



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

Writ Petition No.7832/2023

Ishwar s/o Narayan Tikamgade,
Aged about 60 years, Occ.- Cultivation,
R/o. Rajedahegaon, Tah and Distt. Bhandara.

.... Petitioner
(Ori. Defendant)

- Versus -

Lalchand s/o Gajanan Tikamgade,
Aged about 43 years, Occ.-Cultivation,
R/o Rajedahegaon, Post Thana (Petrol Pump),
Tah. and Distt. Bhandara.

.... Defendant.
(Ori. Plaintiff)

Mr. D.C. Chahande, Advocate for petitioner.
Mr. Nitin Vyawahare, Advocate for respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 08-08-2025.

Oral Judgment

Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. Heard Mr. Chahande, learned Advocate for the petitioner and Mr. Vyawahare, learned Advocate for the respondent.

3. This petition takes exception to the order dated 03-05-2023 passed by the Court of Joint Civil Judge, Junior Division, Bhandara, rejecting the application for amendment to written statement by way of counter claim.

4. Petitioner is the original defendant in the suit for possession and permanent injunction filed by the respondent on 07-08-2018. In response to the suit summons, the defendant

appeared and filed the written statement on 20-12-2018. In view of the pleadings of parties, issues came to be framed in the suit on 13-10-2021. Thereafter, during the pendency of the suit, the defendant filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short, 'CPC') for amendment to the written statement for raising counterclaim. By this amendment application, the defendant sought to add certain pleadings and a prayer by way of counter claim seeking declarations with respect to the suit property. This application was opposed by the plaintiff and the trial Court has rejected the application by the impugned order.

5. Mr. Chahande, learned Advocate for the petitioner submitted that the defendant has sought to amend the written statement and in view of the settled position of law that amendment needs to be allowed at any stage of the suit, the trial Court ought to have allowed the application. In support of his submissions he relied on the judgments in the matter of Chakreshwari Construction Pvt. Ltd vs Manohar Lal, reported in 2017(5) Mh.L.J. 195 and Nileshkumar Jashvantsinh Parmar and others vs Bochasanwasi Shri Akshar Purushottam Swaminarayan Sanstha, Public Charitable Trust, Ahmedabad and others, reported in 2025(2) Mh.L.J. 290.

6. *Per contra*, Mr. Vyawahare, learned Advocate for the respondent opposes the petition and submits that the controversy revolves around the stage at which the counter claim is sought to be

filed. He submits that undisputedly in the civil suit the issues are framed and the counter claim which is filed after the issues are framed cannot be entertained in view of the settled position of law. In support of his submissions he relies on the judgment in the matter of Ashok Kumar Kalra vs Wing CDR. Surendra Agnihotri and others, reported in (2020) 2 SCC 394. He adverts attention of this Court to paragraph 21 of the judgment, which is reproduced below :-

“21. We sum up our findings, that Order 8 Rule 6-A of the 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.”*

7. Thus, having regard to the provisions of Order 8 Rule 6-A of the CPC and in view of the settled position of law as clarified by the judgment of the Hon'ble Supreme Court, it becomes clear that the defendant is not entitled to file counter claim after the issues are framed. In the instant matter, there is no dispute that the counter claim is sought to be filed after the issues are framed and the mandate of provisions of Order 8 Rule 6-A of the CPC thus operates. In view of the settled position of law as clarified by the Hon'ble Supreme Court, the impugned order needs no interference. The petition, therefore, deserves to be dismissed.

8. Petition is dismissed. No order as to costs.

9. Rule stands discharged.

(Prafulla S. Khubalkar, J.)