



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17077 OF 2024

Dhirendra Ramsamujh Mishra

... Petitioner.

Versus

Abhyudaya Co-Op Bank Ltd. and Ors.

... Respondents.

Mr. Atul Damle, Senior Advocate i/by Mr. Ashok Mishra, Advocates for the
Petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : November 26, 2024

P. C. :

1. By this Petition, the challenge is to the judgment dated 3rd October, 2024 passed by the Co-operative Appellate Court dismissing the Revision Application and confirming the order of the Co-operative Court below Application Exhibit-52 in Dispute No.358 of 1999. In the original dispute, an Application came to be filed under Order II Rule 2 read with Order VII Rule 11 of the Code of Civil Procedure, 1908 [for short, "**CPC**"] seeking dismissal of the subsequent disputes as no leave was obtained as contemplated by Sub-section (2) of Order II Rule 2 of the CPC.

2. The fact appears to be that the Disputant had filed four different disputes in the year 1999 against the same parties on the

same date for different claims. The Application was rejected on the ground that the cause of auction is distinct and separate as the loans were obtained with respect to purchasing of vehicle and cash credit facilities which are separate and distinct. It was also noted that if all the different kinds of loan transactions and agreements are clubbed together in one dispute, the same would lead to complicated issues.

3. Mr. Damle, learned Senior Advocate would submit that the disputes were filed for recovery of the amount under the same loan account and against the same parties and the four disputes came to be filed on the same date. He submits that the Disputant-Bank ought to have clubbed the claims as raised under the other disputes in the first dispute of the year 1999 and could not have filed subsequent disputes without obtaining leave under Order II Rule 2 of the CPC. He would submit that the subsequent disputes are in respect of the same cause of auction and therefore, there is a bar for filing of the subsequent disputes without obtaining leave of the Court and thus, not being maintainable, the Application under Order VII Rule 11 read with Order II Rule 2 of CPC came to be filed.

4. Considered the submissions and perused the record.

5. The facts are undisputed that there are four different hypothecation agreements resulting in distinct disputes and that the purpose of loan transactions was with respect to purchase of vehicle and cash credit facilities. Each of the default in the repayment under the hypothecation agreement gave rise to a different cause of action to the disputant-bank and even the underlying transactions for the financial assistance were separate and distinct as some were in respect of purchase of vehicle and other were in respect of cash credit facilities. Even the loan amounts and the claims raised in the disputes are different. Order II Rule 2 of the CPC provides that whether a Plaintiff omit to sue in respect of any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. The provisions of Sub-Rule (1) of Rule 2 of Order II of CPC provides that the suit is required to include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action and therefore, it is necessary that all four disputes should arise out of the same cause of action. Merely because the disputant-bank has advanced the loan facilities under one loan account does not indicate that the cause of action is one and the same. The Appellate Court has specifically held that the dispute is in respect of four different

hypothecation agreements and the agreements did not give rise to the same cause of action as the transactions were in respect of purchase of vehicle and cash credit facilities and that if the different kinds of loan transactions and agreements are clubbed together, the same would lead to complicated issues. After considering the judicial pronouncements on the subject, the impugned order has been passed which does not warrant interference.

6. In light of the above, the Petition is devoid of merits and stands dismissed.

[Sharmila U. Deshmukh, J.]