

2025 LiveLaw (SC) 912

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

PAMIDIGHANTAM SRI NARASIMHA; J., JOYMALYA BAGCHI; J.

SEPTEMBER 12, 2025

CIVIL APPEAL NO. OF 2025 ARISING OUT OF SLP (C) NO. 5635 OF 2023

RAJUL MANOJ SHAH ALIAS RAJESHWARI RASIKLAL SHETH

versus

KIRANBHAI SHAKRABHAI PATEL & ANR.

Code of Civil Procedure, 1908 - Order VIII Rule 6A – Held, defendant cannot file counter claim against co-defendant solely - Such a counter claim is not maintainable - Counter claim filed well after the framing of issues is barred - Order VIII Rule 6A does not stipulate an express time limit, the outer limit for filing a counter claim is pegged as ‘till the issues are framed’ - Set aside order of High Court - Appeal allowed. [Relied on *Satyender v. Saroj*, (2022) 17 SCC 154; *Munishamappa v. M. Rama Reddy*, (2023) SCC OnLine SC 1701; *Salem Advocate Bar Association (ii) v. Union of India* (2005) 6 SCC 344; Paras 17-26]

For Petitioner(s): Mr. Ritin Rai, Sr. Adv. (Arguing Counsel) Mr. Shamik Shirishbhai Sanjanwala, AOR Mr. Kunal Vyas, Adv. Mr. Aditya Tripathi, Adv.

For Respondent(s): Mr. Pradhuman Gohil, Adv. Mrs. Taruna Singh Gohil, AOR Mr. Alapati Sahithya Krishna, Adv. Mr. Rushabh N. Kapadia, Adv. (Arguing Counsel) Ms. Hetvi Ketan Patel, Adv. Ms. Taniya Bansal, Adv. Mr. Malak Manish Bhatt, AOR

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

- 1.** Leave granted.
- 2.** Present appeal is against the judgment and order of the High Court of Gujarat¹ against the order passed by the City Civil Court, Ahmedabad dismissing the interlocutory application² filed by respondent no.1/defendant no.2 for amending the written statement and for filing a counter claim in a suit for declaration and injunction filed by the appellant.
- 3. Facts:** Short facts leading to the filing of the appeal are that the appellant, in 2012, instituted an original suit alleging that the property in question, a bungalow in a cooperative housing society situated near Stadium Char Rasta in Ahmedabad, belongs to her father and upon his demise, the said property came to be owned by her and by her brother jointly. However, upon the demise of her brother, the property was jointly owned by the appellant and her sister-in-law/defendant no. 1. In January, 2012, when the appellant came to know that her sister-in-law has agreed to sell a portion of the undivided share of the joint family property in favour of respondent no.1 /defendant No.2, the appellant filed the suit for a declaration that her sister-in-law, defendant no.1 has no right to transfer or deal with the property without her consent and to declare the agreement to sell dated 21.10.2011 in favour of defendant no.2, as null and void.
- 4.** On 12.10.2013, the original defendant no. 1 passed away pending disposal of the suit. Thereafter, on 23.07.2017, the appellant filed an application before the Trial Court declaring the factum of defendant no.1's death and praying for her deletion from array of parties. Trial Court vide order dated 24.10.2019 allowed appellant's application for deletion

¹ In Special Civil Application No. 12701 of 2021 dated 16.01.2023.

² Exhibit-107/ 108 dated 05.08.2021 in O.S. No.167 of 2012.

of defendant no.1. Meanwhile, on 10.10.2019, defendant no. 2 moved an application before the Trial Court praying for substitution of the original defendant no. 1 with a court appointed officer under Order XXII Rule 4A of Code of Civil Procedure, 1908³ which came to be dismissed vide order dated 15.11.2019.

5. Aggrieved against the orders dated 24.10.2019 and 15.11.2019, defendant no. 2 moved a Special Civil Application before the High Court. On 10.02.2020, the High Court passed an order based on consent of both the parties, thereby quashing orders dated 24.10.2019 and 15.11.2019. Consequently, High Court substituted and appointed the court official – Nazir of the City Civil Court – respondent no. 2 as defendant no.1. Thereafter, the appellant also filed an amended plaint on 04.03.2020.

