



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

WRIT PETITION NO. 2501 OF 2026

Haji Ahemed Abdulla Halari, Aged 80 years, Occ:
Business, R/o Kacchi Chowk, Digras, Dist. Yavatmal.

PETITIONER

VERSUS

1. Pramod Vasant Banginwar, Aged 47 years, Occ:
Business, R/o Near Balaji Mandir, Digras, Dist. Yavatmal.
2. Abdul Aziz Mohammad Yasin, Aged 70 years,
Occ: Agriculturist, R/o Barabhai Mohalla, Digras,
Taluka Digras, District Yavatmal.
3. Farhad Yasmin Ahemed Jaman, Aged 42 years, Occ:
Household, R/o Barshitakli, District Akola.

RESPONDENTS

Shri Bhupesh Patel, Advocate with Shri Akhil Mishra, counsel for the petitioner.
Shri V.R. Choudhari, counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : APRIL 17, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. The petitioner has challenged the order dated 15.01.2026 passed by the trial Court rejecting the petitioner's application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code') for consequential amendment to the written statement.

3. The petitioner is the original defendant no.1 in the suit filed by the respondent no.1 seeking declaration, eviction, possession, arrears of rent and damages. The petitioner-defendant no.1 has appeared in the suit and has filed his written statement and the suit proceeded at the stage of evidence. After the evidence of plaintiff was conducted, he filed an application under Order VI Rule 17 of the Code seeking amendment of

plaint, which came to be allowed by order dated 01.08.2025. The defendant no.1 thereafter filed an application at Exhibit 120 for consequential amendment thereby seeking to introduce certain contentions in response to the amendment of plaint and seeking to raise a counter claim. The application was opposed by the plaintiff and it came to be rejected with costs by order dated 15.01.2026. The defendant no.1 has challenged this order by way of instant petition.

4. Shri Bhupesh Patel, learned counsel for the petitioner submitted that the application for amendment was filed by the defendant no.1 by way of consequential amendment and in view of the notice dated 07.11.2007 filed by the plaintiff by amending the plaint alleging termination of tenancy, the defendant no.1 got a cause of action to file the counter claim and therefore the application for amendment of written statement ought to have been allowed. He submitted that the trial Court has considered the application for amendment by mainly focusing on the contents of the proposed amendment being inconsistent with the earlier stand of the defendant no.1, however by ignoring the right of the defendant no.1 to raise a counter claim in the background of accrual of cause of action based on amendment to the plaint. He therefore submitted that the defendant no.1 cannot be deprived of his right to raise a counter claim which was filed well within limitation. By relying on the judgment of the Hon'ble Supreme Court in *Ashok Kumar Kalra Versus Wing CDR. Surendra Agnihotri & Others* [(2020) 2 SCC 394], he submitted that the counter claim sought to be filed by him even at the stage of evidence was required

Corrected as per
Hon'ble Court's order
dated 07.05.2026.

to be raised by considering the specific contentions introduced by the plaintiff in the amended plaint.

5. Per contra, Shri V.R. Choudhari, learned counsel for the respondents vehemently opposed the petition and submitted that the defendant no.1 had knowledge about the notice dated 07.11.2007 and despite this since he failed to raise any counter claim alongwith the written statement, the amendment application deserved to be rejected. He also submitted that by way of proposed amendment, the defendant no.1 is attempting to introduce contradictory pleas and changing the nature of pleadings which cannot be permitted.

6. While considering the rival contentions, it has to be seen that undisputedly the application for amendment of the written statement, Exhibit 120, is filed by the defendant no.1 in consequence to the amendment made by the plaintiff. It has to be noted that the plaintiff has amended the plaint and taken a stand that the tenancy of the defendant no.1 stood terminated in view of the notice dated 07.11.2007 and this stand was not taken by the plaintiff in the original plaint. In view of this stand of the plaintiff, the defendant no.1 has filed the application for amendment to put forth the defence with respect to the notice dated 07.11.2007 and also raised a counter claim raising challenge to the contentions about termination of tenancy. A perusal of the application for amendment shows that the defendant no.1 has specifically mentioned these reasons in paragraphs 5 and 6 of the application and even proposed amendment mentions challenge to the notice dated 07.11.2007. As such,

it is apparent that the proposed amendment is filed by the defendant no.1 to counter the case of the plaintiff which is put forth by him only through amendment to the plaint and therefore the contentions of the respondents about delayed raising of counter claim are not acceptable.

7. It is fruitful to refer the position of law laid down by the Hon'ble Supreme Court in ***Ashok Kumar Kalra*** (supra) with respect to filing counter claim wherein it is observed that there cannot be a rigid and hypertechanical approach while allowing the defendant to file the counter claim. It is beneficial to refer paragraphs 34 and 57 from the said judgment, which are reproduced below:-

“34. In addition to this, it is also possible to introduce a belated counterclaim by way of an amendment to the original written statement under Order 6 Rule 17 CPC. However, as is the case with Order 8 Rule 9, the filing of such a counterclaim through an amended written statement is subject to the leave of the court, and not accorded to the defendant as a matter of right.

57. At the same time, in exceptional circumstances, to prevent multiplicity of proceedings and a situation of effective re-trial, the court may entertain a counterclaim even after the framing of issues, so long as the court has not started recording the evidence. This is because there is no significant development in the legal proceedings during the Intervening period between framing of issues and commencement of recording of evidence. If a counterclaim is brought during such period, a new issue can still be framed by the court, if needed, and evidence can be recorded accordingly, without seriously prejudicing the rights of either party to the suit.”

8. Applying this legal position to the instant matter, it has to be noted that the counter claim sought to be filed after the evidence was started needs to be entertained in view of accrual of cause of action based on the amended plaint. As such, only because the application for amendment to written statement came to be filed after evidence was started, the same ought not to have been rejected.

9. The position of law is fairly settled that an application for consequential amendment has to be liberally allowed. A perusal of the impugned order shows that the trial Court has rejected the application by mainly considering that the defendant no.1 has attempted to introduce new pleadings by way of amendment and therefore the trial Court has observed that the defence sought to be raised cannot co-exist with the earlier defence in the written statement.

After giving anxious consideration to the application for amendment of written statement and the position of law in this regard, it is clear that the trial Court has misdirected itself in considering the application for consequential amendment by focusing mainly on one aspect about introduction of new pleas in the written statement. In my opinion, the trial Court has failed to consider that the application was basically an application by way of consequential amendment and the same ought to have been considered in the background of the amended plaint. Hence, I am of the considered opinion that the impugned order passed by the trial Court rejecting the consequential application for amendment of the written statement warrants interference.

10. In view of abovementioned factual and legal aspects, the following order is passed:-

- I. The writ petition is allowed.
 - II. The order dated 15.01.2026 passed by the trial Court below application at Exhibit 120 in Special Civil Suit no.20 of 2023 is quashed and set aside. The application filed by the defendant no.1 for amendment at Exhibit 120 is allowed.
11. Rule is made absolute in aforesaid terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE