugned order dated 05.03.2024 passed by 10th Joint

Civil Judge, Junior Division, Aurangabad below Exhibit-29 in Regular Civil Suit No.899/2023, is hereby quashed and set aside.

c. The Application below Exhibit-29 is restored to original position. The Trial Court shall re-consider the application and pass appropriate order in accordance with paragraph 233 of the Civil Manual.

d. Civil Revision Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE