

Order Below Exh. 84 in R.C.S. no. 30/2021

(CNR No. MHRT080004552021)

In the present suit, defendant no. 1 has filed a counter claim at Exh. 54. The suit is pending for written statement / reply of plaintiff over the counter claim (Exh. 54). Moreover, applications at Exh. 56, 58, 62 and 69 are pending for hearing. The application at Exh. 82 is pending for reply of other side.

02. Application at Exh. 82 is for leave to amend the counter claim (Exh. 54). The application at Exh. 69 is an application made by the plaintiff for rejecting the counter claim (Exh. 54).

03. By the present application, the plaintiff has prayed for taking hearing on application at Exh. 69 before further proceeding in respect of application at Exh. 82. It is contended that, by application at Exh. 69 very tenability of the counter claim is challenged. Thus, if the said application is considered preferably, there may not be a question to go into the merits of the application at Exh. 82.

04. The present application is opposed by defendant no. 1 by filing reply thereon.

05. Perused the record. Heard learned advocate Shri. A. A. Kadam for the plaintiff.

06. Learned advocate Shri. Kadam has submitted that, as per the grounds stated in application at Exh. 69, the plaintiff states that, the counter claim (Exh. 54) is not maintainable as the cause of action shown therein for filing the counter claim is one which allegedly arose after delivery of defence by the defendant no. 1. As such, the challenge is as to the tenability of counter claim. When

such application is pending, an application seeking amendment to the counter claim cannot be considered. The right accrued in favour of the plaintiff by filing the counter claim in the given form by defendant no. 1, cannot be taken away from the plaintiff. As such, he prayed for taking hearing on application at Exh. 69 before persuading any proceeding in respect of application at Exh. 82.

07. Pertinently, this Court has to see two aspects i.e. i) whether the counter claim is tenable ? ii) Whether the amendment as sought for, in the counter claim, can be allowed ? These questions have to be considered in light of applications at Exh. 69 and 82, respectively.

08. One aspect need to be noted here that, counter claim has to be treated as a plaint. Thus, tenability of the same need to be considered in light of assertions and statements made therein. For the said purpose, if before deciding said aspect, an amendment is sought, if such application for amendment is not considered, result would be decision without taking into account the assertions which the Court might have allowed to incorporate. While considering the application for amendment in the counter claim, whether it is to be allowed or not can be decided. It can be so done on merits after hearing both sides. If the application seeking amendment is rejected, tenability of counter claim, as it is on record, can be considered. If the amendment is allowed, tenability of the counter claim can be seen in the form of amended counter claim. Therefore, it would be just to consider first the application seeking amendment. This is for the apparent reason that, pleading is not a game of hide and seek. Rather, pleading is a statement made by a party to the suit or proceeding so as to inform the Court and other

party about its exact assertions and claims. Thus, I pass following order-

ORDER

1. Present application is partly allowed.
2. Hearing on application at Exh. 82 would be taken before the hearing on Exh. 69.
3. In light of peculiar facts as above, time to file written statement on the counter claim is granted.

Date : 09.11.2022

(B. D. Tare)
Civil Judge (J.D.), Deorukh

- : C E R T I F I C A T E : -

Judgment/order in (Order below Exh. 84 in R.C.S No.30/2021)

I affirm that the contents of this Pdf file order are same words as per original order.

Name of Stenographer	:- S. S. Thaware (Jr. Clerk)
Court Name	:- The Court of Civil Judge (J.D.) & Judicial Magistrate F.C., Deorukh
Date of decision	:- 09/11/2022
Order signed by PO. on	:- 09/11/2022
Order uploaded on	:- 05/12/2022