6. Proceedings leading to the filing of the present appeal commenced when defendant no. 2, on 26.07.2021 moved an application seeking to amend the written statement by adding a counter-claim, praying for, a) to direct the Nazir/respondent no.2 to accept remaining consideration and execute a sale deed for the undivided share in furtherance of the agreement to sell dated 21.10.2011, and b) to partition the suit property as per Partition Act, 1893.

7. The Trial Court by its order dated 05.08.2021 dismissed the application by holding that defendant no. 2 has filed the application after a long time and that, it is abuse of the process to file such application after issues were framed, way back on 12.02.2019. Trial Court also observed that the defendant cannot seek specific performance of the agreement of sale dated 21.10.2011 against deceased defendant no. 1, as represented by a court officer, that too in a suit filed by the plaintiff. Following the decisions of this Court, the Trial Court held that a counter claim is not maintainable against the co-defendant. Respondent No. 1, defendant no. 2 challenged this order in Special Civil Application under Articles 226/227 and the High Court, by the order impugned before us allowed the petition.

8. The High Court allowed the application of defendant no. 2 and permitted him to file his counter-claim. The relevant portion of the order impugned is as follows;

"13.13. In view of this Court, considering the aforesaid facts, the prayers as prayed for by the petitioner herein are required to be granted and the prayers as prayed for in application below Exh. 107 /108 could have been prayed for by the petitioner herein, only after the Nazir of the City Civil Court as administrator of the property in question would have been appointed. The Nazir came to be appointed only by order dated 10.02.2020 by this Court in Special Civil Application No. 21979 of 2019 and soon thereafter, the applications below Exh.107/108 came to be filed by the petitioner herein. The cause of action can be said to have arisen after the Issues came to be framed, and therefore, in the facts of the present case, the petitioner could not have been non-suited on the ground of delay.

13.14. The trial Court has also come to the conclusion that the petitioner herein has chosen to file counter-claim against the codefendant and the same is held to be not maintainable. It appears that the reliefs have not been sought for by the petitioner herein against the co-defendant, the same have been sought for against the Nazir - court official of the City Civil Court, as also against the respondent no.2 - original plaintiff. The counter-claim is maintainable, in view of the fact that the same is filed after the administrator- Nazir came to be appointed by this Court vide order dated 10.02.2020, for the prayers as referred above.

14. This Court by exercising supervisory jurisdiction under Article 227 of the Constitution of India, is inclined to allow the said applications below Exh. 107 /108 preferred by the petitioner

³ Hereinafter, CPC.

herein by quashing and setting aside the order dated 05.08.2021 passed below Exh.107/108 in Civil Suit No. 167 of 2012 by the City Civil Court, Ahmedabad.

a. In view of this Court, in the facts and circumstances of the present case, the present petition are required to be allowed and the same is allowed, accordingly, keeping it open for the respondent herein to lead the evidence on the ground of limitation and the same be decided by the Court below in accordance with law. It is also kept open for the respective parties to take all the contentions before the Court below, when the matter is taken-up for hearing and other issues that may be germane for adjudication of the dispute in question including the issue of limitation.

The present petition stands allowed, accordingly.”

(emphasis supplied)

9. Aggrieved, the appellant approached this Court by filing the present civil appeal. We have heard Mr. Ritin Rai, learned senior counsel assisted by others, on behalf of the appellant. We have also heard Mr. Pradhuman Gohil, learned counsel and others on behalf of the respondent.

10. The two submissions made by Mr. Ritin Rai, learned senior counsel are simple and straightforward. The first submission is that a counter claim cannot be entertained after the issues are formulated in the suit. For this purpose, he relied on the decision of this Court in *Ashok Kumar Kalra v. Wing CDR. Surendra Agnihotri*⁴. The second submission, as accepted by the Trial Court as well, is that a counter claim cannot be made against a codefendant and for this purpose the decision of this Court in *Rohit Singh & Ors. v. State of Bihar*⁵ is relied on.

