

CNR No. MHPU020057852014

Order below Exh. 1176 in Special Civil Suit No. 1524/2014
(Sheetal Kalyani Vs. Sulochana Kalyani & ors)

1) This is application by defendant Nos. 6 and 7 with request to accept their W.S., say and counter claim enclosed with this application.

2) It is contended that the present suit is for partition and injunction. These defendants could not file their written statement as the suit is for partition involving number of properties, documents, old records which were required to be gone through. It is further contended that these defendants have made grate search of old record, voluminous correspondence and documents. These defendants have recently traced old record and transmitted the same to their Advocate for drafting the written statement and counter claim. So these defendants prayed that, in the interest of justice application may be allowed.

3) Application is not opposed by the plaintiff vide say given below the application.

4) Application is opposed by defendant Nos. 1 and 2 by filing say below Exh. 1390 and 1392 respectively. Application is also opposed by defendant Nos. 4 and 5 by filing say below Exh. 1391. Application is also opposed by defendant No. 3 by filing say below Exh. 1393.

5) I have heard argument advanced on behalf of both parties at length.

6) The defendant Nos. 6 and 7 have put-forth the ground that they have made great efforts to search the old records, voluminous correspondence and documents but same were not aware to trace so delay has been caused in filing written statement and counter claim. In support there is affidavit of defendant No. 6 Gaurishankar Kalyani. Further the defendant Nos. 6 and 7 relied upon a ruling **Bolu Bandodkar Vs. Diana Zita Agnela D'souza & ors, 2015(6) ALL M.R. 395** wherein the Hon'ble High Court in para No. 11 has observed that,

It is well settled that the quantum of delay cannot be strictly relevant. The court has to look to the explanation for delay. Unless and until it is shown that the party has sufficient cause for not approaching the court within time, the delay cannot be condoned.

7) The defendants have contended that the defendant Nos. 6 and 7 have deliberately not filed their written statement but soon after filing of written statement by defendant Nos. 1 to 5, they have filed their written statement alongwith counter claim. Defendants have further contended that the counter claim raised by the defendant Nos. 6 and 7 is not against plaintiff but it is against defendants therefore same cannot be accepted. In support of these contentions both parties have relied upon one and same ruling in case of **Rohit Singh & ors Vs. State of Bihar (now State of Zarkhand) & ors, 2007(0) AIR (SC) 10** wherein the Hon'ble Apex Court in para No. 18 has observed that,

Normally a counter claim though based on a different cause of action than one put in suit by the plaintiff could be made. But a counter claim directed solely against the co-defendants cannot be maintained. By filing a counter claim a litigation cannot be converted into some sort of an inter-pleader suit.

8) I have gone through the W.S. and counter claim filed by the defendants Nos. 6 and 7 with this application. On reading of the said W.S. and counter claim it appears that all reliefs claimed in the written statement are against co-defendants. A single relief is not claimed against plaintiff. Therefore, considering the ratio laid down by the Hon'ble Apex Court in a ruling Rohit Singh cited supra, I am of view that the counter claim raised by the defendant Nos. 6 and 7 against co-defendants cannot be maintained. So far filing of written statement is concerned, the explanation put-forth by the defendant Nos. 6 and 7 for condonation of delay is appears to be genuine and convincing. Hence, the only written statement enclosed by the defendant Nos. 6 and 7 with this application is required to be taken on record by condoning the delay. Hence, following order is passed.

ORDER

- 1) Application is partly allowed.
- 2) Delay in filing written statement is hereby condoned and written statement enclosed by defendant Nos. 6 and 7 with this application is accepted.
- 3) Counter claim raised by defendant Nos. 6 and 7 solely against co-defendants is not maintainable therefore same is not accepted.

Date : 17/02/2018

Sd/-xxx
(Deepak D. Almale)
5th Jt. Civil Judge S.D. Pune.