SANTOSH SUBHASH KULKARNI
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Date: 2026.06.15 22:00:52 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4276 OF 2026

1. Mandar Suresh Bhatwadekar
2. Dr. Shrirang Arun Limaye

...Petitioners

Versus

Shree Nav Vinayak Co-operative Housing Society Ltd. (Housing Society), registered under the provisions of the Maharashtra Co-operative Societies Act, 1960

...Respondent

WITH

WRIT PETITION NO. 4362 OF 2026

1. Mandar Suresh Bhatwadekar
2. Dr. Shrirang Arun Limaye

...Petitioners

Versus

Shree Nav Vinayak Co-operative Housing Society Ltd. (Housing Society), registered under the provisions of the Maharashtra Co-operative Societies Act, 1960

...Respondent

Mr. R. A. Dada, Senior Advocate, a/w Mr. Nitin P. Deshpande, for the Petitioners.
Mr. Shailendra Kanetkar, for the Respondent.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 4th MAY, 2026
PRONOUNCED ON: 15th JUNE, 2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. These petitions under Article 227 of the Constitution of India assail the legality, propriety and correctness of identical orders passed by the learned Civil Judge in RCS/2249/2019 and RCS/2248/2019, whereby the applications preferred by the petitioners – defendant Nos.1 and 2 seeking permission to file counter-claim in the respective suits came to be rejected.

3. Since the petitions arise out of almost identical fact-situation, they were heard together finally with the consent of the Counsel for the parties.

4. For the sake of the convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed in the respective suits.

5. Shorn of unnecessary details, the background facts leading to these petitions can be stated as under:

5.1 The plaintiff is a Housing Society registered under the provisions of Maharashtra Co-operative Societies Act 1960 ("the Act, 1960"). The plaintiff Society had allotted plot No.3 (which is the subject matter of RCS/2248/2019) and plot No.4 (which is the subject matter of RCS/2249/2019) to the different No.1 in the respective suits.

5.2 The defendant No.1 contends, the plaintiff - Society had issued letter of allotment and share certificate to defendant No.1. However, the society did not take any initiative to execute a lease deed in favor of defendant No.1. In the year 2012, defendant No.1 called upon the society to execute the lease deed. Allegedly the society raised an unreasonable demand as a precondition for the execution of the lease deed.

5.3 In the meanwhile, defendant No.1 entered into a transaction to assign the leasehold rights in favour of defendant No.2. Thus, on 29th June, 2017, defendant No.1 sought NOC for transfer of the leasehold rights and shares in favour of defendant No.2. Defendant Nos.1 and 2 entered into a MOU for transfer of the leasehold rights and shares.

5.4 As the plaintiff rejected the application for NOC, the defendants filed a proceeding before the Deputy Registrar, Co-operative Societies, seeking directions to the Society to give NOC for the transfer of the plot. By an order dated 11th January, 2018, the Deputy Registrar, Co-operative Societies, allowed the said application. The said order was affirmed in revision by the Divisional Joint Registrar by a judgment and order dated 31st May, 2019. Eventually, pursuant to the order dated 1st June, 2019 passed by the Deputy Registrar,, Co-operative Societies,

the authorized officer issued NOC on 4th June, 2019. The plaintiff was also directed to admit defendant No.2 as a member of the society. Thereupon, under a registered Agreement for Assignment of leasehold rights and transfer of shares dated 23rd October, 2019, defendant No.1 transferred the leasehold rights in the subject plots in favor of defendant No.2.

5.5 The Plaintiff assailed the legality and validity of the said instrument by instituting the suits, *inter alia,* seeking a declaration that the said Agreement for Assignment of leasehold rights and transfer of shares in respect of the subject plot was sham, bogus, illegal, *void ab initio*, and not binding on the Plaintiff Society, and also sought to restrain the Defendants from creating any third-party interest in the subject plot, taking forcible possession thereof, and constructing any structure on the subject plots.

