



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2176 OF 2023

1] Aruna Mahendra Kala W/o
Late Mahendra Madanlal Kala,
Age : 56 years, Occ. Housewife,
Plot No. 55, Jawahar Co-op. Housing Society,
Jawahar Colony, Near Run Mochan, Ganpati Mandir,
Aurangabad 431 005

2] Mohamad Abdul Rub S/o Mohammad Abdul Gafoor,
Age : 59 years, Occu. Business,
R/o 8-1-22/1/J/1, Towli Chowki,
Hyderabad 500 008 Telangana

.. Petitioners

Versus

Akola Janata Commerce Co-op. Bank Limited
and others

.. Respondents

...

Advocate for the petitioners : Mr. Prasad D. Jarare

AGP for respondent no. 2 : Mr. Amar V. Lavte

Advocate for respondent no. 1 : Mr. Santosh B. Mene

Advocate for respondent no. 3 : Mr. Ram Malani h/f. Mr. A.S. Bajaj

Advocate for respondents no. 4, 5, 6(i) and 6(ii) : Mr. S.V. Adwant

Advocate for respondents no. 7 to 9 : Mr. Sushant V. Dixit

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**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

RESERVED ON : 05 MARCH 2025

PRONOUNCED ON : 09 APRIL 2025

ORDER (MANGESH S. PATIL, J.) :

Learned advocate for the petitioners, on instructions sought leave to withdraw the writ petition on the ground that the purpose of the petition has been subserved inasmuch as the petitioners were merely soliciting writ of prohibio against the

respondent no. 1 - co-operative bank from releasing the mortgaged properties of petitioner no. 1 mortgaged with it till the expiry of extended period of the performance bank guarantee which was to come to an end on 26.02.2024.

2. He would tender across the bar no dues certificate dated 12.11.2024 issued by respondent no.1 which is taken on record and marked 'X' for the purpose of identification.

3. However, learned advocate for respondents no. 7 to 9 Mr. Dixit and for respondents no. 4 to 6 Mr. Adwant vehemently submitted that the petition is frivolous. There was cause of action. Even a false statement was made in the petition that no proceeding was filed and pending touching the subject matter when in-fact, petitioner no. 1 and respondents no. 4 to 6 are involved in civil proceedings in the form of suits pending before the civil court since before filing of the petition. For this reason, they would pray for dismissal of the writ petition by awarding compensatory costs to the contesting respondents.

4. We have heard both the sides.

5. True it is that the petitioners have in paragraph no. 16 averred not to have filed any appeal or application in any Court touching the subject matter of the writ petition which fact clearly stands

belied by absence of any demur to the specific pleadings in the affidavit in reply filed by respondents no. 4 to 6 disclosing the particulars of two suits i.e. Regular Civil Suit no. 198 of 2021 and Regular Civil Suit no. 73 of 2022 in respect of the same properties which are subject of the mortgage by the husband of the petitioner executed in favour of respondent no. 1 - bank. Even the copies of these complaints have been placed on record. It is evident that even one MARJI no. 909 of 2022 was also filed by petitioner no. 1 seeking letters of administration and succession certificates wherein she had claimed injunction restraining respondents no. 4 and 5 from transferring, alienating or selling or creating third party interest in these very properties.

6. It is also evident that respondent no. 4 was propounding a will of the deceased - husband of petitioner no. 1 to assert right in these very properties in Regular Civil Suit no. 198 of 2021. Respondent no. 4 and his son had arrayed petitioner no. 1, respondent no. 11, respondent no. 12 and respondent no. 13 as also respondents no. 5 and 6 as defendants, seeking a declaration about respondent no. 4 and his son being the absolute owners in possession of these very properties and they were also claiming a declaration regarding share of the son of respondent no. 4 in the partnership firm and also injunction.

7. Similarly, even petitioner no. 1 had filed Special Civil Suit no. 73 of 2022 against the rest of the afore-mentioned persons for declaration about she along with respondents no. 11 to 13 being the owners of the same land gat no. 388/2.

8. Obviously, one cannot go into the merits of the rival claims to the properties. However, the fact remains that the averment in the petition that no litigation has been pending in respect of the same subject matter, is factually incorrect.

9. However, it is also evident that initially, the petition was filed arraying only respondent no. 1 - co-operative bank and with a limited prayer as mentioned hereinabove seeking prohibition from releasing the mortgaged properties till the expiry of the performance bank guarantee which the deceased husband of petitioner no. 1 had furnished under a contract entered into with respondent no. 3 - Maharashtra State Electricity Distribution Company Limited.

10. Since rest of the respondents were arrayed subsequently, by amending the petition and also incorporating additional prayers, simplicitor seeking injunction against respondent no. 1 - bank from executing release deeds of the mortgaged properties, in our considered view, sufficiently explains that the statement about absence of any litigation made in the averments at the initial stage must have

been erroneously continued and cannot be alleged to be made falsely, since admittedly, the dispute at the initial stage when the petition was filed was simplicitor praying to be continued the mortgage till the time performance bank guarantee issued by respondent no.1 - bank was alive.

11. True it is that it would have been appropriate that while effecting the amendment of the petition, while arraying the respondents and adding some prayers touching the properties in question, this declaration of absence of any litigation could have been deleted. However, in our considered view, the petitioners cannot be fastened with the allegation of falsity in making such declaration.

12. In our considered view, when the petitioner is abandoning the claim unconditionally, in the light of the afore-mentioned circumstances, imposition of compensatory costs is not warranted.

13. The petition is disposed of as withdrawn.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/