

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LEAVE PETITION NO.7 OF 2024
IN
COMMERCIAL SUIT NO. 207 OF 2022

IDBI Trusteeship Services Limited

...Petitioner

V/s.

Ojas Tradelease and Mall Management
Private Limited and Anr

...Respondents

Mr. Jehaan Mehta with Mr. Sunil Tilokchandani and Mr. Himalaya Chaudhary i/b Manilal Kher Ambalal & Co., Advocate for the Petitioner.
Mr. Harjsh Moorjani with Mr. Devdattta Uchil i/b Link Legal for Respondents.

Mrs. S. S. Dukhande, Section Officer, Court Receiver present.

CORAM : ABHAY AHUJA, J.

DATE : 10th JULY, 2024

PC. :

1. Both the learned Counsel are *ad-idem* that since the present suit has been filed on the basis of deeds of mortgage and since the underlying claim was also secured upto an amount of Rs. 3.50 Crs by deeds of guarantee, this application under Order 2 Rule 2 of the Code of Civil Procedure, 1908 (the “CPC”) can be allowed, so that the Plaintiff can also pursue his remedy of filing the suit on the basis of the deeds of guarantee as the claim arises pursuant to the same underlying transaction.

2. I have perused the Petition and in particular paragraphs 4, 5 and 9 of the Petition as well as paragraph 29 in the Complaint and I am of the view that in view of the provisions of the Order 2 Rule 2 of the CPC as well as submissions made by the learned Counsel, the Petition be allowed.

3. Accordingly, the Petition is made absolute in terms of paragraph 9, which reads thus:-

“9. That leave under the provisions of Order II Rule 2(3) of the Code of Civil Procedure, 1908 be granted to the Petitioner to omit to sue the Respondent No.1 and other parties under the Transaction Documents and/or any other person/party in their capacity as Security Providers for its claim against each of them and the Petitioner reserves its rights to seek further reliefs, remedies and adopt appropriate proceedings for its claim, if so, required in law, arising out of the cause of action including enforcing the securities and for damages and losses caused to the Petitioner for which the Petitioner omits to sue the Respondent No.1 and other parties under the Transaction Documents as described in the above Suit and for all the reliefs other than those claimed therein.”

4. Petition accordingly stands allowed.

(ABHAY AHUJA, J.)