5.6 Simultaneously, the orders passed by the Registrar under the Act, 1960 were assailed before the State Government in revision. The State Government allowed the revision application and set aside the orders passed by the Registrar under the Act, 1960.

6. Being aggrieved, the defendants preferred Writ Petition Nos. 3011 of 2024 and 3169 of 2024. By a common order dated

19th November, 2025, a learned Single Judge declined to interfere with the order passed by the State Government, observing that the Registrar, while acting under Section 79(2) of the Act, 1960, had no jurisdiction to decide disputed questions of fact. This Court, however, observed that it was open to any aggrieved party to take appropriate proceedings before a competent Court for declaration and enforcement of their rights, and that the Court had expressed no opinion on the correctness of the rival claims and the parties were free to pursue their remedies.

7. In Special Leave to Appeal (C) No(s).36837/2025, by an order dated 18th December 2025, the Supreme Court declined to interfere with the order passed by this Court. The trial Court was directed to decide the suit expeditiously and conclude the same within one year.

8. The Defendants preferred an application seeking permission to file a counter-claim purportedly availing the liberty granted by this Court in the aforesaid order dated 19th November, 2025 passed in Writ Petition Nos. 3011 of 2024 and 3169 of 2024 to initiate appropriate proceedings. It was asserted that this Court as well as the Supreme Court had made it clear that the Defendants would have an opportunity to

seek declaration and enforcement of their legal rights. Thus, the Defendants filed applications seeking permission to file the counter-claim under the provisions of Order VIII Rule 6A of the Code.

9. By way of the counter-claim, the Defendants sought a decree of specific performance and enforcement of statutory obligations qua the Plaintiff Society, and direction the Society to execute and register the lease deed in respect of the subject plot in favour of Defendant No. 1, direction to the Managing Committee of the Society to execute and register the necessary deed of surrender and a subsequent and simultaneous lease deed in respect of the subject plot in favour of Defendant No. 2.

10. The Plaintiff resisted the said application. The proposed counter-claim was stated to be beyond the scope of the provisions contained in Order VIII Rule 6A of the Code of Civil Procedure, 1908 ("the Code"). There was no privity of contract between plaintiff and Defendant No. 2. By way of the counter-claim, the Defendants were totally altering the subject matter of the suit and exponentially widening its scope, which has been instituted primarily for declaration that the purported assignment of lease was illegal, void and not binding upon the Plaintiff. Even otherwise, the Defendants had failed to ascribe

any reason for the huge delay of more than five years in filing the counter-claim. Thus, the counter-claim was *ex facie* barred by law of limitation.

11. By the impugned order, the learned Civil Judge was persuaded to reject the application seeking permission to file the counter-claim, holding that the Defendants had failed to explain the delay in filing the counter-claim. There was no pleading to indicate that the Plaintiff had refused to perform its part of the contract. The counter-claim appeared to be barred by law of limitation. There was no privity of contract between the Plaintiff and Defendant No. 2. The learned Judge also recorded that the counter-claim appeared to be premature as there was nothing to demonstrate that the Plaintiff had refused to execute the lease deed in favour of Defendant No. 1, in the respective suit.

12. Being aggrieved, the Defendants have invoked the writ jurisdiction.

13. I have heard Mr. Rafiq Dada, the learned Senior Advocate for the Petitioners, and Mr. Shailendra Kanetkar, the learned Counsel for Respondent No. 2 Society in both the petitions. With the assistance of the learned Counsel for the parties, I have

perused the material on record, including the pleadings and the various orders passed by this Court and the Supreme Court.

