Jvs.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2556 OF 2019

JAYANT VISHWANATH SALUNKE
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Date: 2025.07.30 11:01:51 +0530

Eknath Sakharam Gaikwad, since deceased, through LRS. (1A) Dwarkabai Eknath Gaikwad & Ors. } **Petitioners**

versus

Raghunath Sakharam Gaikwad & Anr. } **Respondents**

Mr. Nikhil Wadikar with Mr. Rushikesh Desai i/b. Mr. andu Pawar for petitioner.

Mr. Ratan L. Adhe i/b. Mr. Pankaj P. Deokar for respondent no. 2.

CORAM: ALOK ARADHE, CJ.

DATE: JULY 29, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioner has assailed the validity of the order dated 5th October 2018 passed by the Trial Court, by which, the application for amendment of the written statement, has been allowed and the respondents/defendants have been permitted to set up the counter claim by way of the amendment in the written statement.

2. Facts giving rise to filing of the writ petition, briefly stated, are that in the year 2011, the petitioners/plaintiffs filed a suit seeking relief of partition and separate possession. In the aforesaid civil suit, the respondents/defendants, on 29th June 2011 filed joint written statement. Thereafter, after a period of

six years, on 14th November 2017, the respondents/defendants filed an application seeking amendment of the written statement, by which, counter claim was sought to be set up. The Trial Court, by the impugned order dated 5th October 2018, has allowed the said application. Hence this petition.

3. Learned counsel for the petitioners submitted that the Trial Court ought to have appreciated that the counter claim set up by the respondents/defendants was barred by limitation and the amendment could not have been allowed by the Trial Court. In support of the aforesaid submission, the learned counsel for the petitioners has placed reliance on the judgment of Supreme Court in the case of ***Rajkumar Gurawara (Dead) Thr. L.Rs. vs. M/s. S. K. Sarwagi & Co. Ltd. & Anr.***[1].

4. On the other hand, learned counsel for the respondents has supported the impugned order.

5. I have considered the rival submissions and perused the record.

6. The Supreme Court in the case of ***Rajkumar Gurawara*** (supra) has dealt with the scope of Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC). The relevant extract of para 7 of the aforesaid decision has been extracted hereinbelow:

> "**7**. ….. It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation."

1 **AIR 2008 SC 2303**

7. In the instant case, the respondents/defendants had filed written statement in the year 2011. After filing the written statement, after a period of six years, the respondents filed an application for amendment, by which they have set up the counter claim. Thus, the counter claim was barred by limitation. However, the Trial Court, without considering the aforesaid aspect of the matter, in ignorance of the law laid down by the Supreme Court in the case of ***Rajkumar Gurawara*** (supra), has allowed the application for amendment in the written statement.

8. The impugned order, therefore, suffers from jurisdictional infirmity as well as an error apparent on the face of the record, which is hereby quashed and set aside.

9. In the result, the writ petition is allowed.

10. Let a copy of this order be forwarded to the Trial Court forthwith.

(CHIEF JUSTICE)