

MHLA110001892011



ORDER BELOW EXH.239 IN
SPL.CS NO.24/2011
SUNIL VS. PANDURANG & ORS.

1. Read the application and say filed thereon. Perused the records of the case. Heard Ld. Advocate for both sides.
2. This is an application filed by defendant No.2 for acceptance of the counter-claim. As per his submission, after filing the written statement, he filed private complaint against plaintiff and other for preparation of fraudulently agreement to sale and process was issued against him for framing charge. Defendant was waiting for the outcome of criminal case, however, the complaint is not yet decided. Therefore, there is delay in filing the counter-claim. The plaintiff and defendants arrived at compromise on 03/02/2024, thereby defendant No.1 admitted selling of the suit property to defendant No.2. Therefore, the cause of action for filing this counter-claim for declaration of ownership arose on 03/02/2024. Thereafter, he filed the complaint case against plaintiff. Hence, to protect the possession of defendant No.2 and to avoid the multiplicity of suit, it is necessary to accept the counter-claim. No prejudice would cause if the counter-claim is accepted. Hence, it is prayed to allow the application.
3. As per contention of plaintiff, counter-claim cannot be filed after framing of issues. The issues were framed on 03/02/2014 and plaintiff has led his evidence. This application is barred and not tenable. No reason mentioned in the application as to why defendant No.2 failed to file counter-claim alongwith the written statement. There is no foundation in the written statement of defendant No.2 in respect of filing of counter-claim. Hence, it is prayed to reject the application.
4. Order VIII Rule 6(a) of the Code of Civil Procedure specifies that a counter-claim must be filed alongwith the defence or before the time limit for filing the defence has expired. The

framing of issues sets the outer limit for filing counter-claim. A counter-claim not containing the original written statement may be refused to be taken on record, if the issues have already been framed and the case set down for trial and more so when the trial has already commenced. The Hon'ble Supreme Court has also reiterated that the counter-claim cannot be filed after the issues are framed. The Court has reasoned that allowing a counter-claim to be filed after framing of issues would result in a retrial of the suit. In the present case, defendant has filed his written statement on 29/09/2011. After appearance of all defendants, the issues were framed on 03/02/2014. The plaintiff has closed his evidence on 16/04/2019. Thereafter, defendant No.2 filed his affidavit in lieu of examination-in-chief and matter was pending for cross-examination of defendant No.2. Defendant No.2 has filed this application for acceptance of counter-claim on 11/06/2024 i.e. after the lapse of period of more than 13 years. No justifiable reason mentioned in the application for the delay. The matter is pertaining to the year 2011 and pending for evidence of defendant No.2 since long. In these circumstances, the application is not tenable and deserves to be rejected. Hence, I pass the following order.

ORDER

Application is rejected.

(Smt. V. D. Bhosale)

Jt. Civil Judge Sr. Dn., Nilanga.

Dt.:- 26/11/2024