<u>In the Court of Judge, Co-operative Court Thane at Thane</u>
(Presided over by Mrs. U. S. Babar, Judge)

Dispute No. CCT 710/2005
(Old Dispute No. CCV 82/2002)

Rupee Co-operative Bank Ltd. Disputant

V/S

Mr. Kamal Chhabria and others Opponents

<u>Order</u>
(Below application Exh. 163)

1. Disputant bank have filed application under Order VI Rule 17 of CPC, wherein bank has contended that disputant bank has filed recovery case against the opponents for the recovery of an amount of Rs 2,54,83,628.83. The evidence in the matter is almost complete and Court had called status report of the mortgaged property namely unit no. 11 and 13 A wing of Oshiwara Industrial Center Premises Co-operative Society Ltd., New Link Road, Goregaon (W), Mumbai from Court Receiver Adv. Mr. Tare. Court Receiver has filed his report on 12/04/2016 and stated that the mortgaged property is in possession of Mr. Abdul Munaf Fazli Qadar. The opponent no.1 in order to defeat the claim of the bank have fraudulently created third party interest in the mortgaged premises. Therefore Abdul Quadar and Farah Munaf are the necessary party opponents. It is also necessary to amend the pleadings on the subsequent fact of creation of third party interest in the mortgaged property. This fact came into the knowledge of the disputant bank through the Court Receiver report dated 12/04/2016. The proposed amendment will not change the nature of the dispute. After the Court

Receiver report, bank has enquired with the society namely Oshiwara Industrial Center Premises Co-operative Society Ltd., and obtained copies of sale deed dated 13/12/2007. Court Receiver's report also shows that Abdul Qadar and Farah Munaf have merged both the unit no. 11 and 13 (A) unauthorizedly and illegally. Therefore amendment as per schedule needs to be allowed.

2. Opponent no.2 have filed their say at Exh. 165 and contended that the application is not maintainable as evidence is almost complete. Unless and until Mr. Abdul Qadar and Mrs. Farah Munaf are made as a party opponent, the amendment shown in the schedule of amendment cannot be allowed. Disputant bank was well aware about the fact that the third party interest already has been created in the mortgaged property, but due to the negligence of the bank they did not preferred the application to add the third party in the present dispute. No cogent reason is given in the application to explain the delay for filing the application at very late stage. The Court Receiver has filed his report on 12/04/2016, wherein he stated that there is alteration and addition in the mortgaged property. Disputant bank has failed to implement the order passed by Hon'ble Appellate Court on 19/06/2007. Therefore application is not maintainable and liable to be rejected.

3. Considering the rival contentions the following issues are raised for my consideration and I have given findings on each of them with reasons as under :-

Sr. No.	Issues	Findings
1	Whether the amendment application is entitled to be allowed ?	In the affirmative.
2	What order ?	As per final order

REASONS

4. I have perused application, say filed by opponent no.2. Heard Ld. Adv. Shri. S. P. Kulkarni for the disputant bank and Ld. Adv. Shri. S. D. Deshpande for the opponent no.2.

AS TO ISSUE NO. 1

5. It is the contention of the disputant bank that bank has filed present dispute for recovery of an outstanding loan amount against opponent. As per the status report of Court Receiver it reveals that the mortgaged property is in the possession of Mr. Abdul Qadar and Mrs. Farah Munaf. The opponent no.1 in order to defeat the claim of the bank have fraudulently created third party interest in the mortgaged property. This fact of creation of third party interest came to the knowledge of the bank when the Court Receiver has filed his report on 12/04/2016. Therefore it is necessary to amend the pleading as per schedule of amendment and to add the names of Abdul Qadar and Mrs. Farah Munaf as party opponent in the present dispute.

6. It is the contention of opponent no.2 that the application is not maintainable, evidence in the matter is almost complete. Disputant bank was well aware about the creation of third party interest in the mortgaged property. Disputant bank have not implemented the order passed by Hon'ble Appellate Court Mumbai on 19/06/2007. Disputant bank was very negligent and therefore the opponents are suffering. Therefore application be rejected.

7. At the outset I would like to mention Order VI Rule 17 of Code of Civil Procedure.

> ***17. Amendment of pleadings*** *: - The Court may at any stage of the proceedings allow either party to alter or amend his*

pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purposes of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8. Upon considering above said provision, it is clear that the purpose and object of Order VI Rule 17 of CPC is to allow either parties to alter or amend his pleadings in such manner and on such terms as may be just. Mere delay cannot be a ground to reject the amendment. The power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with cost. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties and amendments are allowed in the pleadings to avoid uncalled for multiplicity of the litigations.

9. Admittedly, Court Receiver has filed status report of mortgaged property on 12/04/2016. On perusal of that status report it is clear that mortgaged property has been sold to Mr. Abdul Qadar and Mrs. Farah Munaf during the pendancy of the dispute. Therefore considering reliefs claimed by the disputant bank it is necessary to make amendment in the pleadings regarding creation of third party interest in the mortgaged property by the opponent no.1 by impleading Mr. Abdul Qadar and Mr. Farah Munaf as a party opponent in the present dispute. If the proposed amendment as per schedule of amendment is allowed no harm or prejudice would be caused to the opponents. On the contrary proposed amendment will help the Court to adjudicate the matter on merits properly. Considering all these, I am of the view that in order to avoid multiplicity of the proceeding the amendment application filed by the bank requires to be allowed by imposing certain cost.

10. With the above said discussion I have answered issue no. 1 in the affirmative and for issue no. 2 I pass following order.

Order

1. Amendment application at Exh. 163 is allowed subject to Court cost of Rs. 500/-.
2. Disputant bank is directed to carry out the amendment within 14 days from the date of this order and to submit the copy of the amended dispute.

Place : Thane
Date : 19 / 07 / 2017

(Mrs. U. S. Babar)
Judge
Co-operative Court, Thane