

Order below Exh.24 in Reg. Civil Suit No. 327/2013

This is an application filed by plaintiffs under section 114 read with Order 47, Rule 1 of the Code of Civil Procedure, 1908. The plaintiffs have prayed for review of order dated 02/05/2017 passed on counter claim.

02. The plaintiffs have contended that, defendant Nos. 1, 2 and 3 have filed counter claim below Exh.22. However, court has directed defendants to satisfy about limitation of counterclaim. Consequently, on 02/05/2017 the said counterclaim was read and recorded and liberty was given to plaintiffs to file their say to counterclaim. Being aggrieved with order the plaintiffs have filed instant application. According to plaintiffs, while deciding objection below Exh.22 the provision of order VIII, Rule 6 was not considered. The plaintiffs further contended that, there is an error appearing on the face of record and therefore, it is necessary to recall the order passed below Exh. 22.

03. On the contrary defendants have filed their say and denied the contents of application. They contended that, court can not invoke power under section 114 r/w. Order 47 unless and until there was mistake of fact. It is further submitted that, the maintainability of counterclaim would be decided at the time of final hearing. This is not a stage to decide the maintainability of counterclaim. Even plaintiffs would have a liberty to raise such objection at the time of final hearing. According to them there was no any error appears on the face of record. Hence, they prayed for rejection of application.

04. Before advertng to the merits of the instant application. It is required to mention here that, Rule 1 of order 47 has to be read with section 114 of the Code of Civil Procedure 1908. The section 114 confers a substantive right of review, while order 47 lays down procedure to be followed. Section 114 and order 47 Rule 1 of the Code of the Civil Procedure 1908, enumerates certain grounds for review i.e. (i) Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the party or could not be produced by him at the time the decree was passed or order was made, or (ii) mistake or error apparent on the case of record or (iii) any other sufficient reason.

05. In instant matter the court sou-moto raised objection as to limitation of counterclaim filed below Exh.22. Accordingly, opportunities to heard have been given to the parties. After hearing parties, I have concluded that, limitation is mixed question of law and facts and it would not appropriate to decide the point of limitation at this initial stage without affording an opportunity to lead evidence. On this count counter claim was read and recorded. However, by way of this application plaintiffs are seeking review of that order. In this circumstances plaintiffs have to satisfy as to whether there was any error apparent on the face of record. After going through averements from the application it appears that, plaintiffs objected counterclaim on the ground that, defendants have not complied requirement of Order VIII, Rule 6. However, I am of the view that, at the time of decision of application below Exh.22, the grounds raised in present application was not in consideration before court. Therefore, I do not find any error in earlier order passed below Exh.22. Thus, application of plaintiffs are

devoid of merits and liable to be rejected. Hence, I proceed to pass the following order.

ORDER

- 1] Application (Exh.24) is rejected.
- 2] No order as to cost.

Date:- 20/02/2018
Ichalkaranji.

Sd/-
(P. M. Mane)
7th Jt. Civil Judge Jr. Dvn.,
Ichalkaranji.

I affirm that the contents of this P.D.F file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of stenographer	R. D. Patil (L.G.)
Name of Court	P. M. Mane, 7 th Jt. Civil Judge Jr. Dvn. & Judicial Magistrate F. C., Ichalkaranji.
Date of Dictation	20/02/2018
Judgment signed by P.O. on	20/02/2018
Judgment uploaded on	20/02/2018