IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.75 OF 2024

Dalmia Bharat Sugar & Industries Ltd. .. Petitioner

Versus

Vita Merchant Co-Operative Bank Ltd. & Ors. .. Respondents

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Mr.Drupad Patil with Mr.Ajinkya Patil for the Petitioner.

Mr.Mandar Bagkar with Mr.Vishwas Gadage for the Respondent No.1.

Mr.R.A.Thorat, Senior Advocate i/b Mr.Suryajeet P. Chavan for the Respondent Nos.2 to 25.

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CORAM: BHARATI DANGRE, J.
DATED : 05th DECEMBER, 2024

P.C:-

1. In a suit filed before the Co-Operative Court by Vita Merchants Co-Operative Bank Ltd., Vita, for recovery of an amount of Rs.3,40,29,402/-, an application for amendment came to be filed on 07/11/2022 in Dispute No.154 of 2018, seeking amendment for making the Respondent No.33-Dalmia Bharat Sugar & Industries Ltd., New Delhi (the present Petitioner) jointly and severally liable for the amount claimed.

The background facts reveal that Vita Merchants Co-Operative Bank Ltd, the disputant, had advanced loan to Ninaidevi Sahakari Sakhar Karkhana Ltd., opponent No.1 and the loan was disbursed in two tranches; the first being in the sum of Rs.1,20,00,000/- and Rs.99,00,000/- being lend in the second tranche.

Since for some reasons, the loan could not be repaid, the banks and the lenders formed a consortium, after obtaining necessary orders and it secured the assets which came to be sold through an auction under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, **"SARFAESI Act"**).

The present Petitioner, being the successful bidder, deposited a sum of Rs.24,30,00,000/- and on 01/09/2024, a sale certificate was issued in its favour. Pursuant thereto, Respondent Nos.26 to 32, distributed the amount in proportion and the consortium of banks and even the Disputant-Vita Merchants Co-Operative Bank Ltd. received its share as early as on 31/03/2015. However, on being dissatisfied with this distribution, it lodged its claim in the Co-Operative Court at Sangli for recovery of an amount of Rs.3,40,29,402/- by impleading the Sahakari Sakhar Karkhana as Opponent No.1 with the Respondent Nos.2 to 25 being its Ex-Directors. It also impleaded the lenders consortium, as Respondent Nos.26 to 32 and the present Petitioner, the successful auction purchaser, is also impleaded as Respondent No.33.

2. The dispute categorically mentioned that the factory belonging to Respondent No.1 was taken into possession in terms of Section 13(4) of the Securitisation and the Reconstructions of the Financial Assets and Enforcement of

Security Interest Act, 2002 and upon its sale, on pro-rata basis, the bank received an amount of Rs.63,90,720/-. The complaint also mention that the factory (karkhana) of the Opponent No.1 was purchased by Defendant No.33 and it is pleaded that Defendant Nos.1 to 25 are individually and severally liable for settlement of the dues payable to the bank, but alongwith the interest, after the deposit of the said amount, sum of Rs.3,40,05,027/- is still receivable by the Disputant and despite repeated notice, being issued from time to time, the amount was not received by it.

The plaint also gave the bifurcation of the amount claimed, which included a sum of Rs.1,03,91,292/- as the principal amount with the interest amount of Rs.2,36,13,735/- payable till 30/06/2017 alongwith the service charge, notice charge and miscellaneous expenses.

3. In the application moved by the Disputant on 07/11/2022, an amendment in the prayer clause was sought and instead of seeking recovery of the amount from Respondent Nos.2 to 25, it is pleaded that it shall be read as Respondent Nos.2 to33.

It is worth to note that before this application was filed and taken up for consideration, Respondent No.33 (present Petitioner) has taken out an application under Order 7 Rule 11 (a) and (d) of the Civil Procedure Code stating therein that Defendant No.33 had purchased the Defendant No.1's factory and no cause of action had arisen in favour of the Disputant against it, as the Disputant had admittedly consented and authorised the Opponent Bank to initiate action under Section

13 of the SARFAESI Act and, since, no cause of action has been raised/disclosed against it, the plaint deserve a rejection. This application was opposed by the Vita Merchants Co-Operative Bank Ltd. and on 07/11/2022, it was filed.

4. Considering the application for amendment, pleading that the relief was also to be sought against Respondent Nos.2 to 33 including the Petitioner, the Co-Operative Court, considered the nature of the dispute and permitted the amendment, by recording that it did not change the nature of the proceedings and the amendment sought was necessary for effective adjudication of the dispute.

5. I have heard Advocate Drupad Patil for the Petitioner, who has pressed into service the principle contained in the decision of the Apex Court in ***South Konkan Distilleries & Anr. Vs. Prabhakar Gajanan Naik & Ors.***[1], laying down the law revolving around Order 6 Rule 17 of CPC to the effect that the amendment seeking to introduce claim, which was arguably time-barred, shall not be allowed. He has urged that the right of the Petitioner was crystallized on 01/09/2014, when the sale certificate was issued in its favour pursuant to the deposit of the amount of Rs.24,30,00,000/- and, therefore, no claim can be staked by the Petitioner against it after lapse of time.

6. On hearing the learned senior counsel Mr.Thorat for the Respondents and on taking into consideration the well settled position of law revolving around Order 6 Rule 17 of CPC, the principle laid down is clearly discernable to the effect that the

1 (2008) 14 SCC 632

Court may at any stage of the proceedings allow either party to alter or amend the pleadings in such manner and on terms as may be just and all those amendments may be allowed which are imperative for determining the real controversy between the parties.

Running parallel to this is the test of prejudice to the other side.

The present Petitioner is already impleaded as Respondents in the dispute, but no relief was sought against it, as the bank had restricted its claim of recovery of the amount against the Respondent Nos.2 to 25.

Since it was already Respondent in the proceedings, the amendment is now sought to recover the amount even against the other Respondents, including Respondent No.33 i.e. the present Petitioner.

The Petitioner undisputedly has every right to contest the said relief by filing an appropriate written statement and, therefore, since to consider whether the amendment is necessary, the merits of the claim cannot be gone into and amendments are definitely permitted when it would avoid multiplicity of proceedings, in my considered opinion, finding no legal infirmity in the order allowing the amendment in the proceedings, filed by the bank, expanding the scope of the prayer clause to the present Petitioner (Respondent No.33), the present Petition deserve a dismissal and it stands dismissed.

Needless to state that since the order allowing the amendment in the dispute has been upheld, Defendant No.33 i.e. the present Petitioner is entitled to file the written statement, responding to the amended proceedings within a period of eight weeks from today.

No order as to costs.

(BHARATI DANGRE, J.)