11. Mr. Pradhuman Gohil, learned counsel appearing on behalf of respondent no. 1/defendant no. 2, articulated his arguments very well and interpreted Order VIII Rule 6A of CPC innovatively and also relied on certain portions of the 27th Law Commission Report.

12. **Analysis:** Before we take up the issue relating to legality and propriety of entertaining an application for counter claim 9 years after filing of the suit, particularly when issues were framed 3 years before the said application and also the issue relating to the legality of institution of a counter claim against a co-defendant, we will touch upon the jurisdiction that the High Court was exercising.

13. The appellant did in fact raise the plea of the High Court entertaining a petition under Article 227 against the order passed by the Trial Court but the same was rejected by supplying the following reasoning after extracting the portion of the decision of this Court in *Kishore Kumar Khaitan & Anr. v. Praveen Kumar Singh*⁶ by observing that;

“13. 10. Considering the aforesaid ratio as laid down by the Hon'ble Supreme Court, as referred above, while this Court is conscious of the restriction while exercising the jurisdiction under Article 227 of the Constitution of India, looking to the facts of the present case, interference is called for, in view of the fact that cause of action for seeking amendment and counter-claim could be said to have arisen, after the issues came to be framed by the trial Court on 12.02.2019. Undisputedly, the aforesaid prayers as prayed for by the petitioner herein, invoking Order-8 Rule-6(A) 1 and Order-6 Rule-17 of the Code of Civil Procedure 1908 seeking amendment in plaint and for counter-claim by the present petitioner, would normally be not granted, after the commencement of trial and considering the fact that, it would result in prolonging the suit proceedings, however, the same depends upon facts and circumstances of the case. The provisions of Order-6 Rule-17 and Order-8 Rule-6(A)1 of the Code of Civil Procedure, also provide that same be allowed, if the same are germane for determining the real controversy between the parties. In facts of the

⁴ (2020) 2 SCC 394.

⁵ (2006) 12 SCC 734. Hereinafter, “Rohit Singh”.

⁶ AIR 2006 SC 1474

present case, it cannot be said that the petitioner herein has placed on record the facts, which are new to the suit proceedings, and therefore, prayers as prayed for by the petitioner herein are required to be considered and required to be granted.”

(emphasis supplied)

14. The above-referred para does not indicate how the jurisdictional error has arisen for consideration. In any event of the matter, the relevant portion of facts, as found by the trial court while rejecting the application for counter claim, which we are of the opinion are correct in law as well as on fact, are extracted as hereinbelow for ready reference;

“8.

Upon considering the aforesaid provision of C.P.C. Order-8, Rules-6, when cause arises for counter claim for the defendant, then counter-claim can be lodged by the defendant against the plaintiff. In the present case, as per the details of the counter-claim submitted by the defendant no.2, he has demanded counter-claim against defendant no. 1 and he has not prayed for any relief against the plaintiff. If the suit is filed by the plaintiff, the defendant cannot file counter-claim against the defendant in the said suit.

Further, upon conducting in depth study of the other details of the counter-claim, it is proved that the relief of specific performance sought by the defendant no.2 against the defendant no.1 in this counter-claim, is the agreement to sale which was executed by defendant no.1 in favor of defendant no.2 and no dispute is raised by the defendant no. 1 in that regard. However, the said agreement to sale was executed in the year 2011 ie. 21/10/2011. The said counter-claim for specific performance in that regard, was filed by the defendant no.2 in this suit in the year 2021. In this regard, upon considering provisions of Article-54 of the Limitation Act, the relief of specific performance can be filed within three years from the date of execution of agreement and if any condition is fixed in the agreement, then three years from the date of the condition and if any condition is not fixed, then the date from which implementation of the agreement is denied or within three years from the date cause arises. This is a legal limitation. As per the provision of sub-rule-3 of Rule-6 of Order8 of C.P.C., the provisions applicable to claim are also applicable to counter-claim. Accordingly, all the provisions of Limitation Act can be applied to counter-claim. As per Article54 of the Limitation Act, the agreement to sale submitted in this case and the representation made by Mr. Patel, Ld. Advocate of the defendant no.2 by citing condition no.3 of the agreement to sale and upon evaluating the same, duration of twelve months is fixed after receiving the title clear certificate in condition. 3 of the agreement to sale. However, defendant no.2 has stated that the said title clear certificate is not received. The agreement to sale was executed in the year 2011 and the present plaintiff filed the suit to declare the said agreement to sale as null and void, ie the plaintiff has challenged the agreement to sale. Upon considering the said circumstances and the fact that defendant no.2 is also a party in this suit and the agreement to sale is challenged in the knowledge of defendant no.2, then in such circumstances, cause of the suit can be considered arisen as per provision of Article-54 of the Limitation Act. Moreover, the responsibility to prove the provision of ready and willingness as per section- 16 (c) of the Specific Relief Act, falls on defendant no.2. Since the agreement to sale was executed in favor of defendant no.2 in the year 2011, then it cannot be believed in general circumstances that he would have waited for title clear certificate even after suit was filed. Moreover, even after the said suit was filed, defendant no.2 did not initiate proceeding against defendant no. 1 for the implementation of the said agreement while he was alive and no such pleading is made in this revision application. The present counter-claim of defendant no.2 is completely barred by the provision of Limitation Act.

