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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.905 OF 2015

Apna Sahakari Bank Ltd.

...Petitioner

V/s.

Maharashtra State Co-operative
Bank Ltd. & Ors.

...Respondents

.....
Mr. S.S. Patwardhan for the Petitioner.

.....

CORAM : A. K. MENON, J.

DATE : 28TH SEPTEMBER, 2015.

P.C.:

The present Writ Petition challenges the order dated 26th March, 2014 passed by the Maharashtra State Co-operative Appellate Court in Revision Application No.100 of 2013 whereby the Appellate Court allowed Revision Application Nos.100 of 2013 and 108 of 2013 and setting aside the order dated 2nd September, 2013 passed below Exhibit 27 passed by the learned Judge Co-operative Court No.2, Sangli in Dispute No.1189 of 2009.

2. The brief facts are that one Ashta Urban Co-operative Bank Ltd. filed a dispute against the respondent for recovery of amount of a fixed

deposit of a sum of Rs.3 crores. The period of the deposit was 3 years and on the due date respondent no.1 bank declined to pay the amount along with interest. The reasons for refusal to pay the amount was that the amount of Rs.3 crores was subjected to a lien to secure the loan availed of by one Tasgaon Taluka Sahakari Sakhar Karkhana and by virtue of the said alleged lien the amount was not repayable.

3. The respondent resisted the claim as well as the resolution passed by Ashta Bank Ltd. on the basis that the amount has already been appropriated in the loan account of Tasgaon Sakhar Karkhana. The petitioner had, then, filed an application seeking amendment to the pleading pending before the trial Court under Order VI Rule 17 wanting to add new facts as also making a claim against respondent nos.2 and 3 in this Petition contending that the aforesaid respondent nos.2 and 3 were responsible for fraudulent conduct and fabrication of documents which led to the creation of the so called lien.

4. According to the petitioner, the lien is non-existent and the entire amount of the deposit with interest is due and payable on maturity. The Co-operative Court allowed the application in terms of Exhibit 27. Being aggrieved by the same, Respondent nos.2 and 3 filed Revision

Applications being Revision Application Nos.100 of 2013 and 108 of 2013 and by the common impugned orders the Appellate Court came to the conclusion that the amendment sought intends to challenge the resolution of the petitioner itself and seeks to introduce a complete different cause of action against the respondent nos.2 and 3. The Appellate Court was of the view that the petitioner was at liberty to adopt such independent proceedings as they choose since the original dispute was simpliciter for recovery of money and the amendments now sought would introduce a new cause of action against the respondent nos.2 and 3.

5. In the circumstances, the Appellate Court allowed the Revision Applications and set aside the orders passed by the Co-operative Court allowing Exhibit 27 on the basis that two cause of action were separate and the amendment if allowed would alter the nature of dispute. Learned counsel for the petitioner submitted that respondent nos.2 and 3 were indeed necessary and proper parties and that the amendment sought vide schedule appearing at annexure 1 at page 30 of the present Petition sought to bring on record the subsequent facts and fix responsibility on the respondent nos.2 and 3.

6. Apart from these, the proposed averments in Annexure A,

two further prayers were also sought to be incorporate seeking recovery of the amounts from the respondents. It is submitted that in view of the allegations of fraud it was necessary to implead these two persons as well. However, on a fair reading of the pleading and the proposed amendments, I am of the view that the cause of action against the two individuals who are respondent nos.2 and 3 are different from the original cause of action on the basis of which dispute no.1189 of 2009 was instituted. The impugned order does not in my view suffer from any perversity and also calls for no interference. Needless to mention that the petitioner shall always be at liberty to adopt such proceedings against the respondents as may be permissible in law without being influenced by any of the observations in this order. In the circumstances, I pass the following order:-

- (i) The Petition is disposed of as dismissed.
- (ii) There will be no orders as to costs.

(A. K. MENON, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.