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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7941 OF 2025**

The Goregaon Co-operative Bank Ltd through ... Petitioner
Custodian

vs.

M/s. Shree Shivtej Publication Pvt Ltd and Anr ... Respondents

Mr. Onkar Warange for Petitioner.

CORAM : GAURI GODSE, J.

DATED : 8th JULY 2025

ORDER:

1. This petition is filed by defendant no.2 to challenge the order rejecting application to transpose defendant no.2 as plaintiff no.2. Respondent No.1 has filed the suit against Respondent No.2-Insurance Company for recovering the insurance amount. The trial court rejected the application on the ground that defendant no.2, has already filed recovery suit before the Cooperative Court and obtained a recovery certificate. Hence, it is held that defendant no.2's claim cannot be termed as on the same cause of action as pleaded by the plaintiff. The trial court has therefore referred to Order I Rule 10(2) of the Civil Procedure Code, 1908('CPC') and held that the prayer made by defendant no.2 would not fall within the parameters of sub-rule (2) of Rule 10

of Order I of the CPC.

2. Learned counsel for the petitioner submits that since defendant no.2 has a claim against the plaintiff, to avoid multiplicity of proceedings, the court should have permitted defendant no.2's application to transpose defendant no.2 as plaintiff.

3. The suit is filed by respondent no.1 for recovery of amount against defendant no.1 Insurance company. The plaintiff pleaded that defendant no.2 had granted a loan to the plaintiff and the plaintiff had called upon defendant no.2 to take action against defendant no.1 and recover the loan amount. However, inspite of the request of the plaintiff, defendant no.2 did not take any steps and the original insurance policy was not handed over to the plaintiff to enable to recover the insurance amount from defendant no.1. Hence, defendant no.2 is made a necessary party to the suit. But there is no prayer against defendant no.2. Considering the contentions as raised in paragraph no.5 and the amended paragraph no. 5(a) alleging collusion between defendant no.2 bank and the insurance company, defendant no.2 is made a party.

4. Considering the prayers in the suit and the allegations in the plaint, the reasons recorded by the learned trial judge in rejecting petitioner's application cannot be faulted. There is no

dispute that the recovery certificate is already obtained by defendant no. 2. Thus, the reasons stated in the application for transposing defendant no.2 as plaintiff, would not fall within the parameters of Rule 10 Order I of the CPC. It would always be open for defendant no.2 to adopt appropriate proceedings as permissible in law to recover the amount from the plaintiff. Defendant no.2 would not be entitled to be transposed as plaintiff in the suit filed for recovering amount from defendant no.1- Insurance Company. Thus, I do not see any reason to invoke discretionary jurisdiction under Article 227 of the Constitution of India to interfere in the impugned order.

5. Writ Petition is therefore dismissed.

(GAURI GODSE, J.)