9. Moreover, considering the significant contention of this case, the defendant no.2 has already filed his reply vide Exhibit-35 against the plaint of the plaintiff. He has not submitted any counter claim with the said reply and presently, he has submitted application seeking permission to bring the said counter claim on the record. Considering the case records of the entire case as to whether such permission can be allowed after such long period or not, this court has framed issues vide

Exhibit-83. Thereafter, the evidence affidavit has also been submitted by the plaintiff and presently, the matter is kept for the cross examination of the plaintiff witness by the defendant. Regarding the counter claim of the defendant no.2 can be taken on the record or not after such long period, the Hon'ble Supreme Court has recently laid down clearly in the judgment of Ashok Kumar Kalra V/s. Wing CDR Surendra Agnihotri reported on (2020) 2 - SCC - 394 that no time limit has been prescribed in the Order-8, Rules-6 of CPC to submit counter claim. However, it does not mean that counter claim can be taken on record at any time after submitting the reply.

It is laid down in the para-17 of the aforesaid judgment that the court has to consider simultaneously the facts as to whether the counter claim is within the time-limit or not and whether it is barred by the Limitation Act or not. Whereas, it is clearly laid down in para-18 that the counter claim cannot be allowed to take on the record after framing of issues and it may affect the principle of speedy trial if such permission is granted.

Citing the aforesaid facts, the Hon'ble Supreme Court has rejected the application seeking permission to take counter claim on the record after framing of issues and the said judgment can be made applicable to the case on hand in its entirety.....

Thus, once it has been established by the Hon'ble Supreme Court that the permission to take counter claim on the record cannot be granted once the issues are framed and as discussed in the case on the hand, the issues have been framed vide Exhibit-83. Deposition of the plaintiff has also been recorded vide Exhibit-84 and considering the same, the counter claim of the defendant no.2 cannot be taken on the records.

10. Thus, considering the entire facts, as discussed above, the issues have been framed in the present case, the proceedings of the suit have been initiated, the defendant no.2 has preferred present application after very long period and it is barred the provisions of the limitation. As per the judgment of the Hon'ble Supreme Court, permission to take counter claim on record cannot be granted once the issues have been framed and according to the provision of Order-8, Rules-6(A) of the CPC, the defendant is not entitled to seek counter claim against the defendant in the suit of the plaintiff, as the present application of the defendant no.2 cannot be granted, I pass following order rejecting this application."

(emphasis supplied)

15. The only justification supplied by the High Court can be seen in para 13.13 where the High Court has come to the conclusion that the cause of action for defendant no. 2 has arisen only after the High Court directed the appointment of a Nazir to represent the interest of defendant no. 1. There is no other reasoning in the decision of the High Court.

