IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8184 OF 2016
ALONG WITH
CIVIL APPLICATION NO. 2385 OF 2016

Nancy Builders & Developers P. Ltd.,
Ulhasnagar – 421 001. … Applicant

v/s

1. Goel Ganga Developers P. Ltd.
2. ICICI Bank Ltd. … Respondents

Mr.Sanjay Jain along with Sheelang Shah and Jainish Jain i/by L.J.Law for the applicant/petitioner.

Mr.Prashant Pandey for the respondents.

Coram: N.M. Jamdar, J.

Dated: 28 September 2016

ORAL ORDER:

Rule. Rule made returnable forthwith. Learned counsel for the Respondents waives service. By consent of parties, taken up for final disposal.

2 Heard learned counsel for the parties.

3 The impugned order in this petition is passed by the learned

Civil Judge, Senior Division, Pune, dated 4 July 2016, refusing the application taken out by the Petitioner/Plaintiff for amendment of the plaint to add the proposed Defendant No.2 and paragraph 17A. By the proposed amendment, the Petitioner has sought inclusion of ICICI Bank as a party to the suit on the ground that the suit property is mortgaged with the ICICI Bank. The learned Civil Judge rejected the application on the ground that it is the duty of the Respondent No.1 to redeem the mortgage by paying the entire amount with interest to the ICICI Bank, if the suit is decreed.

4 The fact of mortgage with the Bank is not a disputed position. According to the learned counsel for the Respondent No.1, the loan has been already paid and 'no due certificate' is also given. Learned counsel for the Petitioner asserts to the contrary. If the mortgage is existing as on date, then the apprehension of the Petitioner that various complications will arise even if the decree is passed, as the Bank will claim redemption of mortgage, cannot be stated to be a misplaced one. This would also give rise to the multiplicity of proceedings and delay the trial further, which the learned counsel for the parties agree, should not be the consequence.

5 In the circumstances, if the Bank is joined as a party Defendant, the Bank can make the position regarding mortgage clear rather than both the parties contesting rival contentions as regard the record of the Bank, which the Bank would be in the best possible position to

clarify.

6 In the circumstances, the impugned order is required to be set aside, and the amendment as sought for needs to be granted. The writ petition is allowed in terms of prayer clause (a).

7 Amendment to be carried out within one week from today.

8 The learned Civil Judge will issue appropriate directions for expeditious service on the ICICI Bank and will call upon the Bank to produce all the necessary documentation on the given date so that on that date itself the disputed position regarding mortgage is clarified.

9 The writ petition is disposed of in above terms.

10 In view of disposal of the writ petition, the civil application does not survive and is disposed of.

(N. M. Jamdar, J.)