

3. Learned counsel for the petitioner does not dispute that the order is implemented. He however submits that the counter claim itself is not maintainable; hence, the impugned order of mandatory injunction would also not be sustainable. He points out that the suit is filed only against one defendant, however in the counter claim filed by defendant no. 1, he has added defendant no. 2 to 5 as party defendants. He submits that in this counter claim which is not maintainable the court passed order of mandatory injunction. He submitted that even if the order is implemented, this court can interfere with the impugned order to set aside the impugned order which according to the learned counsel for the petitioner is an illegal order.

4. Since the order is already implemented, I do not see any reason to exercise the discretionary jurisdiction under Article 227 of the Constitution of India to interfere with the impugned order. The impugned order of mandatory injunction is confirmed by the appeal court.

5. Since the suit and counter claim are still pending, it would always be open to the petitioner to raise necessary objections including maintainability of the counter claim by

taking appropriate steps in accordance with law. Subject to aforesaid observations and keeping liberty open the petitioner to raise the objection of maintainability of the counter claim, this writ petition is dismissed.

6. It is further clarified that rival contentions of the parties on merits in the suit and the counter claim are kept open.

[GAURI GODSE, J.]