16. Now, we must consider the two issues raised by the appellant.

17. Re: Defendant no. 2's claim of specific relief not maintainable against appellant: Ld. Sr. Counsel for the appellant has argued that in terms of Order VIII Rule 6A of CPC, a counter-claim must be filed seeking relief against the plaintiff and cannot be filed against a co-defendant, for a counter-claim must necessarily deal with the defendant's cause of action against the plaintiff. On the other hand, Ld. Counsel for the respondent submits that the counter-claim seeks two substantive reliefs, namely, partition and specific performance. Consequently, it is contended that the counter-claim is not directed solely against a co-defendant, for, in an independent suit seeking the very same reliefs, the appellant would necessarily have to be impleaded as a party. The ultimate relief sought by defendant no. 2 is a declaration of co-ownership of the deceased sister-in-law of plaintiff and a consequent decree of specific performance as against that ownership on the basis of the agreement of sale.

18. Order VIII, Rule 6A, CPC enables a defendant to set up a counter-claim. Said provision is extracted as below;

6A. Counter-claim by defendant.—(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) *Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.*

(3) *The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the court.*

(4) *The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.*

(emphasis supplied)

19. As per Rule 6-A(1), a defendant may assert any right or claim against the plaintiff before the filing of the written statement, even if such cause of action is unrelated to the plaintiff's suit. The only limitation is that the counter-claim must lie within the pecuniary jurisdiction of the court. Such a counter-claim is treated as a cross-suit and is governed by the rules applicable to plaints, including the obligation to disclose the cause of action and pay requisite court fees. The legislative intent is to avoid multiplicity of proceedings by allowing both the original suit and the counterclaim to be tried and disposed of in a single trial, thereby avoiding prolonged and protracted litigation as held in *Jag Mohan Chawla v. Dera Radha Swami Satsang*.⁷

20. Rule 6A provides that counter-claim shall be against the claim of the plaintiff and such right or claim shall be in respect of cause of action accruing to defendant against the plaintiff. This Court in *Rohit Singh* (supra) held;

“21. Normally, a counterclaim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counterclaim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the codefendants in the suit. But a counterclaim directed solely against the co-defendants cannot be maintained. By filing a counterclaim the litigation cannot be converted into some sort of an interpleader suit.....”

21. The above observations have been reiterated with approval in subsequent pronouncement in *Damodhar Narayan Sawale v. Tejrao Bajirao Mhaske*⁸, by observing as under;

“39. The decision of this Court in Rohit Singh v. State of Bihar also assumes relevance in the above context. This Court held that a defendant could not be permitted to raise counterclaim against co-defendant because by virtue of Order 8 Rule 6-A CPC, it could be raised by the defendant against the claim of the plaintiff.”

22. In the present case, defendant no. 2 sought to raise a counter-claim primarily for the relief of specific performance of agreement dated 21.10.2011 executed in his favour

⁷ (1996) 4 SCC 699.

⁸ (2023) 19 SCC 175; also see *Satyender v. Saroj*, (2022) 17 SCC 154.

by deceased original defendant no. 1 with respect to her undivided share in the suit property, by a direction to the Nazir, the substituted representative of defendant no. 1, to execute a sale deed in pursuance of the agreement to sell. The relief of specific performance as sought to be raised by defendant no. 2 cannot be set up by way of a counter-claim since the same is not directed against the appellant/plaintiff, but is instead directed solely against the co-defendant. In view of this, defendant no. 2 is held to be disentitled to raise prayer of specific performance by way of counter-claim. This is simply not permissible, and this position is no more res-integra in view of the decision of this Court in *Rohit Singh* (supra).

23. Defendant no. 2 however submits that he has not only claimed the relief of specific performance, but has also sought partition of suit property to separate the share he is entitled to under the agreement. Defendant must first establish a right of claim over the property, which is absent⁹ till he succeeds against the estate of defendant no. 1 and only thereafter that the question of setting up a counter claim against plaintiff may arise. Thus, the submission that there is also a claim for partition must fail for the same reason.

