



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 85 of 2025

[Uma Sanjay Madamwar (dead) through her legal heirs Sanjay s/o Baburao
Madamwar and ors. ..vs.. Smt. Shobha wd/o Babulal Banmare and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Dhore, Advocate for the petitioners
Mr. A.B. Lokhande with Mr. Pramod Bapat, Advocates for respondent
nos. 1 to 6

CORAM : ANIL L. PANSARE J.

DATED : 03-04-2025

Heard.

2. The trial Court permitted respondent – original defendant to file counter claim subsequent to the closure of evidence by the petitioner – plaintiff. The question is whether the trial Court committed error of law in permitting respondent to file counter claim once the petitioner-plaintiff's evidence is/was closed.

3. As such, learned counsel for the respondents submits that the counter claim is nothing but extension of the pleadings put forth in the written statement and, therefore, the trial Court has rightly permitted respondent to amend the written statement and incorporate counter claim. However, the petitioners' counsel has invited my attention to the judgment of the Supreme Court in the case of *Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri and ors. [(2020) 2 SCC 394]* wherein the three Judges Bench with majority took a view that though there is no straitjacket formula to permit counter claim subsequent to filing written statement, the trial Court should not permit filing counter claim post framing of issues, whereas minority view opined that counter claim could be filed prior to plaintiff entering witness box.

4. Learned counsel for the respondents has relied upon the judgment of the Supreme Court in the case of ***Raj Kumar Bhatia Vs. Subhash Chander Bhatia [2018(4) Mh.L.J. 76]*** wherein the Supreme Court has reiterated the scope of High Court to interfere under Article 227 of the Constitution. The Supreme Court found that High Court entered into merits of the case sought to be set up by the appellant therein in the amendment which was impermissible and thus transgressed the limitation of its jurisdiction under Article 227. The Supreme Court held that the judgment of High Court holding the amendment as untenable on merits is unsustainable and accordingly order passed by the High Court was set aside.

5. To my mind, this judgment will not be applicable in the present case in as much as the merits of the amendment has been not touched at all. The question as framed is whether the trial Court committed error of law in permitting the amendment and having found that trial Court has committed such error, this Court is duty bound to correct such error under Article 227 of the Constitution.

6. Resultantly, the writ petition is allowed. Order dated 13-12-2024 passed by the Civil Judge Senior Division, Hinganghat below Exhibit 203 in Special Civil Suit No. 8/2017 is quashed and set aside. The application, Exhibit 203 seeking permission to file counter claim in the form of amendment is rejected.

(Anil L. Pansare, J.)