

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5707 OF 2005

ABDUL NAJEEB KHAN
VERSUS
STATE OF MAH & ORS

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Advocate for Petitioner : Mr. S.V. Adwant & R.B. Dhakane

AGP for Respondent/State-1 : Mr. S.R.Palnitkar

Advocate for Respondent 2 : Mr. S.S.Dande

Respondent No.3 - Served.

Advocate for Respondent 4 : Mr. Alok Sharma

Advocate for Respondent 5 : Mr. K B Choudhari

Advocate for Respondent 6 : Mr. P.P.Bafna

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CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.

Dated: February 04, 2015

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PER COURT :-

1. Heard. Perused petition and reply.

2. Having regard to the facts of the case, prayers made in the petition and contentions raised by the respondents No.1 and 3, we have no difficulty to arrive at a conclusion that the respondent No.3 and respondent No.5 could not have stopped the transaction that took place between the petitioner on one hand and the respondent No.6 on the other. The Respondent No.6 as secured creditor sold the asset of a defaulter to the petitioner. Since the property is now transferred in favour of the petitioner all that respondents No.3 and 5 can do is to resort to legal provisions

for asserting their rights over the assets. It is also clear from the submissions that these two authorities are claiming to have charge over the asset transferred to the petitioner. They are at liberty to recover their dues as per law. The question as to whether the charge is enforceable against the petitioner is an independent question and would depend on facts. We would refrain ourselves from going into the facts of the case and drawing any conclusion on the question as to whether the petitioner had notice of the charge of respondents No.3 and 5. Such question would be decided as and when respondents No.3 and 5 would initiate the proceedings against the asset of the petitioner for recovery of their dues.

3. The respondent No.4 is also entitled to resort to Section 11 of The Central Excise Act, 1944 for recovery of their dues. Besides that, it is clear from the facts of the case that they have no right to stop the effect of transaction that took place between the Bank and the petitioner.

4. There shall be order in terms of prayer clause '**B**' & '**C**'. The petitioner is also given liberty to take suitable action seeking damages against the respondents. Petitioner is also given liberty to apply to respondent No.2-Corporation for getting his name transferred in their record as a lessee in

respect of the asset of the petitioner.

5. As per the directions of this Court given on earlier date, Respondent No.6 - Bank produced their record of this case. Same is perused and returned to them.

6. Writ Petition is disposed of.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

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aaa/-