



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

959 WRIT PETITION NO. 5466 OF 2023

Rajlaxmi Infotech Private Ltd.,
Through its Director,
Vishal Manoharrao Budhwant
Age: 43 years, Occu. Business,
R/o. Shivram Nager, Karegaon Road,
Parbhani, Tal. & District : Parbhani. .. **PETITIONER**

VERSUS

Vaidhyanath Urban Co-operative Bank,
Ltd. Parali-Vaijainath,
Tq. Parali-Vaijainath, District : Beed,
Through its General Manager. .. **RESPONDENT**

...
Advocate for the petitioner : Mr.S.G.Jadhavar
Advocate for Respondent : Mr.A.R.Joshi
...

CORAM : ARUN R. PEDNEKER, J.

DATE : 13.08.2024

P.C. :

1] By the present petition, the petitioner is challenging the order dated 21.02.2023 passed by the District Judge, Parbhani below Exh.59, thereby application for amendment of the suit is dismissed.

Brief facts leading to filing the present petition are summarized as under :

2] The petitioner – plaintiff filed Regular Civil Suit No. 54 of 2018 before the Civil Judge Senior Division, Parbhani claiming perpetual injunction against the defendant that the defendant shall not interfere into the peaceful possession of the plaintiff in respect of the properties mentioned in the plaint. The respondent Bank filed an application below Exh.18 under Order 7 Rule 11 (d) of Civil Procedure Code and seeks rejection of the plaint. The respondent – Bank has issued notice under Section 13 (2) and (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act [for short ‘SARFAESI Act’].

3] It is the contention of the respondent Bank that as per Section 34 of the SARFAESI Act, the Civil Court has no jurisdiction to decide the dispute. Thereafter, by order dated 27.02.2018, the Civil Judge Senior Division, Parbhani allowed the application below Exh.18. Thereafter, the petitioner filed Appeal bearing RCA No.27/2018 before the District Judge, Parbhani. Along with the said Appeal, the petitioner has also filed an application for interim relief below Exh.5 and the same is rejected by the District Judge,

Parbhani on 18.04.2018. Against the said order, the petitioner filed Appeal from Order No.37/2018 before this Court, which was disposed of by order dated 04.10.2018, directing the Appellate Court to decide the RCA No.27/2018 as expeditiously as possible and in any case on or before 28.02.2019. The Appeal is not yet decided and is pending. During pendency of the Appeal, the respondent Bank placed the properties of the petitioner for auction against which the petitioner again approached this Court seeking relief against selling of the properties.

4] Needless to mention that there are various litigation pending between the parties. During pendency of the Appeal before the District Court, the petitioner filed an application for amendment of the plaint wherein it is contended that the fraud played by the respondent Bank upon the petitioner. However, the application filed by the petitioner is rejected by the Appellate Court holding that the High Court has directed the Appellate Court to decide the appeal as expeditiously as possible. It is further observed that the issue before the Appellate Court is with regard to the tenability of the suit before the trial Court in view of the bar under the provisions of the SARFAESI Act. It is further observed that if the suit is held to be tenable, the appellant would be entitled to prefer appropriate application for

amendment before the trial Court and such application shall be considered on its own merit. Therefore, the application for amendment is rejected by the Appellate Court. Against which, the present writ petition is filed.

5] The learned counsel for the petitioner submits that the Bank has transferred certain amount without consent of the petitioner and as such the Bank has committed fraud upon the petitioner. He further submits that all such relevant facts are necessary to be brought on record.

6] *Per contra*, the learned counsel for the respondent submits that the issue in respect of tenability of the suit is decided by the trial Court and the issue before the Appellate Court only pertain to jurisdiction of the trial Court to decide the suit in view of bar contained in SARFAESI Act. Therefore, the learned counsel submits that the present petition may be dismissed.

7] Considering the submissions raised by the parties, it is to be noted that the Appellate Court is required only to decide whether the suit is maintainable before the trial Court in view of bar contained in SARFAESI Act. In the event, the Appellate Court decides that suit is maintainable before the trial Court, in such situation, the suit shall be

remanded to the trial Court and then the application for amendment can be considered by the trial Court.

8] In view of the same, the present Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC