Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SHABNOOR AYUB PATHAN
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Date: 2025.09.18 18:34:09 +0530

WRIT PETITION NO.4670 OF 2025

WITH
WRIT PETITION NO.4671 OF 2025

Dhondiba Sitaram Katke ... Petitioner

V/s.

Rupee Cooperative Bank Limited
Through Liquidator & Ors. ... Respondents

Mr. Prashant Darandale for the petitioner in both WPs.

Mr. Ajit Hon, a/w Mamta Pandey, Atharv Deshmukh i/b PNP & Associates for respondent No.1

Mr. Kishor Patil i/b Mr. Aadesh M. Patil for respondent Nos.2 to 4.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 18, 2025

P.C.:

1. The Co-operative Appellate Court has allowed the appeal filed by respondent Nos. 1 to 4, thereby setting aside the order of the Co-operative Court which had impleaded the petitioner as a necessary party in the dispute filed under Section 91 of the Maharashtra Co-operative Societies Act, 1960. The petitioner rests his claim on the basis that he is an auction purchaser of the property in respect of which the Co-operative Dispute No. 10 of 2011 is pending. The said dispute essentially concerns the validity of the mortgage executed by the borrower in favour of the creditor.

2. The petitioner contends that any adjudication by the Co-operative Court in relation to the validity of the mortgage would directly prejudice his right, title, and interest in the property purchased by him at auction. It is on this basis that the impleadment was sought. However, the Co-operative Appellate Court, by the impugned order, held otherwise and has set aside the impleadment.

3. The issue, therefore, is whether the petitioner, as auction purchaser, is a necessary or proper party to the dispute. The test is well settled in law. A person is a necessary party only if, in his absence, no effective and complete adjudication can take place, or the award passed would be rendered inconclusive. The Supreme Court and this Court have repeatedly clarified that mere interest in the subject property does not automatically entitle a person to be joined as a party, unless the decision sought directly determines his rights.

4. In the present case, the petitioner is not a decree-holder purchaser, but a third-party auction purchaser. The legal distinction between the two categories has been consistently recognised. In *Ashwin S. Mehta v. Custodian, (2006) 2 SCC 385*, the Supreme Court reiterated the principle laid down as far back as in *Nawab Zain-ul-Abdin Khan v. Mohd. Asghar Ali Khan, (1887) 15 IA 12*, and reaffirmed in *Gurjoginder Singh v. Jaswant Kaur, (1994) 2 SCC 368*. The law is that the rights of a bona fide auction purchaser for value are saved even if the decree, under which the sale was conducted, is subsequently set aside. In other words, the interest of such a purchaser is insulated from the fate of the underlying dispute between the original parties.

5. Applying this principle to the present case, even if the Co-operative Court were to declare the mortgage invalid, the same would not unsettle the petitioner’s right, title, or interest as an auction purchaser. His rights flow from the auction purchase itself, which stands on a distinct legal footing, and not from the mortgage or its validity. Hence, the petitioner's apprehension of prejudice is unfounded.

6. Further, it is pertinent to note that the second dispute is confined to quantification of the outstanding dues payable to the bank by the borrower and guarantor. This is a matter strictly between the creditor and debtor. The purchaser of the mortgaged property has no role to play in such adjudication. Thus, the presence of the petitioner is neither necessary for complete adjudication nor proper for the effective disposal of the dispute.

7. In view of the above discussion, I find that the Co-operative Appellate Court has applied the correct test of necessary and proper party and has rightly set aside the impleadment of the petitioner. No case for interference is made out in writ jurisdiction.

8. The writ petitions stand disposed of. No order as to costs.

(AMIT BORKAR, J.)