



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

**50 WRIT PETITION NO. 15364 OF 2023
WITH WRIT PETITION NO. 15371 OF 2023**

**SUSTAINABLE AGRO COMMERCIAL FINANCE LTD THROUGH
AUTHORIZED REPRESENTATIVE
VERSUS
BALBHIM SHRIRAN BHUIBHAR AND OTHERS**

Mr. B. G. Lathe, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 18th NOVEMBER, 2024

PER COURT :-

1. These petitions take exception to the decree dated 08/07/2017 passed in Lokadalat in R.C.S. No. 678/2017 and 14/09/2019 in R.C.S. No. 441/2019.

2. The petitioner is a financial institution. It is claimed by the petitioner that respondent nos.1 and 2 are farmers and they availed loan for purchase of Micro Irrigation System. On compliance of due requirements from respondent nos.1 and 2, petitioner-company sanctioned then a Term Loan Facility of Rs.3,22,000/- in Writ Petition No. 15364/2023 and Rs.11,76,000/- in Writ Petition No. 15371/2023. A loan cum hypothecation agreement was executed between the parties. A promissory note was also executed by these respondents in favour of the petitioner company. A mortgage deed was duly registered with Sub Registrar Office, Georai, land bearing gut no. 738 admeasuring 4 H 67 R

in Writ Petition No. 15364/2023 and Sub Registrar Office, Sangamner, lands bearing gut no. 10/8, 21/6, 21/20, 23/1, 41/9, 10/6 in Writ Petition No. 15364/2023 were given in security for repayment of loan. It is the case of the petitioner that in spite of having knowledge of the mortgage, the respondents filed suit R.C.S. No. 678/2017 and 441/2019 before Civil Court for partition and separate possession with a view to defraud to petitioner company. It is also alleged that after filing of the suit the a compromise was arrived at and decree was obtained in Lokadalat. It is claim of the petitioner that the entire amount has remained to be unpaid and hence the petition challenges the collusive decree obtained by fraud.

3. Learned counsel for the petitioner submits that without knowledge / joining the petitioner as a party to the said suit, decree is obtained in collusion by the respondents. It is his submission that because of the said decree the petitioners is not in a position to recover the loan amount from respondent nos. 1 and 2.

4. It is not the case of the petitioner that the suit properties are not ancestral joint family properties of the respondents. There is no legal embargo for the respondents to file a suit for partition and separate possession of the suit properties to the extent of their respective shares. Filing of such suit and determination of the shares of the parties cannot

be be treated as creating any third party interest in the subject property. In any case, the petitioner would have never become a necessary or proper party in case of a suit for partition.

5. Merely because the petitioner is unable to recover money advance to the respondent nos.1 and 2 it can not be claimed that the suit filed by the respondents is collusive and the decree obtained is by fraud. The execution of mortgage is sufficient for the petitioner to create charge on the property and if petitioner desires appropriate steps could be taken for the recovery of the loan amount due. In absence of taking any such steps it is not open for the petitioner to claim that the loan/ money is not recoverable. In any case, petitioner was unable to show any embargo created by law for the members of the joint family to file a suit for partition when there is a mortgage of the suit properties.

6. Having regard to the above facts, there is merit in the petition. Hence, petitions stand dismissed.

7. Needless to say that it is open for the petitioner to recover loan /money due from the borrower and guarantor in accordance with law.

(R. M. JOSHI, J.)

ssp