

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 1907 OF 2021

The Bank of Maharashtra -- Petitioner

Vs.

Radhika Susheel Nair and others -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.S. Jaiswal, Senior Advocate & Mr. V.I. Kolte, Advocate
for Petitioner

Mr. M.G.Bhangde, Senior Advocate & Mr. A.H. Lohiya, Ad-
vocate for Respondent No.1

Mr. V.A. Bramhe, Advocate for Respondent No.2

Mr. U.M. Aurangabadkar, Adv. for Respondent Nos.3 to 6

Mr.H.R. Gadhia, Advocate for the Intervenor

CORAM : MANISH PITALE, J.

DATE : 19th APRIL, 2022

By this writ petition, the petitioner has challenged order dated 05/04/2021, passed by the Court of 17th Jt. Civil Judge, Senior Division, Nagpur, whereby an application for vacating status quo (Exh.16) has been rejected.

2. This Court while issuing notice for final disposal granted ad-interim stay in favour of the petitioner.

3. The respondent No.1 (original plaintiff) has filed a suit for declaration and injunction against the petitioner and other defendants, claiming that a declaration is warranted in the facts and circumstances of the present case for lifting the corporate veil of the original defendant No.3 - company to protect the rights and interest of plaintiff i.e. share-holder of the said company. It is claimed that the defendants have acted in collusion to defeat the interest of respondent No.1 as a share-holder of the company and that the defendants have indulged in acts of fraud and illegalities. It is specifically pleaded that in the light of the grievance being raised by respondent No.1 in the aforesaid suit and the nature of prayers made therein, the suit is not barred by the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act). In the said suit, the Court below granted an order of status quo in favour of the respondent No.1, during the pendency of the application for grant of temporary injunction (Exh.5). The petitioner filed an application under Order 7 Rule 11 of the Code of Civil Procedure (Exh.14), praying for rejection of the plaint on the ground that the suit itself is barred by the provisions of the said Act and that the original defendant No.3 – Company

has exhausted the remedies under the SARFAESI Act upto the Hon'ble Supreme Court.

4. During the pendency of the applications for grant of temporary injunction (Exh.5) and for rejection of plaint (Exh.14), the petitioner filed the aforesaid application for vacation of status quo at Exh.16. By the impugned order, the said application has been rejected. A perusal of the impugned order would show that the entire discussion is on the question of the very maintainability of the suit. The contention raised on behalf of the petitioner that the suit is barred by the provisions of the SARFAESI Act, has been rejected, while rejecting the application (Exh.16) for vacating status quo.

5. Mr. Anand Jaiswal, learned Senior Advocate appearing for the petitioner submits that although the petitioner has filed a substantive appeal on the merits against rejection of the aforesaid application at Exh.16 for vacating status quo, the present writ petition has been filed, being aggrieved by the findings given in the impugned order as regards the maintainability of the suit. It is contended that the detailed discussion and the findings rendered in the impugned order on the said aspect of the matter has virtually rendered the application under Order 7 Rule 11 of the Code

of Civil Procedure for rejection of plaint as meaningless. It is submitted that therefore, the said findings need to be set aside for a fair and proper hearing on the application for rejection of plaint.

6. On the other hand, Mr. M.G. Bhangde, learned Senior Advocate appearing for the contesting respondent No.1 submitted that it was the petitioner, who invited the discussion and findings on the aspect of maintainability of the suit while pursuing the application at Exh.16 for vacating status quo. It was submitted that a perusal of the application at Exh.16 would show that it was almost a replica of the application under application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint and having invited the said findings from the Court below, the petitioner could not now make a grievance regarding the same, particularly when a substantive appeal is already filed by the petitioner, challenging the very impugned order dated 05/04/2021. It was further submitted that if need be, the respondent No.1 was ready to argue the matter on merits as regards the very maintainability of the suit.

7. This Court has considered the rival contentions. In an application seeking vacation of status quo and the findings rendered on such an application, it would not be

appropriate for this Court to consider the submissions made on behalf of the rival parties on the maintainability of the suit, as it would obviously amount to preempting decision on the application under Order 7 Rule 11 of the Code of Civil Procedure, as well as the substantive appeal already filed by the petitioner against the impugned order dated 05/04/2021. Nevertheless, there can be no dispute about the fact that if the application under Order 7 Rule 11 of the Code of Civil Procedure was to be taken up for decision and necessary observations were not to be given by this Court, there is possibility of the observations made in the impugned order influencing the Court below while deciding the pending application under Order 7 Rule 11 of the Code of Civil Procedure. At the same time, during the pendency of the substantive appeal filed by the petitioner against the impugned order, it would not be appropriate for this Court to go into the merits of the impugned order either on the findings on the question of maintainability of the suit or otherwise. Therefore, it would be appropriate that the present writ petition is disposed of with appropriate observations.

8. At this stage, the learned Senior Advocate for respondent No.1 has informed this Court that an application for amendment of plaint is also filed on behalf of respondent

No.1. According to the learned Senior Advocate, this was necessitated in order to place before the Court below the conduct of the petitioner after the interim order was passed by this Court on 10/06/2021. The learned Senior Advocate relied upon judgments of this Court in the cases of **Pramod s/o Manoharrao Konge Vs. Shantaram Balkrushna Dhok** reported in **2017(3) Mh.L.J. 223** and **Bharat Travellers Vs. Sumitrabai Vinayakrao Buty** reported in **2017(6) Mh.L.J. 703**, to contend that when an application for amendment of plaint is pending, such an application is to be decided before considering the application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, in the interest of justice.

9. This Court has perused the aforesaid judgments and it is indeed laid down therein that it would be appropriate that the application for amendment of plaint is decided before the application for rejection of plaint is taken up for consideration and that this would be a procedurally correct approach, for the reason that even if the application for rejection of plaint was to be considered and granted, the plaintiff would be entitled to file a fresh suit to include the subject matter of the proposed amendment in such a fresh suit.

10. This Court finds substance in the aforesaid submission made on behalf of respondent No.1.

11. In view of the above, the present writ petition is disposed of in the following manner :

A Considering the petitioner has filed a substantive appeal, challenging the impugned order dated 05/4/2021, this Court refrains from interfering with the impugned order.

B The Court below is directed to consider the pending applications before proceeding further in the matter.

C Accordingly, the Court below is directed to take up the application for amendment of plaint at Exh.42 for consideration forthwith. The said application shall be decided within a period of four weeks from today.

D Thereafter, the Court below shall immediately take up the application for rejection of plaint at Exh.14 for consideration. It shall be decided within three weeks of disposing of the application for amendment of plaint.

E The Court below shall decide the aforesaid applications at Exhs.14 and 42 uninfluenced by the observations made in the impugned order.

F Since there is an apprehension expressed that the Court below, presided over by the Judicial Officer who is still holding the post, has already made up his mind regarding maintainability of the suit, this Court is of the opinion that it would be appropriate that the applications and suit are taken up by an alternative Court. Accordingly, the Principal District and Sessions Judge, Nagpur, is directed to forthwith allot the pending Special Civil Suit No.219/2021, along with applications filed therein to an alternative Court. An appropriate order in that regard be passed within one week from today.

12. It is clarified that the interim order dated 10/06/2021, granted by this Court pertained to the impugned order dated 05/04/2021, passed on Exh.16 and not the order dated 02/03/2021, which appears to be a typographical error in the prayer clause of the writ petition.

13. The Writ Petition stands disposed of.

JUDGE