

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16152 OF 2024

Abha Rabindranath Samanta

...Petitioner

VS.

Yes Bank Ltd. and Ors.

...Respondents

Mr. Ashish Verma, for the Petitioner.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 23, 2025

P.C:

1. Heard the learned counsel for the petitioner.
2. The petitioner assails the order passed by the learned Judge, City Civil Court, Mumbai in Chamber Summons Nos. 1320 of 2023 and 1321 of 2023 whereby the Chambers Summons were partly allowed and respondent Nos. 2 to 4 defendant Nos. 2 to 4 came to be deleted from the array of defendants by invoking the power under Order I Rule 10(2) of the Code of Civil Procedure, 1908.
3. The petitioner/plaintiff has instituted the suit claiming damages, return of documents and an apology from the defendants. Samraj Gold Export Private Limited, of which the plaintiff's son was the Director, had obtained loan facilities from respondent No. 1-Bank. The subject flat was mortgaged as a security for the said loan.
4. The respondent No. 1 initiated proceedings to recover the loan amount. Respondent No. 2 is an Advocate. Respondent No. 3 is a firm run by respondent No. 2. Respondent No. 4 is the wife of the

respondent No. 2. The allegations of conspiracy to sell of the subject property in an auction for the recovery of financial facilities advanced by respondent No. 1, have been made against respondent Nos. 2 to 4.

5. The learned Judge, City Civil Court, was of the view that the primary dispute was between the borrower and respondent No. 1 - Bank. Respondent No. 2 who represented the respondent No. 1 - Bank and his wife have been dragged in the suit groundlessly.

6. Mr. Verma, the learned counsel for the petitioner, urged that respondent No. 2 was aware that the suit property was not mortgaged with MDCC Bank yet, respondent No. 2 made such representation and eventually the suit property was sold. It was submitted that the damages are claimed against the respondent Nos. 2 to 4 also. Therefore, the Court could not have deleted respondent Nos. 2 to 4 from the array of the parties.

7. I have perused the order passed by the learned Judge, City Civil Court.

8. The learned Judge has ascribed reasons for deleting the respondent Nos. 2 to 4 from the array of the parties. It appears that there was no cause of action against respondent Nos. 2 to 4. They were roped in primarily for the reason that respondent No. 2 represented the respondent No. 1 - Bank, from which the financial

facilities were availed and in view of the default the subject property came to be sold for recovery of the loan amount.

9. The learned Judge, City Civil Court has committed no error in ordering the deletion of respondent Nos. 2 to 4 from the array of the defendants. No interference is warranted in the impugned order.

10. The petition stands dismissed.

(N. J. JAMADAR, J.)