

RCA 63/2017
Rajakka Vitthal Gavade & ors.
Vs.
Shivaji Vitthal Gavade

ORDER BELOW EXH. 74

1] This is an application for condonation of delay for filing counter claim in RCS No. 259/2007. The said suit came to be decreed vide order dated 05/04/2017 by learned Jt. Civil Judge Jr. Dn. Islampur.

2] Respondent has strongly resisted the application by filing (Exh.79). He has contended that the appellants have no locus standi to file this application. The application is not tenable in the eyes of law. It is contended that there is no sufficient reason for condonation of delay. Hence, they prayed that application may be rejected.

3] I have heard learned counsels of both the parties.

On perusal of record it appears that respondent (original plaintiff) has filed R.C.S. No. 259/2007. It was decreed vide order dated 05/04/2017 passed by learned Jt. Civil Judge Jr. Dn. Islampur. The said suit was decided on merit after adducing evidence by both the parties. Appellants (original defendants) have not filed counter claim in the said suit as contemplated by the provisions of Order VIII Rule 6-A of the Code of Civil Procedure. They are filing the counter claim at this juncture, when the appeal is fixed for hearing. The reason mentioned in the application for condonation of delay in filing counter claim is not justifiable. They have opportunity to file the counter claim in the suit itself. There is no provision to file counter claim after decision of suit. Appellants have not shown sufficient cause for non filing of the counter claim within the period specified in

the Limitation Act. So, in that view of matter, delay cannot be condoned.

4] Learned advocate for appellants relied on following case-laws.

1. Gurbachan Singh Vs. Bhag Singh, 1995 CJ(SC) 345,
2. Vijay Prakash Jarath Vs. Tej Prakash Jarath, AIR 2016 Supreme Court 1304 and
3. Atmaram Gangadhar Deshwali & anr. Vs. Noormohammad & ors. AIR 2007 Madhya Pradesh 81.

The aforesaid case laws are in respect of limitation from filing of counter claim and its maintainability. I have carefully gone through the above Case laws. With great respect to the Hon'ble Apex Court and High Court, the facts of the case in the given case law cited supra are not identical with the facts of the present case. Therefore aforesaid case laws are not applicable to the present case.

5] Taking into consideration the circumstances of the case and above reasons, it does not appear to be just and proper to allow the application. Therefore, the application is liable to be rejected. Hence, following order is passed.

ORDER

The application is rejected.

Date:- 24/11/2022

(Rajshri P. Pardeshi)
District Judge-2, Islampur.

CERTIFICATE

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

Name of the Stenographer : Shri B.M.Patil, Steno, Gr. I
Court Name : Dist. Judge – 2 & Addl. Sessions
Judge, Islampur.
Date of Order : 24/11/2022
Signed by P.O. on : 24/11/2022
Uploaded on : 25/11/2022