

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 7539 OF 2022

Ashok Kumar Madan Gopal Jain
Alias Ashok Jain

..Petitioner

Versus

Chandu Naturam Dave & Anr.

..Respondents

Mr. U.S.R. Singh a/w. Suhas Rohile for Petitioner.
Mr. Anil D'Souza a/w. Valentine Mascarenhas a/w. Ernest Tuscano
for Respondent Nos.1 and 2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 9 MARCH 2023**

PC :

1. The petitioner has challenged the order dated 06/01/2022 passed by learned Civil Judge, S.D., Vasai rejecting the application at Exhibit 11 in Special Civil Suit No.203 of 2019. The said application was preferred by the original plaintiff who is the petitioner herein for exclusion of the defendants' (respondents herein) counter claim under O.8, Rule 6(C) of the Code of Civil Procedure, 1908. The plaintiff's alternate prayer was for rejection

of the counter claim under O.7, Rule 11 of the C.P.C.

2. Heard Shri. Singh, learned counsel for the petitioner and Shri. Anil D'Souza for the Respondent Nos.1 and 2.

3. The petitioner-plaintiff had filed a Special Civil Suit No.203 of 2019 before that Court against the defendants for declaration and cancellation of the sale agreement dated 07/04/2014, executed between the plaintiff and the defendants; registered with the office of the Sub Registrar, Vasai-3, in respect of flat No.B-303 in building No.2 known as Global Heights at village Manikpur, Taluka Vasai, District Palghar. The prayer was for cancellation of that particular sale deed. The sale agreement was dated 07/04/2014. The plaintiff had agreed to sale that particular flat to the respondents. But, according to the plaintiff, the balance amount was not paid by the defendants. While this suit was pending the defendants i.e. the respondent Nos.1 and 2 herein filed a counter claim / set off claim for recovery of Rs.58,34,000/-. It was the case of the respondents herein that the plaintiff had agreed to give supervision charges and thus the amount of

Rs.58,34,000/- were due and payable by the petitioner herein. The application was made by the petitioner herein before the trial Court for exclusion of the defendants/respondents' counter claim, as mentioned earlier.

4. Learned Trial Judge held that, there was similarity of causes of action between the main suit and the counter claim. The exclusion of the counter claim would cause prejudice to the defendants, whereas, no prejudice would be caused to the plaintiff if the counter claim was heard and disposed of with the suit. A plea of limitation could be decided at the trial being the mixed question of law and fact. He also observed that the counter claim was not undervalued. On these reasonings the application preferred by the original plaintiff-petitioner herein was rejected.

5. Learned counsel for the petitioner submitted that, there was absolutely no connection between the two causes of action. The M.O.U. which the respondents herein are referring to was from the year 2012 and it was only an oral agreement. There was no M.O.U. at all. It has nothing to do with the sale transaction

dated 07/04/2014. Therefore, the counter claim could not have been entertained by the Trial Court. He particularly relied on the Judgment of a Single Judge of this Court in the case of Sahebrao Vithoba Pawar Vs. Bapurao Ravji Pawar¹. In paragraph 7 it was held that the provision of O.8, Rule 6A postulates that there has to be some identity or connection between the claim and the counter claim or between the causes of action enabling the parties to seek redress. Totally different and divorced causes of action are, surely, not intended to be clubbed or grouped nor could, as such, be tried in one suit.

6. Learned counsel for the petitioner relied on the Judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Kalra Versus Wing CDR. Surendra Agnihotri & Ors. in SLP (C) No. 23599 of 2018. He relied on the illustrative examples given in this Judgment for maintainability of the counter claim. The examples included similarity of causes of action between the main suit and the counter claim. One of the considerations was that, injustice of abuse of process of law was to be avoided and

¹ AIR 1985 BOMBAY 426

there should be no prejudice to the opposite party. Learned counsel also relied on the provision of Section 20(C) of the Specific Relief Act, 1963. He submitted that, allowing the counter claim to go on would certainly prejudice him. By these submissions he challenged the counter claim.

7. Learned counsel for the respondents countered these submissions. He submitted that, there is no requirement that there has to be connection between two causes of action in the claim and the counter claim. He relied on the Judgment of the Hon'ble Supreme Court in the case of *Jag Mohan Chawla & Anr. Versus Dera Radha Swami Satsang and others*², in which, it was observed that the counter claim need not relate to the original cause of action but can be made on an independent and different cause of action, even on one which accrued to defendant after institution of the suit.

8. The submissions made by both learned counsel require consideration. Arguable points are raised.

9. Therefore, the following order is passed:

² (1996) 4 Supreme Court Cases 699

ORDER

i) Rule.

ii) Rule is made returnable on 10/07/2023.

iii) Till then, there shall be interim relief in terms of prayer clause (c).

(SARANG V. KOTWAL, J.)