



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.6743/2024

Oazi Syed thr Lrs V M/s Ramdeobaba Developers and Builders and another

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

Court's or Judge's orders

Mr. Mohd. Ateeque, Advocate for petitioner.
Mr. M.M. Agnihotri, Advocate for respondent nos.1 and 2.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 09-12-2025.

Heard learned Counsel for the petitioner as well as learned
Counsel for the respondents.

2. Petitioner's challenge is to order dated 28-03-2024 passed by the trial Court, allowing the application filed by the plaintiff at Exhibit-22, seeking rejection of counterclaim filed by the defendant in Regular Civil Suit No.03/2024.

3. The primary reason for rejecting the counterclaim is the fact that the petitioner/defendant in Regular Civil Suit No.03/2024 has already filed an independent suit bearing R.C.C. No.116/2023 which is pending and the claim sought to be raised by way of counterclaim is also independently raised in the said civil suit. The Court has observed that the suit as well as cross suit on the same cause of action cannot be allowed to be continued and the petitioner/defendant cannot claim the reliefs available to him at the time of filing his independent suit but, omitted to be claimed in the said suit.

4. Learned counsel for the petitioner submitted that the petitioner is entitled to raise counterclaim in the suit in question. Learned Counsel for respondents pointed out that the petitioner has

submitted an amendment application in his suit and therefore the counterclaim cannot be allowed to be raised. Learned Counsel for petitioner does not dispute the position that by way of an amendment in his suit i.e. R.C.C. No.116/2023 now a challenge is raised to the Sale Deed dated 25-04-2007 and the same was also sought to be raised by way of counterclaim in the instant suit.

5. Having regard to the controversy involved and the contentions canvassed, no perversity is seen with the impugned order rejecting the counterclaim; particularly because the plaintiff's separate suit bearing R.C.C. No.116/2023 is pending in which the petitioner is entitled to raise all the issues.

6. Needless to state that the challenge raised by the petitioner with respect to challenge to the Sale Deed is kept open and will be decided independently in the said suit.

7. In view of this, no indulgence is warranted with the impugned order. Writ Petition is dismissed. No order as to costs.

(Prafulla S. Khubalkar, J.)