



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4757 OF 2026**

Abaso Shivdas Bandgar	...	Petitioner
versus		
Ravindra Shivdas Bandgar and Ors.	...	Respondents

Mr. Bhalchandra Shinde, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 28 APRIL 2026

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 20 January 2026, whereby the learned Civil Judge has dismissed the application preferred by the Petitioner to file a counter-claim in a suit instituted in the year 2014.
3. The Respondents – Plaintiffs have filed a suit for partition and separate possession of the properties described in paragraph No.1 of the plaint. The Defendant has filed the written statement in the year 2014 itself. In the said written statement, the Petitioner had not claimed that there were other joint family properties which were not brought into the common hotchpot. After the settlement of the issues and the filing of an affidavit in lieu of examination in chief, the Petitioner filed an application seeking permission to file a counter-claim contending, inter alia, that the properties described in paragraph Nos.1a to 1m in the counter-claim, are the joint family properties.

4. Learned Civil Judge was persuaded to dismiss the application placing reliance on the judgment of the Supreme Court in the case of **Ashok Kumar Kalra V/s. Wind CDR Surendra Agnihotri**¹ as the counter-claim was filed after the settlement of the issues.

5. Learned Counsel for the Petitioner submitted that the trial Court has taken a hyper-technical view of the matter. Since the Petitioner – Defendant No.1 was seeking to file a counter-claim so as to bring all the joint family properties into the common hotchpot, the trial Court ought to have allowed the counter-claim.

6. In the case of **Ashok Kumar Kalra (supra)**, the Supreme Court by a majority judgment, enunciated that the counter-claim shall not be permitted to be filed after the settlement of the issues. The majority view, in paragraph No.21, reads as under :

“21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counter-claim 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 counter-claim 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 counter-claim, which is pegged till the issues are framed.....”

1 (2020) 2 SCC 394

7. In a partly supplementing and dissenting opinion, Hon'ble Justice Mohan M. Shantanagoudar, observed that, in exceptional circumstances, counter-claim may be permitted to be filed till the stage of commencement of recording of evidence on behalf of the Plaintiff. The observations of the Hon'ble Lordship in para 60 read as under :

“60. Having considered the previous judgments of this Court on counterclaims, the language employed in the rules related thereto, as well as the intention of the Legislature, I conclude that it is not mandatory for a counterclaim to be filed along with the written statement. The Court, in its discretion, may allow a counterclaim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of a counter claim till the framing of issues for trial. To this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, I am of the view that in exceptional circumstances, a counterclaim may be permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff.”

8. In the case at hand, even if the case of the Defendant is construed rather generously, yet the Defendant does not seem to be entitled to have the benefit of the special dispensation to file the counter-claim after the settlement of the issues on account of exceptional circumstances. The trial Court has

recorded in para 11 of the impugned order that the Plaintiff had filed an affidavit in lieu of examination in chief and further examination in chief of the Plaintiff was recorded on the same day. Thereafter, the Petitioner filed an application seeking permission to file the counter-claim. It cannot be, thus, said that the evidence has not commenced.

9. In any event, this Court finds that the written statement was filed by the Petitioner in the year 2014. The non-inclusion of the joint family properties in the suit for partition was such a notorious fact that the Petitioner – Defendant No.1 ought not to have missed to raise the said ground at the first possible opportunity.

10. In this view of the matter, the learned Civil Judge was justified in rejecting the application to file a counter-claim. There is no legal infirmity in the impugned order.

11. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)