

**CNR No. MHSI070000282026****Order passed below Exh. No. 41****in R.C.S. No. 04/2026**

The present application has been filed by the defendant seeking permission to amend the written statement so as to incorporate a counterclaim.

2. It is the contention of the defendant that the written statement was required to be filed within the prescribed period of limitation. It is submitted that, in order to avoid a 'no written statement' order being passed against him, the defendant filed the written statement in haste. Therefore, the proposed counterclaim could not be incorporated in the written statement. It is further submitted that thereafter the Court closed for the summer vacation. Hence, the counterclaim could not be included in the written statement. Therefore, the present application has been filed.

3. The application is resisted by the plaintiff by filing a reply at Exh. 42. It is contended that the contents of the application are false and untenable. According to the plaintiff, the proposed amendment is not maintainable. It is further contended that if the defendant had intended to file a counterclaim, the same ought to have been filed along with the written statement. No sufficient explanation has

been furnished by the defendant for not doing so. Hence, the plaintiff has prayed for rejection of the application.

4. I have heard the learned advocate for both sides and perused the record.

5. By way of the proposed amendment, the defendant seeks to incorporate a counterclaim in the written statement. The Hon'ble Supreme Court, in **Ashok Kumar Kalra v. Wing Commander Surendra Agnihotri & Ors., (2020) 2 SCC 394**, has held that a counterclaim may be permitted even after the filing of the written statement, provided it is filed before the framing of issues. Admittedly, in the present case, issues have not yet been framed. Therefore, the proposed amendment seeking incorporation of the counterclaim can be permitted. Allowing the amendment will not cause any prejudice to the plaintiff. On the contrary, it would avoid multiplicity of proceedings. The plaintiff will have an adequate opportunity to file a written statement in answer to the counterclaim and to contest the same on merits. Thus, no irreparable prejudice would be caused to the plaintiff. However, the inconvenience caused to the plaintiff can be compensated by imposing costs upon the defendant. Therefore the application deserves to be allowed. Hence, the following order:

	<u>ORDER</u>
1.	The application at Exh. 41 is allowed , subject to payment of costs of ₹500/- by the defendant to the plaintiff on or before the next date.
2.	Upon payment of the said costs, the defendant shall carry out the amendment as prayed for and shall file a copy of the amended written statement incorporating the counterclaim on record.
	(Pronounced and dictated in open Court.)

Sd/-

Place : Malvan
Date : 14/07/2026M.K.Fakih
Civil Judge (J.D.) Malvan.