

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11246 OF 2014**

Dharmaveer Sambhaji Urban
Co-op. Bnk Ltd

..Petitioner

Vs

Mr. Mahendra Jivraj @
Chandrabhan Karnavat and Ors

.. Respondents

Mr. Atul P. Vanarse, Advocate for Petitioner.
Mr. Mahendra Jivraj @ Chandrbhan Karnavat-respondent no.1
present in-person.

CORAM : R.G.KETKAR,J.
DATE : 11/06/2015

PC:

1. Heard Mr. Atul Vanarse, learned counsel for the petitioner and Mr. Mahendra Jivraj @ Chandrabha Karnavat-respondent no.1 in person, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner - third party has challenged the Judgment and order dated 27.8.2014 passed by the learned 3rd Jt. Civil Judge, Sr.Dn., Pune below Exhibit-86 in Special Civil Suit No.1274 of 2011. By that order, the learned trial Judge rejected the application taken out by the petitioner-third party under Order I Rule 10(2) of C.P.C. for impleading it as party-defendant no.12 in the suit.
3. In support of this petition, Mr. Vanarse strenuously

contended that respondent no.1 instituted suit for partition and possession of his 1/12th share or proportionate share in the suit properties as also for settlement of accounts of joint family business, amongst other prayers. He submitted that the petitioner had advanced a loan of Rs. 15 lakhs to respondent no.7-defendant no.6 and the property mentioned in para 1(I) is mortgaged with the petitioner. The said property is having charge of the petitioner and the same is entered in the 7/12 extract of the property. He further submitted that as the loan was defaulted by respondent no.7, the petitioner-Bank has obtained recovery certificate under section 101 of the Maharashtra Cooperative Societies Act, 1960. He submitted that as the charge of the petitioner-Bank is on property described in paragraph 1(I) and the said property is attached under the recovery proceedings, presence of the petitioner is absolutely necessary for deciding the suit on merits. The learned trial Judge, however, wrongly rejected the application.

4. On the other hand, respondent no.1 supported the impugned order.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, in the application itself the petitioner has averred that it has obtained recovery

certification under section 101 of the Maharashtra Cooperative Societies Act, 1960 and the property described in para 1(I) has charge of the petitioner-Bank. As noted earlier, respondent no.1 has instituted suit for partition and separate possession of his share. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. In my opinion, the petitioner cannot be termed as either necessary or a proper party. Hence, no fault can be found in the impugned order. Hence, the Petition fails and the same is dismissed.

(R.G.KETKAR, J.)