14. Mr. Dada, the learned Senior Advocate for the Petitioners, would submit that the learned Civil Judge completely misconstrued the import of the provisions contained in Order VIII Rule 6A of the Code. The purpose for which an enabling provision has been made in the Code to permit a Defendant to file a counter-claim, was completely lost sight of. In the process, Mr. Dada would urge, the learned Civil Judge unjustifiably imported the aspect of delay. It was submitted since the counter-claim was filed before settlement of issues, the Defendants were not enjoined to offer any explanation for the purported delay. Attention of the Court was invited to the enunciation of law in the case of ***Ashok Kumar Kalra vs Wing Commander Surendra Agnihotri***[1].

15. As a second limb of the submission, Mr. Dada would urge, the learned Civil Judge has recorded contradictory and mutually destructive findings. On the one hand, it was observed that the counter-claim was barred by the law of limitation. On the other hand, it was also recorded that the counter-claim was

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1 (2020) 2 SCC 394.

premature. These findings are completely incongruous and contradictory.

16. Mr. Dada further submitted, with a degree of vehemence, that the learned Judge committed a manifest error in not appreciating that, in the strict sense, no period of limitation has been prescribed for filing a counter-claim. The only condition to be satisfied is that the cause of action to file counter-claim must have arisen to the Defendant before or after the filing of the suit. In the case at hand, Mr. Dada would urge that, filing of the counter-claim became necessary as the State Government had set aside the order passed by the Registrar under the Act of 1960 to grant NOC for transfer of the leasehold rights; pursuant to which the registered Agreements for Assignment were executed by respective Defendant No.1 in favour of Defendant No.2. When that order was affirmed by the High Court and, subsequently, by the Supreme Court, the necessity to file the counter-claim arose. Without properly appreciating the circumstances in which the Defendants were constrained to file the counter-claim, the learned Civil Judge unjustifiably non-suited the Defendants.

17. In contrast, Mr. Kanetkar, the learned Counsel for the Plaintiff, would submit that the learned Civil Judge has

correctly exercised the discretion. From a bare perusal of the averments in the proposed counter-claim, especially the clause on the accrual of the cause of action, it becomes evidently clear that the counter-claims were *ex facie* barred by law of limitation. Having found that the counter-claims were barred by law limitation, the learned Civil Judge rightfully declined to entertain the counter-claims.

18. Without disputing the position that the counter-claim can be filed by the Defendant till the settlement of issues in view of the decision in the case of ***Ashok Kumar Kalra*** (supra), Mr. Kanetkar would urge that the aspect of delay in filing the counter-claim cannot be said to be wholly inconsequential or immaterial. To this end, Mr. Kanetkar placed reliance on the judgment of this Court in the case of ***Vijaymala Sidling Doijad v. State of Maharashtra and others***[2], wherein it was enunciated that a belated filing of a counter-claim is not permissible. The aforesaid decision applies with equal force to the facts of the present case, submitted Mr. Kanetkar.

19. Inviting the attention of the Court to the averments in the counter-claim which indicate that the cause of action for filing the counter-claim had arisen in October 2012, Mr. Kanetkar

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2 2005(3) Mh.L.J. 329.

would urge that by no stretch of imagination the counter-claim in respect of such a cause of action, filed in the year 2026, can be said to be within the stipulated period of limitation. Mr. Kanetkar would urge that the Plaintiff cannot draw any mileage from the fact that this Court had granted liberty to the parties to take out appropriate proceedings before a competent Court. The said liberty cannot be construed as granting a carte blanche to the Defendants to file the counter-claims belatedly and also beyond the scope of the suit.

20. The aforesaid submissions now fall for consideration.

21. To begin with, it is necessary to note that the Plaintiff is not only assailing the legality and validity of the Agreements for Assignment, but the very allotment of the subject plots to Defendant No. 1 was sought to be put in contest. In the plaint, the Plaintiff has made an endeavour to assert that the erstwhile Managing Committee had illegally allotted the subject plots in favour of Defendant No. 1 in gross violation of the prescribed procedure. Indeed, the suit came to be instituted after Defendant No. 1 executed registered instrument in favour of Defendant No. 2. Secondly, the Registrar passed orders purportedly in exercise of the powers under Section 79 of the Act of 1960 directing issuance of NOC and admission of

Defendant No. 2 as a member of the Plaintiff Society. Thirdly, as noted above, the orders passed by the Registrar were eventually set aside by the State Government in revision, and the said order of the State Government has attained finality.

