

ORDER BELOW EXH. NO. 36 IN R.C.S. NO. 221/10.

((1)) Perused the application, affidavit, say at exh. 38. Also perused the case-laws filed by both parties. Heard learned Adv. Shri. M. K. Kadam for the defendant's learned Adv. Shri. K. S. Tribhuvan for the plaintiff.

((2)) The application in short filed by the defendants is as follows :-

That the plaintiff has filed the suit for perpetual injunction against defendant and same is pending. That defendant's no. 2 and 3 are the owners of 765 square meter area of Survey No. 45 of Village Kasbe, Tal. Vaijapur. They have purchased the said land from defendant no. 1. Since purchase the plaintiff is causing obstruction to them. Actually he is pressurizing the defendant's for selling the said land to him. After service of summons the defendant's no. 1 to 4 have appeared and have filed their written statement within time. The plaintiff has caused actual obstruction to the defendant's no. 2 and 3 on 20.06.2010 and thereafter the said obstruction is still continued. The cause of action for counter claim has therefore arisen on 20.06.2010. It is necessary to restrain the plaintiff from causing

obstruction. The defendant's have already filed their written statement so now by way of amendment they want to implead counter claim. Hence the application .

((3)) The plaintiff has filed his say vide exh. 38 and have strongly objected the application on the ground that the application itself is not maintainable. The defendant nos. 2 to 4 were served with summons on 15.07.2010 and on 06.10.2010 they have filed their written statement. It is essential for them to file the counter claim along with the written statement as per order 8 rule 6(A) of C.P.C. Now by way of amendment they cannot make such prayer. So plaintiff has prayed to reject the application.

((4)) Heard learned Advocates Shri. M. K. Kadam for the defendant. He vehemently argued that the written statement is filed within limitation. The cause of action has arose when the written statement was filed but it is continuing till today. So it has become essential for the defendant's to file counter claim. The obstruction is continued and so it is necessary to restrain the plaintiff. On the other hand learned Advocate Shri. K. S. Tribhuvan submitted in reply that by way of amendment the defendant's cannot be permitted to file the

counter claim. The defendants have already delivered their defence through written statement. Now they are at liberty to file separate suit. As written statement is already filed, so now counter claim cannot be filed. And as such the amendment cannot be allowed. So it submitted that the application be rejected.

((5)) In support of his contention the defendant's have filed one case-law reported in “2004 STPL(LE-CIVIL) 4373 AP = AIR 2004. ANDHRA PRADESH 428 IN SUGESAN AND CO. PVT. LTD., MADRAS V/s. HINDUSTAN MACHINE TOOLS LTD., HYDERABAD” . In case it is explained in details and held that counter claim can be permitted to be filed after written statement is filed. The detailed discussions surely show that the said case-law is in support of the plaintiff.

((6)) On the other hand learned Advocate Shri. K. S. Tribhuvan for plaintiff has relied on following two case-laws :

i) “2003(3)Mah. L .R 1(SUPREME COURT) in RAMESH. CHAND ARDAWATIYA V/s ANIL PANJWANI”. In this case the defendant had failed to file written statement and then was directly trying to file counter claim. In such circumstance his prayer for filing

counter claim was rejected. Such is not the situation in the present case in hand because in the present case the written statement is already filed. So the case-law file is not applicable in the present application in hand.

ii) “2002 (2) BCJ 488 (BOMBAY HIGH COURT - Panaji Bench) in SHAIKH IBRAHIM AND ANOTHER Vs. SHAHIDA BI AND OTHERS”. In the case the term “delivery of defence” is explained but the facts and circumstances of the case-law filed are entirely different and as such are not applicable in the present application in hand.

((7)) The written statement of the defendants show that they have mentioned regarding the obstruction caused by the plaintiff. Not only this in para no. 9 they have specifically contended regarding the obstruction cause on 20.06.2010 i.e. the cause of action for following counter claim. So considering the same which is found that in the present application no new diary is tried to be brought nature of the pleading are also not changed. So in my opinion no such circumstances the amendment sort can be allowed and as such the counter claim can be permitted. The contention of the contended show that cause of action had arising on 20.06.2010 and is continued

till today. Filed purpose the application is allowed the multiplicity of litigation that surely be avoided.

((8)) So the considering behalf discussion evidence of regard, case-laws filed and after --- learned Advocate for both companies reached to the conclusion with the application filed holds merit and deserves to be allowed. So now result of I proceed to pass the following order,

ORDER.

- (1) Application is allowed.
- 2) The defendants to carry out the defendant immediately.

Date :- 20/12/2010.
Vaijapur.

sd/-
(Mrs. I.J. Nanda)
2nd Jt. C.J.(J.D.), Vaijapur.

