



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

WRIT PETITION NO.7285 OF 2024

Pravin S/o. Sharadrao Kadam (Deshmukh) and Others

Vs.

Smt. Jyoti Wd/o. Bhagwat Deshmukh

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. C.D. Gawande, Advocate for the Petitioners.
Mr. N.R. Tekade, Advocate for the Respondent.

CORAM: SIDDHESHWAR S. THOMBRE, J.

DATED : 14th OCTOBER, 2025

1. Heard Mr. C.D. Gawande, learned counsel for the petitioners and Mr. N.R. Tekade, learned counsel for the respondent.
2. The petitioners, who are defendants in the suit filed an application along with a counter claim praying for declaration of ownership on the basis of the Will Deed. This application was rejected by the learned trial Court vide its order dated 30.09.2024. Learned trial Court, while rejecting the application has observed that there are two contrary pleas between the plaintiff and defendants based on the same instrument, which cannot be adjudicated in single proceedings, therefore, on that count the application came to be rejected.
3. Learned counsel for the petitioner relies upon the judgment in the case of *SERGI Transformers Explosion Prevention Technologies Private Ltd., Vs. CTR Manufacturing Industries Ltd., and Others* reported in

2011(5) Bom.C.R.806 decided on 06.06.2011, specifically pointing out para No.19, which is reproduced as follows :-

“19. In any event, while considering the application for leave to place counter claim on record, in my view, merits of the counter claim cannot be gone into. Limited scope of enquiry would be. as to whether the applicants have made out a case for grant of permission or not. The ather issues would arise only in the event the counter claim is permitted to be taken on record. Insofar as the contention of the respondents regarding prejudice is concerned, it is contended that if the suit is permitted to continue in Thane Court, it can be decided expeditiously and if counter claim is permitted to be taken on record, it will have to be transferred to the Original Side of this Court and it will take a long time for suit to be decided. To appreciate this submission, a reference to section 104 of the said Act would be necessary.

Section 104 of the Patents Act, 1970 reads thus:

104. Jurisdiction.- No suit for a declaration under section 105 or for any relief under section 106 or for infringement of a patent shall be instituted in any Court inferior to a district Court having jurisdiction to try the suit.

Provided that where a counter-claim for revocation of the patent is made by the defendant, the suit, along with the counterclaim, shall be transferred to the High Court for decision.”

He invited attention of this Court to the above referred para and contended that the learned trial Court was not supposed to go into the merits of the counter claim.

4. Learned counsel for the petitioner had also relied upon the judgment in the case of ***Ashok Kumar Kalra Vs. Wing Commander Surendra Agnihotri and Others*** reported in ***AIR Online 2019 SC 1525 Supreme Court***, decided on 19.11.2019 and pointed out para No.17, which is reproduced as follows :-

“As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6A in Order VIII of the CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counterclaim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hypertechnical approach that the provision stipulates that the counterclaim has to be filed along with the written statement and beyond that, the Court has no power. The Courts, taking into consideration the reasons stated in support of the counter claim, should adopt a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counterclaim has to be filed, by curtailing the discretion conferred on the Courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counterclaim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to the CPC.”

5. It is categorically stated that in the above judgment that to avoid multiplicity of proceedings, both the proceedings can proceed simultaneously.

6. I have gone through the order passed by the learned Trial Court and as well as the documents placed on record, it is an admitted fact that the suit filed respondent is for declaration and permanent injunction, wherein the present petitioners are the defendants. On

the same instruments, the petitioners who are defendants have filed the counter claim, these are contrary pleading therefore, the learned Trial Court has rightly taken the view and rejected the application.

7. In view thereof, I do not find any reason to interfere with the order passed by the learned Trial Court. Accordingly, the writ petition is **dismissed**. No order as to costs.

(SIDDHESHWAR S. THOMBRE J.)

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