22. In the background of the aforesaid rather uncontroverted facts, the substratum of the case of the Defendants was that, this Court while dismissing the writ petitions had kept open the liberty to take out appropriate proceedings before the competent Court and, therefore, the filing of the counter-claim, after the order dated 19th November, 2025 in Writ Petition Nos. 3011 of 2024 and 3169 of 2024 attained finality, was in order.

23. The provision contained in Order VIII Rule 6A reads as under:

> "**Order 8 Rule 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"

24. The phraseology of the afore-extracted rule makes it explicitly clear that, 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 which has accrued 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 delivery his defence has expired. A counter-claim has the same effect as a cross-suit. It is governed by the rules of pleadings applicable to plaints. Under Order VIII Rule 6G, the rules relating to a written statement by a Defendant apply to the written statement filed in answer to a counter-claim.

25. It is pertinent to note that, from the text of rule 6A of Order VIII, a time limit for filing of the counter-claim is not discernible. Instead, the right to file a counter-claim appears to be inextricably connected with the accrual of the cause of action and the limitation on filing of the counter-claim is with reference to the time at which the cause of action has arisen. The outer

limit for accrual of such cause of action is the filing of the defence by the Defendant.

26. At this juncture, it is imperative to note the object and purpose of the provisions of the rule that enables the filing of the counter-claim. The primary object is to avoid multiplicity of judicial proceedings and save upon the Court's time as also to obviate the inconvenience to the parties by enabling determination of the claims and counter-claims and thereby resolve all the disputes between the same parties in the course of the same proceeding.

27. In the case of ***Ramesh Chand Ardawatiya v. Anil Panjwani***[3]**,** after expounding the aforesaid purpose of the enabling provision, the Supreme Court enunciated, as under:

> "15. ....If the consequence of permitting a counter-claim either by way of amendment or by way of subsequent pleading would be prolonging of the trial, complicating the otherwise smooth flow of proceedings or causing a delay in the progress of the suit by forcing a retreat on the steps already taken by the court, the court would be justified in exercising its discretion not in favour of permitting a belated counter-claim. Generally speaking, a counter-claim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case set down for trial, and more so when the trial has already commenced. (para 28).

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3 (2003) 7 SCC 350.

28. In the case of ***Bollepanda P. Poonacha and Anr. V/s. K.M.Madapa***[4], the Supreme Court after adverting to the aforesaid decision, enunciated the law as under :

> "11. The provision of Order VIII Rule 6A must beconsidered having regard to the aforementioned provisions. A right to file counter claim is an additional right. It may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence. Respondent in his application for amendment of written statement categorically raised the plea that the appellants had tresspassed on the lands, in question, in the summer of 1998. Cause of action for filing the counter claim inter alia was said to have arisen at that time. It was so explicitly stated in the said application. The said application, in our opinion, was, thus, clearly not maintainable. The decision of Sri Ryaz Ahmed (supra) is based on the decision of this Court in in ***Baldev Singh V/s. Manohar Singh and Anr.***[5]
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> .....
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> 15. A belated counter claim must be discouraged by this Court. See ***Ramesh Chand Ardawatiya versus Anil Panjwani (supra).*** We are, however, not unmindful of the decisions of this Court where a defendant has been allowed to amend his written statement so as to enable him to elaborate his defence or to take additional pleas in support of his case. The Court in such matters has a wide discretion. It must, however, subserve the ultimate cause of justice. It may be true that further litigation should be endeavoured to be avoided. It may also be true that joinder of several causes of action in a suit is permissible. The Court, must, however, exercise the discretionary jurisdiction in a judicious manner. While considering that subservance of justice is the ultimate goal, the statutory limitation shall not be overstepped. Grant of relief will depend upon the factual background involved in each case. The Court, while undoubtedly would take into consideration the questions of serious injustice or irreparable loss, but nevertheless should bear in mind that a provision for amendment of pleadings are not available as a

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4 (208) 13 SCC 179.

