

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

**Sneha N.
Chavan**

WRIT PETITION NO. 11058 OF 2019

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Sneha N. Chavan
Date: 2021.01.18
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Nandbala Nathalal Mayani
V/s.

.. Petitioner

Corporation Bank & Anr.

..Respondents

Mr. Vivek Kantawala a/w Amey Patil with Mr. Shanay Bafna i/b M/s.
Vivek Kantawala & Co. for the petitioner.
None for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 18th JANUARY, 2021

P.C.

1. Heard Mr. Kantawala, the learned counsel for the petitioner.
None appears for the respondents, though shown to be served as per
office report dated 15.01.2020. The petitioner has also filed
affidavit-of-service, which is taken on record.

2. The challenge in this petition is to the order dated 05.09.2019
below Exhibit 18, passed by the Appellate Bench of the Small Causes
Court in Appeal No. 70 of 2015 arising out of Mesne Profit
Application No. 524 of 2009 in T.E. & R. Suit No. 81/88 of 2003. By
the impugned order, the Appellate Bench has rejected the

application Exhibit 18 filed by the petitioner for impleadment as a party respondent in the appeal.

3. The learned counsel for the petitioner has taken me through the order dated 13.08.2018 passed by this Court in Execution Application No.530 of 2011 which arises out of execution of an Arbitral Award for settlement of accounts, in respect of the partnership firm M/s. Manoj & Co., which award is dated 21.01.2011. It is pointed out that the petitioner Nandbala is held to be a partner of the partnership firm having 24% share in profits and the said award has attained finality inasmuch as the Arbitral Award is not challenged under Section 34 of the Arbitration and Conciliation Act, 1996. The learned Counsel submitted that the Small Causes Court has also noticed that there is, *inter se*, dispute between partners of the firm. He, therefore, submitted that in order to safeguard the interest of the petitioner in the appeal, the petitioner is a proper party to the appeal. He points out that the petitioner is only seeking her impleadment as a respondent and she will not address the court on merits. He submits that this is only to ensure that the dispute is not settled with the bank, which will be detrimental to the interest of other partners.

4. I have considered the circumstances and the submissions made. The only apprehension expressed on behalf of petitioner is that if there is a compromise between the bank and the partnership firm represented by Jaswantrai Mayani, it would adversely affect the interest of the present petitioner.

5. In my considered view, the petition can be disposed of by directing the Small Causes Court not to record any compromise/settlement and in the event, there is any such attempt, the Small Causes Court shall issue a notice to the petitioner inasmuch as this is a long standing between the partners of the firm. This will adequately take care of the interest and the apprehension on behalf of the petitioner.

6. In the view of the matter, the petition is disposed of.

7. In the event, there is any attempt to record any compromise in the appeal, the Appellate Bench of the Small Causes Court shall ensure that a notice is issued to the petitioner before recording such compromise.

8. Needless to mention that the petitioner, if, makes any application for withdrawal of her share of amount of mesne profits, the same shall be decided on its own merits and in accordance with law.

C.V. BHADANG, J.