IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 4261 of 2024

M/s B. Himmatlal Agrawal
Versus
HDFC Bank, through its Managing Director, Mumbai and others

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri M.G.Bhangde, Senior Advocate assisted by Shri S.S.Sarda, Advocate for the petitioner.
Shri C.S.Kaptan, Senior Advocate assisted by Shri S.D.Ingole, Advocate for the respondents.

CORAM : N.R.BORKAR, J.
DATED : 19th AUGUST, 2024.

The petitioner herein has filed an appeal before the District Court, Nagpur being Regular Civil Appeal No. 118 of 2024, against the order of rejection of plaint passed by the trial Court. By the order impugned in this petition the learned District Court has rejected the application filed by the petitioner for amendment of plaint.

2. It is not in dispute that certain credit facilities were sanctioned by respondent no.1-bank. On 29th July 2016 the account of the petitioner was declared as Non-performing asset. An application under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as “SARFAESI Act”) was thereafter filed before the Additional District Collector. By order dated 4th December, 2019 the said application was allowed and permission was granted to take possession of the mortgage properties.

3. According to the petitioner due to COVID-19 pandemic, there were no buyers for the proprieties and thus they requested to respondent no.1 for one time settlement. It is stated that their one time settlement offer was accepted and six mortgage properties were released. They sold the said properties and deposited the entire consideration amount with respondent No.1-bank. It is alleged that on 05.04.2022, the respondent

No.1-bank had issued no due certificate as the entire amount of one time settlement was paid and it was informed to the petitioner that in due course they would return the title deeds of the other mortgage properties along with security cheque.

4. According to the petitioner to their utter surprise, inspite of payment of entire one time settlement amount they received the communication dated 16th October, 2023 from Tahsildar, Nagpur in which it was mentioned that as per the order of the Additional District Collector dated 4th December, 2019 action would be taken for taking possession on 31st October, 2023. The suit was thus filed with following prayers:

> "i. Hold and declare that the act of retaining the title deeds of the collateral security mentioned in paragraph no.1 by the defendant no.1 bank inspite of clearing of the credit facility (Limit Account No. 10538747, 12482790000120) of the defendant no.1 bank is bad in law, arbitrary and violation of Fair Banking practice Code adopted by defendant bank;
> ii. Hold and declare that the accounts being settled, defendants were not entitled to take recourse to the order of the District Collector dated 4th December, 2019 the passed in terms of section 14;

iii. Hold and declare that possession of the property situated at Gopal Nagar, Nagpur taken by the defendant nos. 2 and 3 on 31st October, 2023 for and on behalf of the defendant no.1 is illegal, arbitrary and against the guidelines in numerate it in the body of the plaint;

iv. Hold and declare that the plaintiff is entitled to the original title deeds, of the property mentioned in paragraph No.1 and also cheque No. 000344 drawn on Union Bank of India, Ghat Road Branch to the plaintiff.

v. Under a decree of mandatory injunction, direct the defendants to handover the original title deeds of the properties mentioned in paragraph 1 of the plaint and also the cheque No. 000344 drawn on Union Bank of India, Ghat Road Branch to the plaintiff.

vi. Hold and declare that defendant bank and each of their main agents and all sub-ordinates or not entitled to take any steps towards taking possession of the suit property(s) enumerated in the 11th Paragraph of the plaint.

vii. Grant ad-interim relief in terms of prayer clause

viii. Allow the instant suit.

ix. Grant any other relief which this Hon'ble Court deems fit and proper in the interest of justice."

