



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9206 OF 2014

1. Ramdas s/o Aba Khamgal,
Age : 62 years, Occu : Agri.
2. Lankabai Ramdas Khamgal,
Since deceased, through L.Rs.
- 2-A. Sau. Vandana Vijay Waghmode,
Age : 33 years, Occu : Housewife,
R/o : Morevasti, Laxminarayan Society,
Chikhli, Pune
- 2-B. Sau. Laxmi Suresh Kharat,
Age : 27 years, Occu : Housewife,
R/o : Morevasti, Laxminarayan Society,
Chikhli, Pune
3. Gorakh s/o Ramdas Khamgal,
Age : 39 years, Occu : Agri.
4. Sanjana Gorakh Khamgal,
Age : 35 years, Occu : Agri.
5. Mhasku s/o Ramdas Khamgal,
Age : 25 years, Occu : Agri.

Petitioner No.1 and 3 to 5
R/o : Datta Nagar, Near Datta Mandir,
Chinchwad, Pune-17,
At present R/o : Thetewadi, Taluka Karjat,
District Ahmednagar

...PETITIONERS

VERSUS

1. Ankush s/o Aba Khamgal,
Age : 55 years, Occu : Service,
2. Sindhu Ankush Khamgal,
Age : 50 years, Occu : Housewife,
Both R/o: Shivkrupa Building,
Ramnagar, Chinchwad
Pune

...RESPONDENTS

*Advocate for the petitioners : Mr. R. R. Karpe**AGP for Respondent Nos.1 and 2 : Mr. Y. V. Kakade h/f. Mr. N. V. Gaware*

CORAM : PRAFULLA S. KHUBALKAR, J.
RESERVED ON : 24th JUNE 2025
PRONOUNCED ON : 9th JULY 2025

JUDGMENT :-

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.
2. Heard Advocate R. R. Karpe, learned counsel for the petitioners and Advocate Y. V. Kakade, holding for Advocate N. V. Gaware, learned counsel for respondent Nos.1 and 2.
3. By this petition, the petitioners have challenged an order

dated 06.09.2014, passed by the Court of Civil Judge, Junior Division, Karjat, Dist. Ahmednagar, on an application (Exh-44) for permission to file counter-claim in Regular Civil Suit No.264 of 2011, by which the Trial Court has permitted production of counter-claim after the issues are framed. The petitioners are the original plaintiffs and the respondents are the original defendants. The parties are referred to as plaintiffs and defendants according to their status in the suit.

4. Advocate R. R. Karpe, learned counsel for the petitioners, vehemently submitted that the impugned order is erroneous and unsustainable in law. He stated that the petitioners are the original plaintiffs who have filed suit for perpetual injunction on 19.09.2011. The respondents who are the defendants have filed their written statement dated 12.12.2011 stating elaborate specific pleadings. It is stated that after the written statement was filed, the Trial Court framed the issues in the civil suit on 02.05.2013, and the matter was posted for evidence. It is submitted that, at that stage, the defendants have filed the application dated 06.09.2013, seeking permission to place on record counter-claim,

which was allowed by the Trial Court. It is also vehemently argued that the application seeking permission to file counter-claim does not mention any reason at all and, in one line, the defendants merely stated that they are filing counter-claim. This application was allowed by the Trial Court to enable the decision of the real dispute between the parties. Feeling aggrieved by this order permitting the submission of counter-claim after the issues have been framed, the instant petition has been filed.

5. Opposing the petition, Advocate Y. V. Kakade, holding for Advocate N. V. Gaware, learned counsel for respondent Nos.1 and 2 justified the impugned order and submitted that, although the counter-claim was not filed along with the written statement, however, a foundation for the purpose of counterclaim was laid in the written statement, and therefore the defendants should be permitted to file counterclaim. He submitted that the counterclaim is necessary for avoiding multiplicity of proceedings. It is pertinent to note that neither the petitioners nor the respondents have placed on record copy of the

counter-claim sought to be filed by the original defendants. On the basis of pleadings of the written statement, the learned counsel for the respondents has attempted to show that there are pleadings with respect to re-conveyance of the suit property in the written statement and the defendants should be permitted to seek relief on the basis of that plea by way of counter-claim.

6. The crucial issue which primarily falls for consideration is about the stage at which the counterclaim can be permitted to be filed.

7. Advocate R. R. Karpe, learned counsel for the petitioners, has placed reliance on the judgment in the matter of **Rohit Singh and Ors. vs. State of Bihar reported at AIR 2007 Supreme Court 10**, to contend that counter-claim cannot be raised after the issues are framed and evidence is closed. By relying on this judgment, he submitted that since the issues are already framed, the defendants cannot be allowed to file any counter-claim on record in this matter. As against this, Advocate Y. V. Kakade relied on recent judgment of the Hon'ble Supreme Court in the matter of **Ashok Kumar Kalra vs. Surendra Agnihotri and Ors. reported at**

MANU/SC/1590/2019. By referring to this judgment, he has strenuously submitted that since the evidence in the suit is yet to begin, the defendants should be allowed to file counter-claim on record.

8. As regards the position of law, as laid down in the matter of **Rohit Singh (Supra)** regarding the stage at which counter-claim can be filed, it is pertinent to note that the Hon'ble Supreme Court has observed in Paragraph No.15, relevant portion of which is reproduced below:-

“..... A counter-claim, no doubt, could be filed even after the written statement is filed, but that does not mean that a counter-claim can be raised after issues are framed and the evidence is closed. Therefore, the entertaining of the so called counter-claim of defendants 3 to 17 by the trial court, after the framing of issues for trial, was clearly illegal and without jurisdiction. On that short ground the counter-claim so called, filed by defendants 3 to 17 has to be held to be not maintainable.”