5 (2006) 6 SCC 498.

> matter of right under all circumstances. One cause of action, cannot be allowed to be substituted by another. Ordinarily, effect of an admission made in earlier pleadings shall not be permitted to be taken away. See ***State of A.P. V/s. Pioneer Builders***[6] and ***Steel Authority of India Ltd. V/s. Union of India***[7] and ***Himmat Singh V/s. ICI India Ltd.***[8]"
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> (emphasis supplied)

17. In the case of ***Vijay Prakash Jarath V/s. Tej Prakash Jarath***[9], the Supreme Court set aside an order passed by the High Court declining Defendant No.3 and 4 therein, to file counter claim after two and half years of the framing of the issues. The Supreme Court noted that the Respondents/Plaintiffs' evidence was still being recorded by the trial Court when the counter-claim was filed. Nor it could be shown that any prejudice would be caused to the Plaintiffs if counter counter-claim was to be adjudicated upon alongwith the main suit. Thus, no serious injustice or irreparable loss as expressed in para 15 of ***Bollepanda P. Poonacha*** (supra) would be suffered by the Plaintiff in that case.

18. Noticing the difference in the enunciation of law in the aforesaid cases, a reference was made to the larger bench

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6 (2006) 12 SCC 119.
7 (2006) 12 SCC 233.
8 (2008) 3 SCC 571.
9 (2016) 11 SCC 800.

in the case of ***Ashok Kumar Kalra*** (supra). The Supreme Court considered the following questions :

> "6.1 (i) Whether Order 8 Rule 6-A CPC mandates an embargo on filing the counter-claim after filing the written statement ?
>
> 6.2 (ii) If the answer to the aforesaid question is in the negative, then what are the restrictions on filing the counter-claim after filing of the written statement ?

19. After adverting to the provisions of the Code and the precedents, the Supreme Court observed that 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. However, the defendant cannot be permitted to file counterclaim after the issues are framed and 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 the Code.

20. In the said case, the majority culled out the principles as under :

> 21. We sum up our findings, that Order VIII Rule 6-A CPC does not put an embargo on filing the counter-claim 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 counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counte-claim, 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 counter-claim.
> (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."
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> (emphasis supplied)

29. In ***Vijaymala*** (supra), on which reliance was placed by Mr. Kanetkar, noticing the aforesaid position in law, this Court observed as under:

> "22. The position in law which thus emerges is that the Code does not prescribe a definite time limit for the filing of the counter-claim. Rather the restriction on the right to file counter-claim is with reference to the accrual of the cause of action. It is in the discretion of the court to allow a Defendant to file counter claim either by way of amendment in the written statement or a separate counter-claim, even post filing of the written statement. The considerations of avoiding multiplicity of proceedings, advancing the cause of substantive justice, likelihood of prejudice and the possibility of protraction of the trial, by permitting the filing of the counter-claim at a belated stage, principally weigh with the

> Court in exercise of judicious discretion. It is also required to be kept in view that, generally the question of prejudice to the defendant may not arise as the defendant would have an option to pursue his cause of action in a separate suit."
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> (emphasis supplied)

30. It is an admitted position that when the applications seeking permission to file the counter-claim were filed, the issues were not settled. Thus, the outer limit for filing the counter-claim, pegged till the settlements of issues, by the majority judgment in the case of ***Ashok Kumar Kalra*** (supra) was not crossed. The question which thus crops up for consideration is whether the delay of about five years, since the filing of the written statement, disentitles the defendants from the exercise of discretion in their favour?

