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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 938 OF 2016
WITH
CIVIL APPLICATION NO. 1086 OF 2016**

Pallavi Trading Company and Anr ... Appellants/Applicants
vs.
Anna Bhaguji Kushare ... Respondent

Ms. Jaymala Ostwal i/b. M/s. J.J. Associate for the Appellants.
Ms. Ashwini B. Jadhav i/b. Mr. J.G.(Aradwad) Reddy for the
Respondent.

**CORAM : GAURI GODSE, J.
DATED : 21st APRIL 2026**

ORDER:

1. The second appeal is admitted on the following substantial questions of law:

- I) Whether paragraph no. 26 of the written statement can be treated as a counter claim under Rule 6A of Order VIII of the Civil Procedure Code, 1908('CPC'), in the absence of any valuation made on the claim and without payment of court fees?
- II) Whether, without giving an opportunity to the plaintiffs to

file the written statement as per sub-rule (3) of Rule 6A of Order VIII of the CPC, the decree passed by the first appellate court treating paragraph no. 26 of the written statement as a counter claim is sustainable in law?

III) Whether paragraph no. 26 of the written statement is only a claim of a set-off as contemplated under Rule 6 of Order VIII of the CPC, and thus, based on paragraph no. 26 of the written statement, whether the decree passed by the first appellate court would be sustainable?

2. Learned counsel for the sole respondent waives notice.
3. Call for records and proceedings.
4. Printing is dispensed with.
5. Learned advocate for the appellants shall file private paper-book within a period of one year from today.

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6. Learned counsel for the sole respondent waives notice.
7. This application is for stay to the execution of the impugned decree directing the applicant to refund the amount to the plaintiff. The trial court had decreed the suit for recovering the amount. In the appeal preferred by the defendant, the first appellate court reversed

the trial court's decree and dismissed the suit and directed the appellant(plaintiff) to refund the amount to the defendant by treating paragraph no. 26 of the written statement as the counter claim. The said decree is passed with a direction to the defendant to pay court fees on the counter claim of Rs. 80,000/-.

8. Though the trial court had framed issue no. 6, as to whether the defendant would be entitled to claim the amount, there was no issue framed treating paragraph no. 26 of the written statement as a counter claim. There is no dispute that the defendant had not valued the claim and had not paid any court fees. Hence, the appellant i.e. the plaintiff, would be entitled to interim protection during the pendency of the second appeal. The second appeal is already admitted by framing substantial questions of law. Hence, during the pendency of the appeal, there will be interim stay in terms of prayer clause(a).

(GAURI GODSE, J.)