24. *Re: Defendant no. 2 filed the counter-claim after issues were framed:* It is true that issues were framed on 12.02.2019 and the application for counter claim was filed almost two years thereafter i.e., on 26.07.2021. For our purpose, it is sufficient to refer to the guiding principle for determining the time-frame for filing a counter claim, succinctly articulated in the judgment of this Court in *Ashok Kumar Kalra* (supra). The relevant portion of the decision is as under¹⁰;

“17. The time limitation for filing of the counterclaim, is not explicitly provided by the legislature, rather only limitation as to the accrual of the cause of action is provided. As noted in the above precedents, further complications stem from the fact that there is a possibility of amending the written statement. However, we can state that the right to file a counterclaim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order 8 Rule 6-A. Having said so, this does not mean that counterclaim can be filed at any time after filing of the written statement. As counterclaim is treated to be plaint, generally it needs to first of all be compliant with the limitation provided under the Limitation Act, 1963 as the timebarred suits cannot be entertained under the guise of the counterclaim just because of the fact that the cause of action arose as per the parameters of Order 8 Rule 6-A.

18. As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6-A in Order 8 CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counterclaim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counterclaim has to be filed along with the written statement and beyond that, the court has no power. The courts, taking into consideration the reasons stated in support of the counterclaim, should adopt a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counterclaim has to be filed, by curtailing the discretion conferred on the courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counterclaim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be

⁹ *Munishamappa v. M. Rama Reddy*, 2023 SCC OnLine SC 1701.

¹⁰ *Ashok Kumar Kalra v. Wing CDR Surendra Agnihotri*, (2020) 2 SCC 394.

permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to CPC.

19. *In this regard having clarified the law, we may note that Mahendra Kumar case [Mahendra Kumar v. State of M.P., (1987) 3 SCC 265] needs to be understood and restricted to the facts of that case. We may note that even if a counterclaim is filed within the limitation period, the trial court has to exercise its discretion to balance between the right to speedy trial and right to file counterclaim, so that the substantive justice is not defeated. The discretion vested with the trial court to ascertain the maintainability of the counterclaim is limited by various considerations based on facts and circumstances of each case. We may point out that there cannot be a straitjacket formula, rather there are numerous factors which needs to be taken into consideration before admitting a counterclaim.*

20. *We may note that any contrary interpretation would lead to unnecessary curtailment of the right of a defendant to file counterclaim. This Court needs to recognise the practical difficulties faced by the litigants across the country. Attaining the laudable goal of speedy justice itself cannot be the only end, rather effective justice wherein adequate opportunity is provided to all the parties, need to be recognised as well (refer to Salem Advocate Bar Assn. case [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3353]).*

21. *We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:*

- (i) Period of delay.*
- (ii) Prescribed limitation period for the cause of action pleaded.*
- (iii) Reason for the delay.*
- (iv) Defendant's assertion of his right.*
- (v) Similarity of cause of action between the main suit and the counterclaim.*
- (vi) Cost of fresh litigation.*
- (vii) Injustice and abuse of process.*
- (viii) Prejudice to the opposite party.*
- (ix) And facts and circumstances of each case.*
- (x) In any case, not after framing of the issues."*

25. *It is also important to note that defendant no. 2 is seeking specific performance of an agreement dated 21.10.2011, which provided execution of the sale deed within twelve months. Defendant no. 2 did not take any action. In any event, the next course of action to seek execution of the sale deed arose immediately after January 2012 when the appellant/plaintiff instituted a suit seeking annulment of so-called agreement to sell. The defendant no. 2 did nothing. Only after the death of his vendor in October 2013 and after framing of the issues in February 2019 that the defendant no. 2 decided to file the application- only after nine years of the filing of the suit, which is again two years after framing of the issues.*

26. *Enquiry and trial arising out of a claim to enforce an agreement to sell is qualitatively different from the claim of a plaintiff seeking a declaratory decree against a defendant.*

The civil remedy that the appellant seeks, i.e., a declaration that his sister-in-law has no manner of right to alienate the property and therefore to annul the sale is very different from the attempted civil remedy through counter-claim for specific performance against a co-defendant.

27. In view of the above, we are of the opinion that the High Court committed an error in reversing the judgment of the Trial Court by permitting defendant no. 2 to file a counter-claim against defendant no.1 and not against the plaintiff. We, therefore, allow the appeal arising out of SLP (C) No. 5635 of 2023 and set aside the order and judgment passed by the High Court in SCA No. 12701 of 2021 dated 16.01.2023.

28. There shall be no order as to costs.

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