



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

WRIT PETITION NO. 6864 OF 2022

1. Shri Manoj Shivshankar Badole,
Aged 32 years.
2. Shri Mahesh Shivshankar Badole,
Aged 28 years.
3. Sau. Savita Rajesh Walde,
Aged 35 years.
4. Smt. Sheela Shivshankar Badole,
Aged 57 years.

All occupied as agriculturists,
r/o Panchasheel Ward, Sakoli,
Tah. Sakoli. Dist. Bhandara,
All through Power of Attorney Holder-
Manish Chokhelal Shahare,
Aged about 42 years,
R/o Ganesh Ward, Sakoli,
Tah. Sakoli, Dist. Bhandara.

.... **PETITIONER/
ORG. DEFENDANTS ON R.A.**

VERSUS

Shri Madhav Namdev Parshuramkar,
Aged 55, Occ. Service/agriculturist,
r/o Sendurwafa, Behind Mangalmurti
Sabhagruha, Tah. Sakoli,
Dist. Bhandara, Pin – 441802.

.... **RESPONDENT/
ORG. PLAINTIFF ON R.A.**

Shri Vedant Vyawahare, Advocate h/f Shri Nitin Vyawahare, Advocate
for petitioners.

Shri H. A. Khedikar, Advocate for respondent-sole.

CORAM:- SACHIN S. DESHMUKH, J.
DATED : 30/07/2025.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.

2. The petitioners raise an exception to the order rendered by the Civil Judge Junior Division, Sakoli in R.C.S. No.18/2020 wherein the present petitioners are the defendants. In response to the suit summons, the petitioners herein have tendered their written statement on 13/07/2020. Having participated in the suit, thereafter an application was presented with twofold request to amend the written statement and under the garb of said amendment in written statement, a counter claim has been raised. The same was objected by the original plaintiff since it was contrary to the mandate of Order 8 Rule 6-A of the Code of Civil Procedure (For short, "CPC").

3. The Trial Court taking into account the mandate of Order 8 Rule 6-A of the CPC has rejected the application. Aggrieved by the same, petitioners are before this Court. It is contended by Shri Vyawahare, learned counsel for petitioners that the application is presented for amendment. As such, it should have been allowed and it was not open for the Trial Court to go into the merits of the amendment application.

4. Per contra, Shri Khedikar, learned counsel for respondent has supported the order contending that the application is presumably for amendment, which in fact raises a counter claim is impermissible by virtue of operation of mandate of Order 8 Rule 6-A of the CPC. In his support, Shri Khedikar relies upon the Judgment of Hon'ble Apex Court in the case of Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri and others, reported in (2020) 2 SCC 394, more particularly in Para No.21 wherein the Hon'ble Apex Court has carved out the contingencies under which the application under Order 8 Rule 6-A of the CPC can be permitted, Para No.21 of which reads as under:-

“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, 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.”

5. Shri Vyawahare, learned counsel for the petitioners in all fairness does not dispute the fact that already issues are framed in the suit. Thus, Trial Court has acted in conformity with the mandate of Order 8 Rule 6-A of the CPC and the principles laid down by the Hon’ble Apex Court in the case of Ashok Kumar Kalra (cited supra) in that regard. As such, no error is committed by Trial Court while rejecting the application presented by the petitioner.

6. In the result, writ petition is dismissed. Rule stands discharged. No costs.

7. Needless to state that all the contentions raised between the parties are kept open.

[SACHIN S. DESHMUKH, J.]