

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 79 OF 2023
IN
NOTICE OF MOTION NO. 2016 OF 2017
IN
SUIT NO. 1051 OF 2007

Apex Urban Co-op. Bank of Maharashtra ... Appellant
& Goa Ltd. (Org. Applicant)

V/s.

Deposit Insurance & Credit Guarantee Corporation & Ors. ... Respondents

Mr. Kirit Hakani a/w Niyati Mankad for Appellant.

Mr. Prasad Shenoy a/w Kirti Ojha i/by BLAC Co. for Respondent No.1.

Mr. Devanshu Desai for Respondent No.2.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATED : 15th DECEMBER, 2023.

P.C. :

1. The present Appeal impugns an order dated 6th December, 2017, dismissing the Notice of Motion filed by the Appellant by which the Appellant sought impleadment in the captioned Suit.

2. Mr. Hakani, learned counsel for the Appellant, submitted that the Appellant was a necessary party to the Suit since the Appellant had admitted dues against Respondent No.2 in respect of which Respondent No.2 was adjudged judgment debtor and liable to pay an amount of Rs.49 Crores in favour of the Appellant along with interest as more particularly set out in the Affidavit in Reply of Notice of Motion.

3. Mr. Hakani also pointed out that the reasons why the Appellant was a necessary party was because Respondent No.1 (being the Plaintiff in the captioned Suit) claimed priority over other creditors of Respondent No.2 including statutory dues, secure creditors and fixed deposit holders. It was on the basis this he submitted that the right of the Applicant qua the amounts adjudicated as due from Respondent No.2 would be severely prejudiced, since any order or direction of this Court in relation to disbursement of the amount claimed by the Plaintiff would prejudicially affect the right of the Applicant. It was on the basis of this he sought impleadment of the Appellant.

4. Per contra, Mr. Shenoy, learned counsel appearing on behalf of first Respondent (Plaintiff in the Suit) submitted

that the Appellant's Application for impleadment was entirely misconceived. He pointed out that the Appellant could always proceed in execution to recover the amount claimed to be admitted/adjudicated in favour of the Appellant. He submitted that the Appellant was in no way thus either a necessary or a proper party to the captioned Suit which was filed to recover the amounts paid by the first Respondent to the depositors of first Respondent. Mr. Shenoy pointed out that infact the principal amount claimed in the Suit had already been paid and what remained was only the interest amount and cost. It was thus he submitted that the Appellant was neither a necessary nor a proper party to the captioned Suit. He submitted that the Appellant could always filed execution proceedings independently to recover any amount that it claimed was due and payable to the Appellant. He submitted that the Learned Single Judge by the Impugned Order had correctly rejected the Application of the Appellant for impleadment.

5. We have heard learned counsel and find that no case whatsoever has been made in the Appeal. Learned counsel for the Appellant has failed to impress upon us as to how the

Applicant could ever been construed as a necessary party in a recovery Suit filed by the Plaintiff against a party from whom the Applicant claims to be entitled to a money decree and/or payment.

6. In view thereof, the Appeal is dismissed with no order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)