

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4563 OF 2018
(Arising out of S.L.P. (C) No. 7951 OF 2017)

APNA SAHAKARI BANK LTD

Appellant (s)

VERSUS

MAHARASHTRA STATE CO-OPERATIVE BANK LTD & ORS.

Respondent(s)

O R D E R

- 1) Delay condoned.
- 2) Heard the learned Counsel appearing for the parties.
- 3) Leave granted.
- 4) In a Suit filed before the Cooperative Court at Sangli, an amendment was allowed in the following terms:

"I am of the opinion that, by seeking relief of declaration that, said resolution is bogus, pleadings of the Plaintiff would change, however, Plaintiffs claim would remain the same, only some allied reliefs would be sought. The core issue is refund/recovery of amount under Term Deposit receipt(s). The fate of resolution i.e. to say whether resolution is bogus or not would decide the fate of amount payable under Term Deposit receipt(s). In case amendment about bogus resolution is rejected, Plaintiff would initiate another proceedings and fate of that proceeding would decide the verdict of original suit. It may happen that, two different verdicts would be given and in that event chaotic situation would arise, hence to avoid multiple litigation, I am of the

opinion that, proposed amendment as per Annexure 'A' be granted. In this regard, I take guidance from the case decided by Hon'ble Apex Court (2007) 7 SCC 559.

In this application, Plaintiff states that, in the resolution dated 29/03/03, Exh.3(1) is not noted/entered into minute books. In view of these specific pleadings, Resp. No.2 & 3 who are ex-Chairman and C.E.O. of erstwhile bank have not denied their signatures on the said resolution. Plaintiff has not claimed any relief against Proposed Respondent, but only states that, since signature of these two are appearing on resolution they may be impleaded as party respondent. In such situation, it is my opinion that, calling them as witness would not suffice to decide the case on merits. Plaintiff is challenging the very existence of said resolution, in such situation, Proposed Resp. No. 2 and 3 would get opportunity to give their own witness and to adduce other witnesses.

At this juncture, I feel it necessary to consider provision of Order 1 Rule 3 of CPC. This provision tells who may be joined as Defendants. When any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons.

The resolution to which Plaintiff desires to assail, is bearing signatures of proposed Resp. No. 2 & 3. It is the averments of Plaintiff that, this resolution is bogus and fabricated and is not recorded in the minute books. Hence to decide the question whether said resolution is bogus or not, they are necessary party. Since their signature is

appearing they might have interest in it. As per judgment of Hon'ble Apex Court 1992 (2) SCC 524, proposed respondents have become necessary parties."

5) This order was set aside by the Maharashtra State Cooperative Appellate Court, which allowed a revision stating that as the cause of action of the amendment was different and that the petitioner wish to shift liability to the ex-chairman and C.E.O., the amendment would have to be disallowed. A Writ Petition against this order was dismissed by the Bombay High Court on 28.09.2015.

6) Having gone through the amendment, we are of the view that the cause of action is not different but that two others are said to be added as parties in order that the same relief be granted to the plaintiff in the Suit.

7) Accordingly, we allow the appeal and set aside the judgment of the High Court and restore that of the Cooperative Court allowing the amendment.

8) Needless to add, it will be open to all parties to take up all contentions before the Cooperative Court.

..... J.
(ROHINTON FALI NARIMAN)

.....
(S.ABDUL NAZEER)

New Delhi;
April 27, 2018.

ITEM NO.8

COURT NO.10

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 7951/2017

(Arising out of impugned final judgment and order dated 28-09-2015 in WP No. 905/2015 passed by the High Court Of Judicature At Bombay)

APNA SAHAKARI BANK LTD

Petitioner(s)

VERSUS

MAHARASHTRA STATE CO-OPERATIVE BANK LTD & ORS.

Respondent(s)

Date : 27-04-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Shivaji M. Jadhav, Adv.
Mr. Brij Kishor Sah, Adv.
Ms. Astha Deep, Adv.
Mr. Nicholas Choudhury, Adv.
M/s. S.M. Jadhav And Company, AOR

For Respondent(s) Mr. Krishan Kumar, AOR

Mr. Satyajit A. Desai, Adv.
Ms. Anagha S. Desai, AOR
Mr. Mehmood Umar Faruqui, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)