31. For an answer, it would be apposite to first notice the clause in the proposed counter-claim as to the accrual of the cause of action. In paragraph 16 of the proposed counter-claim, the defendants contend that the cause of action arose on every occasions on 22nd October, 2012, 23rd October, 2012, 30th October, 2012, 24th November, 2012, 21st October, 2014 and 28th July, 2015, when Defendant No. 1 requested and called upon the Plaintiff Society to execute the lease deed of the plot in favour of defendant No. 1 but the plaintiff avoided to do so. It is further

asserted that the failure of the plaintiff society's to execute the lease deed amounts to a continuing cause of action.

32. It was submitted on behalf of the plaintiff that, the aforesaid claim of the defendants as to accrual of the cause of action renders the counter-claim explicitly barred by limitation, even if the time was reckoned from the last of the dates of accrual of the cause of action. Thus, the learned Civil Judge was justified in holding that on account of the absence of any explanation in the application seeking permission to file the counter-claim in regard to the huge delay, it was legally impermissible to file the counter-claim belatedly, and that, even otherwise, the reliefs in the counter-claim were *ex facie* barred by law of limitation.

33. The entire gamut of the circumstances, as it emerges from the various proceedings among the parties, deserves to be appreciated. First and foremost, the tenor of the plaint is required to be considered. As noted above, the Society has made an endeavour to contend that, the very allotment of the subject plots to Defendant No. 1 and the issuance of the share certificates were tainted with illegality. Premised on the aforesaid stand, an effort was made to assert that Defendant No.1 did not diligently pursue the matter of execution of the

lease deed and declined to comply with the demand to pay the development charges and/or transfer fees and/or other legal dues to the Plaintiff Society, despite being called upon to do so in response to the request of Defendant No. 1 to execute the lease deed. In regard to the communication dated 28th June, 2017 addressed by Defendants No.1 to the Plaintiff for issuance of NOC, the Plaintiff claims to have again intimated Defendant No. 1 that Defendant No. 1 had not cleared the dues of the Plaintiff Society for several years, the Society had resolved to take action against Defendant No. 1 for recovery of the dues and, thus, Defendant No. 1 was not entitled for NOC unless all the legal dues were cleared.

34. *Prima facie,* a cleavage emerges in the stand of the Plaintiff. On the one hand, the very initial allotment of the subject plots was sought to be put in contest. On the other hand, the default on the part of Defendant No. 1 to clear the arrears purportedly on account of development charges/transfer fees and legal dues was stated to be the reason for the refusal to execute the lease deed and issue the NOC.

35. Secondly, the Plaintiff claims, instead of clearing the legal dues, Defendant No. 1 approached the authorities under the Act, 1960. The developments pursuant to the orders passed by

the authorities under the Act, 1960, also bear upon the exercise of discretion. As noted above, pursuant to the orders passed by the Registrar, the NOC was issued and the deeds of assignment were executed by Defendant No. 1 in favour of Defendant No. 2. Thus, the Plaintiff instituted the suit seeking a declaration that the said Agreements of Assignment were illegal, void and not binding upon the Plaintiff. Moreover, till the State Government set aside the orders passed by the Registrar, the said Agreements for Assignment was holding the field.

36. It is in the aforesaid context, the requirement to seek a declaration and enforcement of the purported statutory obligations of the Plaintiff Society to execute the lease deed deserve appreciation. Since the Plaintiff was seeking a declaratary relief qua the Agreements for Assignment, defendant No.1 did not consider it necessary to seek directions against the Plaintiff to execute the lease deed was the thrust of the submission of Mr. Dada. At this juncture, it may not be necessary to record a definitive finding on this aspect and the Court refrains from delving more into the justifiability of the explanation sought to be offered as that would be a matter for adjudication by the trial Court.

