

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8038 OF 2024**

Pradipkumar Abhimanyu Bagal & Ors.Petitioners

Vs.

Baban Janardhan Shinde & Ors.Respondents

Mr. Akshay J. Kandarkar, i/b. Mr. Sachin Deokar, for the Petitioners.
Mr. Drupad Patil, for the Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 12th DECEMBER 2025

P.C.:-

1. The present Writ Petition takes exception to order dated 25th January 2024 passed by Civil Judge, Senior Division, Karmala below Exhibit 56 in Regular Civil Suit No.332 of 2023, by which application filed by Respondent Nos.2 to 4 seeking amendment in written statement and raising counterclaim has been allowed.

2. Petitioners/original plaintiffs instituted Regular Civil Suit No.332 of 2023. Respondents appeared in suit and filed written statement on 1st January 2021. The issues were framed on 17th March 2021. The plaintiff tendered evidence affidavit on 1st September 2023. At this stage on 20th October 2023, Respondent

filed application for amendment thereby raising counterclaim. The trial Court allowed said application by order impugned. Hence, this petition.

3. The learned counsel appearing for Petitioners/plaintiffs relying upon observations of Supreme Court in case of ***Ashok Kumar Kalra v. Wing Commander Surendra Agrihotri & Ors.***¹ submits that issue as to stage of filing counterclaim is no more *res integra* and paragraph No.21 of judgment concluded thus:

“21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim 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,

¹ (2020) 2 SCC 394.

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.*
- (ix) And facts and circumstances of each case.*
- (x) In any case, not after framing of the issues.”*

4. In light of aforesaid exposition of law, it is contention of Petitioners that after framing of issues, there is no scope to permit filing of counterclaim.

5. Per contra, Mr.Drupad Patil, learned Advocate appearing for Respondents supports impugned order. According to him, amendment was necessary to resolve controversy between parties and no prejudice is caused to plaintiff.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that Order 8 Rule 6A of Code of Civil Procedure deals with counterclaim. The law relating to filing of counterclaim is well settled, particularly in case of

Ashok Kumar Kalra (supra), issue under consideration was as regards to stage of filing counterclaim. Finally, it has been observed that counterclaim can be permitted till issues only. There is no scope to permit raising counterclaim, once issues are framed and matter reached to the stage of trial. The impugned order appears to have been passed ignoring well settled legal position.

7. In that view of matter, Writ Petition is allowed in terms of prayer clause (a).

8. Needless to state here that Respondents shall be at liberty to file a separate suit in relation to claim sought to be raised by counterclaim.

(S. G. CHAPALGAONKAR, J.)

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RAJU
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GAIKWAD
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