

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 2477 OF 2017
IN
SUIT NO. 1051 OF 2007

**Apex Urban Co-op.Bank of Maharashtra
& Goa Ltd., Through Official Liquidator** Applicant

IN THE MATTER OF

**Deposit Insurance & Credit Guarantee
Corporation** Plaintiff

VERSUS

**Madhavpura Mercantile Co-operative
Bank Ltd. & Anr.** Defendants

Ms.Mansi Patel, i/b. Udwadia & Udeshi for the Plaintiff.

Mr.D.P.Desai for the Defendant no.1.

Mr.D.R.Talankat for the Intervenor/Applicant in NMS.

CORAM : R.D.DHANUKA, J.

DATE : 6th DECEMBER, 2017

P.C.

Learned counsel appearing for the applicant states that his client Apex Urban Co-op.Bank of Maharashtra & Goa Ltd. has filed a notice of motion *inter alia* praying for impleadment in the suit on the ground that the applicant is a necessary party to the suit. He tenders a draft notice of motion for seeking relief in the notice of motion.

2. It is submitted by the learned counsel for the applicant that the applicant has to recover duly adjudicated and admitted dues against the defendant no.1 in respect of which the defendant no.1 had been

adjudged as judgment debtor and is directed to pay an amount of Rs.49,00,00,000/- to the applicant. He submits that if the applicant is not impleaded in the suit, the rights of the applicant would be seriously prejudiced.

3. The application for intervention of the applicant is opposed by the learned counsel for the plaintiff on the ground that the defendant no.1 has already paid the principal amount and the dispute only remained about the interest and cost. It is submitted that the applicant is neither necessary nor a proper party to this suit filed by the plaintiff for recovery of an amount from the defendants.

4. A perusal of the prayers in the plaint indicates that the plaintiff has filed a suit against the defendant no.1 for recovery of the amount of Rs.4,36,59,61,984/-. The suit is of the year 2007. The matter is placed on board for arguments today.

5. If the applicant has any money decree against the defendant no.1, the applicant can file execution application independently. In my view the appellant is neither a necessary nor proper party to the suit. The application is misconceived and is accordingly dismissed. The applicant is accordingly directed to get the notice of motion numbered within one week from today.

6. Place the suit on board for hearing and final disposal on **8th January,2018.**

(R.D.DHANUKA, J.)