37. The fact, however, remains that till the Agreements of Assignment were left untouched, there was seemingly no cloud on the jural relationship sought to be established under the said Agreement of Assignments. The setting aside of the orders passed by the Registrar under the Act, 1960 and the consequent affirmation thereof by this Court, necessitated the liberty granted by this Court in the order dated 19th November, 2025. Thus, the Court clarified that it was open to any aggrieved party to take appropriate proceedings before a competent Court for deermination and enforcement of their rights. I, thus, find it difficult to accede to the submission of Mr. Kanetkar that the afroesaid liberty did not enure to the benefit of the Defendants.

38. The core controversy between the parties also cannot be lost sight of. Whether the Defendant No. 1 is entitled to execution of lease deed by the Society in respect of the subject plots, without the Society insisting for the payment, as claimed, is at the heart of the controversy. Could the Plaintiff Society refuse to execute the lease deed? Could the Plaintiff Society refuse to grant NOC for transfer of purported leasehold rights by Defendant No. 1 in favour of Defendant No. 2?, are the other pivotal questions that would warrant adjudication.

39. In the aforesaid backdrop, if the prayer for permission to file the counter-claim is appraised in the light of the enabling provision, it could hardly be disputed that there is an element of similarity of cause of action between the suit and the counter-claim. Common questions of facts and law would arise for adjudication in the suit as well as the counter-claim. The objective of resolution of all disputes between the parties in one proceeding would be better subserved if the counter-claims are permitted to be filed. The Court does not find that there is a possibility of irretrievable prejudice to the Plaintiff if the Defendants are permitted to file the counter-claim. Indeed, the fate of the reliefs sought in the counter-claim hinges upon the outcome of the suits. If the Plaintiff succeeds in the suits, the entitlement of the Defendants to the proposed reliefs claimed in the counter-claim would become tenuous. On the contrary, if the Plaintiff fails, Defendant No. 1 would be entitled to enforce the obligation on the part of the Plaintiff to execute a lease deed in favour of Defendant No. 1 and, in that event, the further liability of the Plaintiff to grant NOC for transfer of leasehold rights by Defendant No. 1 in favour of Defendant No. 2, would warrant consideration.

40. If viewed through the prism of the purpose of the enabling provision, this Court finds that the objective of avoiding multiplicity of proceedings and advancing the cause of substantive justice may be promoted by permitting Defendant Nos. 1 and 2 to file the counter-claim.

41. The submission on behalf of the Plaintiff that the counter-claim is *ex facie* barred by the law of limitation cannot be readily acceded to. In the facts of the case at hand, adverted to above, the question of limitation *prima facie* appears to be a mixed question of facts and law. It would, therefore, be appropriate to keep the issues of the reliefs claimed in the counter-claim being barred by law of limitation and that the Defendants are not otherwise entitled to those reliefs, open adjudication at trial.

42. In conclusion, it can be said that, the learned Civil Judge appears to have adopted a very rigid approach. The matter was not evaluated from the perspective of exercise of judicial discretion which promotes object of Order VIII Rule 6A of the Code.

43. The upshot of the consideration is that the petitions deserve to be allowed.

44. Hence, the following order:

: O R D E R :

(i) The petitions stand allowed.

(ii) The impugned order passed by the learned Civil Judge in each of the suits declining permission to file the counter-claim stands quashed and set aside.

(iii) The defendants are permitted to file the counter-claim.

(iv) The issues of the reliefs in the counter-claim being barred by law of limitation and defendant Nos. 1 and 2 not being otherwise entitled to the said reliefs, are kept open for adjudication at the trial.

(v) The defendant No.1 shall file the counter-claim within the period of one week from the date of uploading of this order.

(vi) The plaintiff shall be entitled to file written statement to the counter-claim within a period of 30 days thereafter.

(vii) The parties shall co-operate with the learned Civil Judge in the expeditious disposal of the suits and counter-claims in conformity with the directions of the Supreme Court to dispose of the suits within the stipulated time frame.

(viii) In the circumstances, there shall be no order as to costs.

[N. J. JAMADAR, J.]