IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 425 OF 2022

Keshav Vitthalrao Hambir
VERSUS
Ramchandra Venkatrao Demgunde And Others

Mr. P. P. Mandlik, Advocate for Petitioner
Mr. V. D. Gunale, Advocate for Respondent Nos. 2 and 3

CORAM : R. M. JOSHI, J.
DATE : 07th April, 2025

PER COURT :-

1. This petition takes exception to the order passed below Exhibit 38 in Special Civil Suit No. 12/2019 rejecting application filed by the petitioner-plaintiff for adding Housing Development Finance Corporation (for short "**HDFC Bank**") as a party defendant to the suit.

2. The facts which led to the filing of this petition narrated in brief as under :-

Petitioner claimed himself to be Karta of joint family and has purchased suit property under the registered sale deed dated 04.09.2001 and became owner thereof. Petitioner wanted to carry out construction upon the suit land and, therefore, obtained necessary permissions from the Municipal

Authorities. As the petitioner was in the need of funds in order to execute the construction upon the suit property, he obtained handloan of Rs. 25,000/- by executing promissory note dated 09.02.2025 in favour of Respondent No. 1/Original Defendant No. 1. It is further contended that petitioner was also required to approach HDFC Bank for raising fund of Rs 2,50,000/-. Raising of funds was done by depositing title deeds of the said property and by mortgaging same as collateral security. Petitioner was thereafter required to approach Respondent No. 1 for seeking additional funds and obtained financial help to the extent of Rs. 2,00,000/-. It is claimed by the petitioner that sometime around November, 2005, Respondent No. 1 started demanding the repayment of the borrowed amount along with interest. Petitioner, therefore, executed nominal sale deed in favour of Respondent No. 1 without handing over the possession or title of the property. It is alleged that Respondent No. 1 executed sale deed in favour of Respondent No. 2 and 3 on the basis of power of attorney. Petitioner tried to approach various authorities such as Police Authority, Collector, Assistant Registrar Co-operative Societies, Ahmedpur, etc but could not get any relief. Hence, Special Civil Suit No. 25 of 2019 came to be filed for recovery of the possession of the suit property.

3. During the pendency of this suit, Application Exhibit 36 came to

be filed by the petitioner-plaintiff for joining HDFC bank as a Party defendant to the suit. It is contended by the plaintiff that after filing of the suit now the bank is bent upon to recover the loan amount due from plaintiff. According to the plaintiff, the bank is necessary party to the suit. This contention is opposed by the defendant contending that the bank is neither necessary nor proper party and bank has no concern with the subject matter of the suit. It is also claimed that nature of suit would change if the bank is added as a party defendant. Trial Court rejected the said application by observing that plaintiff has not shown any cause for joining bank as a party defendant.

4. Learned counsel for the petitioner by referring to the averments made in the plaint submits that there is already a plea taken in the plaint with regard there being mortgaged in respect of the suit property that HDFC bank. It is his further submission that having regard to the said fact, the bank becomes necessary and proper party to the suit. Learned counsel for respondent refutes the said contention

5. There is no dispute about the settled position of law, that to add any person as party to the suit, he should be necessary or proper party thereto. Perusal of the plaint indicates that averments are made in respect of mortgage being created in favour of the bank but relief sought are against Defendant

Nos. 1, 2 and 3 of eviction from the suit property and possession thereof. Alleged mortgage created by plaintiff himself in favour of the bank is concerned, the said fact has not bearing on the relief sought against the defendants. In case, bank wishes to recover the loan amount from the plaintiff, it may adopt independent proceedings as provided by law. The claim of bank, if any, is independent to the outcome of suit. The Trial Court has rightly taken into consideration the said aspect and since the bank is neither necessary or proper party to the suit, rejected the application Exhibit 38.

6. In the facts of the case and for want of perversity in the said findings, no interference is required in the said order. Petition stands dismissed.

(R. M. JOSHI, J.)

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