5. According to the respondent No.1 -bank the cash credit facility of Rs. 41,13,00,000/- was sanctioned in favour of the petitioner. As the petitioner committed default in repayment of the loan, the account was declared NPA. To recover the outstanding dues of Rs.45,23,88,823.27 they initiated the proceedings under the provision of SARFAESI Act

before the Debt Recovery Tribunal, Nagpur and the same are pending. It is further stated that in terms of provision of Section 14 of SARFAESI Act, the application was filed for taking physical possession of the secured assets and the same was allowed vide order dated 4th December, 2019. Thereafter, the respondent No.1-bank initiated the action for execution of the above order through the Tahsildar. At that time the present petitioner approached to the respondent No. 1-bank and made a request that they are having six buyers and they be permitted to sell mortgage properties. It is stated that request of the petitioner was accepted and the respondent No.1-bank consented for sale of six properties against the deposit of the entire sale consideration in the loan account. It is stated that as per the sanction letter dated 13th February, 2021, the petitioner and the buyers deposited the sale consideration amount of Rs. 4 crore in the loan account. It is stated that thereafter the said six properties were released and the original title deeds of the said six properties were delivered to the buyers. It is stated that the petitioner then requested for issuance of NOC regarding the release of the said six properties and accordingly the NOC dated 5th April, 2022 for the receipt of payment of the sale consideration was issued. The respondent No.1-bank has stated that after the issuance of said NOC, Release Deed dated 17th May, 2022 was executed wherein the petitioner admitted part dues. According to the respondent No.1-bank outstanding dues were more than 57 crores and therefore there was no question of settling it for meagre amount of Rs.4 crores.

6. I have heard Shri M.G.Bhangde, learned Senior Advocate for the petitioner and Shri C.S.Kaptan, learned Senior Advocate for the respondent No.1-bank.

7. Learned Senior Counsel for the petitioner submits that the suit was hurriedly filed with too brief pleadings as respondent no.1-bank was trying to take

possession of the mortgage properties. It is submitted that application for amendment was thus moved to elaborate those pleadings and to bring on record certain other material facts. It is submitted that the only test to allow the amendment is whether amendment was necessary to decide the real question in controversy between the parties. It is submitted that the Court below has, however, rejected the application on irrelevant grounds. The learned Senior Counsel for the petitioner submits that proposed amendment is in the nature of amplification of plea already taken by the petitioner. It is submitted that in terms of Order VI Rule 17 of Code of Civil Procedure it is imperative to allow all the amendments which are necessary for the purpose of determining real question in controversy between the parties. In support of his submissions, the learned Senior Counsel for the petitioner has relied upon various judgments of the Hon'ble Supreme Court and High Courts.

8. On the other hand, learned Senior Counsel for the respondent No.1-bank submits that the reason assigned by the petitioner that the suit was filed hurriedly is factually incorrect. It is submitted that no attempts were made to amend the plaint before the trial Court. It is submitted that the material facts like pendency of recovery proceedings before the Debt Recovery Tribunal and execution of release deed were suppressed and thus the amendment sought lacks bonafide.

9. The Hon'ble Supreme Court in *Ravajeetu Builders and Developers Vs. Narayanaswamy and sons and others* reported in *2009(10) SCC 84* has held:

> 63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.
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> (1) whether the amendment sought is imperative for proper and effective adjudication of the case?
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> (2) whether the application for amendment is bona fide or mala fide?
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> (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

> (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
> (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and
> (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.
> These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

10. According to petitioner, themselves they received the notice from the Tahsildar on 16th October, 2023 and thereafter they filed the suit on 7th November, 2023 i.e. after more than 20 days. Even assuming that suit was filed hurriedly, however the same was pending before the trial Court for more than four months. Be that as it may the fact of pendency of recovery proceeding before Debt Recovery Tribunal was not disclosed in the suit. According to the respondent no.1-bank, a release deed admitting part dues was executed after issuance of alleged No Due Certificate dated 5th April, 2022. However, there is no reference of the said

release deed in the plaint. Even in the proposed amendment execution of it is not disputed. The proposed amendment therefore does not appear to be bonafide. I am therefore not inclined to interfere with the impugned order. Hence, the petition is dismissed.

[N.R.BORKAR, J.]