It is pertinent to note that this judgment deals with a case where the counter-claim was filed after the issues were framed and evidence was closed.

9. It is relevant to note that the above referred judgment of **Rohit Singh (supra)** was considered by the Hon'ble Supreme Court in the matter of **Ashok Kumar Kalra vs. Surendra Agnihotri (supra)** and after considering the various other judgments, the position of law is summarized in Paragraph No.44 which is reproduced below:-

“44. The above discussion lends support to the conclusion that even though Rule 6A permits the filing of a counter-claim after the written statement, the Court has the discretion to refuse such filing if it is done at a highly belated stage. However, in my considered opinion, to ensure speedy disposal of suits, propriety requires that **such discretion should only be exercised till the framing of issues for trial**. Allowing counter-claims beyond this stage would not only prolong the trial, but also prejudice the rights that may get vested with the Plaintiff over the course of time.

At the same time, in exceptional circumstances, to prevent multiplicity of proceedings and a situation of effective re-trial, the Court may entertain a counter-claim even after the framing of issues, so long as the Court has not started recording the evidence. This is because there is no significant development in the legal proceedings during the intervening period between framing of issues and commencement of recording of evidence. If a counter-claim is brought during such period, a new issue can still be framed by the Court, if needed, and evidence can be recorded accordingly, without seriously prejudicing the rights of either party to the suit.

At this juncture, I would like to address the observation in ***Rohit Singh (supra)*** that a counter-claim, if filed after the framing of the issues and closing of the evidence, would be illegal and without jurisdiction. In my opinion, this is not a correct statement of law, as the filing of counter-claims after the commencement of recording of evidence is not illegal *per se*. However, I hasten to add that permitting such a counter-claim would be improper, as the Court's discretion has to be exercised wisely and pragmatically.”

10. In this regard, a profitable reference need to be made to a more recent judgment of the Hon'ble Supreme Court in the matter of **Mahesh Govindji Trivedi vs. Bakul Maganlal Vyas and Others reported at (2023) 11 Supreme Court Cases 516**, in which, after considering the various judgments, including the judgment of **Ashok Kumar Kalra (supra)**, it was opined that considering the provisions of Civil Procedure Code, there was no bar for taking on record the counter-claim which was filed before framing of issues as observed in Paragraph No.36, which is reproduced below:-

“In the totality of the facts and circumstances of the present case, we are clearly of the view that neither the requirements of Order 8 Rule 6-A CPC or Rule 95 of the Rules nor the principles

enunciated and explained in Ashok Kumar Kalra operate as a bar over the prayer of the appellant for taking the belatedly filed counterclaim on record, which was indeed filed before framing of issues.”

11. Having regard to the position of law as laid down in the above mentioned authoritative pronouncements of the Hon’ble Supreme Court, it is clear that even though Order 8 Rule 6-A of C.P.C. permits the filing of counter-claim after the written statement, the Court has the discretion to refuse such filing at a belated stage. As observed by the Hon’ble Supreme Court in the matter of **Ashok Kumar Kalra (supra)**, to ensure speedy disposal of suits, propriety requires that such discretion should only be exercised till the framing of issues for trial. It is also categorically observed that allowing the counter-claim beyond this stage would not only prolong the trial but also prejudice the rights that may get vested with the plaintiff over the course of time.

12. Although it is also observed that, in exceptional circumstances, to prevent multiplicity of proceedings the Court may entertain a counter-claim even after the framing of issues, however, in

the instant case, the defendants have failed to demonstrate any exceptional circumstances necessitating permission to file counter-claim after the framing of issues. It is crucial to note that the application filed by the defendants for permission to file counter-claim does not mention any reasons, much less exceptional circumstances for grant of permission. The application states only in one sentence that the defendants are filing counter-claim along with the application. As such in the instant case, no exceptional case is made out. Further, as regards, the counter-claim sought to be raised by the defendants, the defendants are at liberty to raise the challenge sought to be raised by way of counter-claim in a separate suit, if permissible.

13. Having regard to the factual and legal aspects involved in this matter and in view of legal position as clarified by the Hon'ble Supreme Court in the matter of **Ashok Kumar Kalra (supra)**, I am of the considered opinion that the counter-claim filed by the defendants after the issues are framed cannot be permitted, particularly in absence of any exceptional circumstances.

14. In the light of the above, the impugned order is unsustainable and deserves to be quashed and set aside.

15. The writ petition is allowed. The order dated 06.09.2014 passed by the Court of Civil Judge, Junior Division, Karjat, Dist. Ahmednagar, in Regular Civil Suit No.264 of 2011 is quashed and set aside. The application at Exhibit-44 filed by the defendants is rejected.

16. Rule made absolute in above terms.

17. No order as to costs.

18. After the judgment is pronounced, the learned counsel for respondents prays for continuation of the interim relief, which was granted by order dated 27.10.2014 and which was continued during the pendency of the petition. The learned counsel for the petitioners strongly opposes this request, for continuation of interim relief.

19. However, in view of the fact that the interim relief was

operating during the pendency of the petition, the same is continued for a further period of 8 weeks from today.

[PRAFULLA S. KHUBALKAR, J.]

PRW