

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11679 OF 2019

Maratha Sahakari Bank Ltd. Petitioner

Vs.

Azhar Yaar Mohammad Khan & Anr. Respondents

Mr. K.S. Dewal i/by Jayesh Joshi for Petitioner.

Mr. Prashant Patil for Respondent No. 1

Coram : NITIN W. SAMBRE, J.

Date : 1ST MARCH, 2021

P.C.:

1. After having heard respective counsel for some time, it can be noticed from the record that Respondent No.2 has mortgaged the property bearing commercial shop No. C-45, APMC, Onion-Potato Market, Plot No. 2, Sector 19, Village Turbhe Vashi, New Mumbai, admeasuring 687.50 sq. ft. having obtained a loan.

2. I am informed that certificate under Section 101 of the Co-operative Societies Act, for recovery of about 2.5 Cr. was issued on 30th

May, 2014, which till date remained un-executed for the reason of the initial suit initiated by Defendant No. 2 and later on the present suit by Defendant No.1 against Defendant No.2 seeking declaration and injunction.

3. An attempt on the part of the Petitioner to get impleaded in the suit initiated by Respondent No. 1 being Regular Civil Suit No. 366 of 2018 remained futile, as prayer to that effect was rejected by the impugned order.

4. In the backdrop of aforesaid observations, as it is apparent that the suit initiated by Respondent No. 1 being Regular Civil Suit No. 366 of 2018 is in relation to the aforesaid property, which is owned by Defendant No.2, who has mortgaged the same with the Petitioner, order if any in the suit is likely to affect the rights of the Petitioner as the property involved in the suit is mortgaged with the Petitioner

5. In that view of the matter, the Petitioner appears to be an appropriate party to the aforesaid suit.

6. It is rightly claimed by the learned counsel for the Petitioner that in view of operation of status-quo inter-se between the Respondents in the aforesaid suit, the recovery proceedings in relation to the suit property could not be taken to its logical end.

7. In that view of the matter, the order impugned passed below Exhibit 11 in Regular Civil Suit No. 366 of 2018 on 20th June, 2019 is hereby quashed and set aside.

8. Application Exhibit 11 stands allowed to the above extent. It shall be open for the Petitioner to file written statement with a prayer for vacation of an injunction.

9 The Petitioner be permitted to be added as Defendant No. 2 to the suit.

10. The trial Court is directed to hear the Petitioner on the issue of vacation of injunction.

(NITIN W. SAMBRE, J.)