

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

WRIT PETITION NO.5772 OF 2010

The Maharashtra State Co-operative
Bank Limited,
Having its registered office at,
9, Maharashtra Chamber,
Commerce Lane, Mumbai – 23,
Regional Office at Pay Office at
Nanded, District Nanded,
through its Chief Officer

... PETITIONER

VERSUS

1. The State of Maharashtra,
through its Principal Secretary,
Co-operation & Textile Department,
Maharashtra State,
Mantralaya, Mumbai – 32
(Copy to be served on Govt.
Pleader, High Court of Judicature
of Bombay, Bench at Aurangabad)
2. The Commissioner of Sugar,
Maharashtra State, Pune,
Sakhar Sankul, Pune
3. The Regional Joint Director of
Sugar, Latur Region, Latur.
4. Shetkari Sahakari Sakhar Karkhana
Ltd., Swami Ramanand Teertha Nagar,
Killari, Tq. Ausa, District Latur.
Through its Board of Liquidator
5. The District Collector,
Latur.

6. Baburao s/o Bhanudasrao Shinde,
Age major, Socc. Agri.,
R/o Omerga, Tq. Omerga,
District Osmanabad.
7. Vinayakrao Anandrao Patil,
Age major, Occ. Agri.,
R/o Kawatha, Tq. Omerga,
District Osmanabad.
8. Kishor s/o Janardhan Sathe,
Age major, Occ. Agri.
R/o Makani, Tq. Lohara,
District Osmanabad.
9. Pratap s/o Raosaheb Patil,
Age major, Occ. Agri.,
R/o Sawalsur, Tq. Omerga,
District Osmanabad
10. Randhir s/o Shivram Jadhav,
Age major, Occ. Agri.,
R/o Yenegurwadi, Tq. Omerga,
District Osmanabad
11. Vitthal s/o Vyankatrao Kale,
Age major, Occ. Agri.,
R/o Karla, Tq. Ausa,
District Latur.
12. Maruti s/o Dhondiba Gaikwad,
Age major, Occ. Agri.,
R/o Makani (Thor), Tq. Nilanga,
District Latur.
13. Balaji s/o Vishwambhar Patil,
Age major, Occ. Agri.,
R/o Harijawalga, Tq. Nilanga,
District Latur.
14. Ritesh s/o Trimbakrao Patil,
Age major, Occ. Agri.,
R/o Madansuri, Tq. Nilanga,
District Latur.

15. Tukaram s/o Pandurang Bole,
Age major, Occ. Agri.,
R/o Nanad, Tq. Ausa,
District Latur.
16. Ravindra s/o Vyankatrao Suryawanshi,
Age major, Occ. Agri.,
R/o Nagarsoga, Tq. Ausa,
District Latur. **(R.No.16 deleted)**
17. Jalil Sardar Tamboli,
Age major, Occ. Agri.,
R/o Masurdi, Tq. Ausa,
District Latur.
18. Ranjanabai Pratap Shinde,
Age major, Occ. Household
R/o Chincholi Rebe, Tq. Omerga,
District Osmanabad
19. Sow. Laxmibai Omprakash Hande,
Age Major, Occ. Household,
R/o Sirsal, Tq. Ausa,
District Latur.
20. Sow. Vidhyawati Mallikarjun Wadikar,
Age major, Occ. Household,
R/o Lohata, Tq. Ausa,
District Latur. ... RESPONDENTS

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Shri R.N. Dhorde, Senior Counsel with
Shri V.R. Dhorde, Advocate for petitioner
Mrs. Y.M. Kshirsagar, A.G.P. for State
Shri S.S. Choudhari, Advocate for respondents No.6, 8 to 11, 13
to 15 18 and 19
Shri V.D. Hon, Senior Counsel with
Shri A.V. Hon, advocate for respondent No.7
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CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.

DATED: 29th April, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2. Mr. Dhorde, learned Senior Counsel for the petitioner submits that, the petitioner has sanctioned loan to respondent No.4 Sugar Factory and as on the date of filing of the petition, the amount of Rs.2882.65 Lakhs was outstanding as against the respondent No.4. For various purposes the loan has been sanctioned by the petitioner to the respondent No.4 as are detailed in the extract filed at Page 229. The learned Senior Counsel submits that the petitioner has also initiated action under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by issuing notice under Section 13(2) on 7.11.2007 and further has taken action under section 13(4) on 7.8.2008. The learned Senior Counsel submits that, in spite of the fact that all the assets are secured with the present petitioner by way of hypothecation, mortgage and pledge, still the respondent No.2 has passed the impugned order directing recovery of Rs.62.09 Lakhs with interest at the rate of 15% p.a. from the assets of

respondent No.4 Karkhana which assets are secured by the petitioner. The learned senior counsel relies on the judgment of the (2009) 2 SCC 121 [Union of India & ors. Vs. Sicom Limited & anr.].

3. Mr. Choudhari, learned counsel for some of the respondents- Directors submits that the petitioner has already given on lease the respondent No.4 factory and has recovered the lease amount and the major amount has been recovered by the petitioner. We have also heard Mr. Hon, learned Senior counsel for some of the respondents- Directors. The learned A.G.P. appearing for respondents No.2 to 5 submits that the respondent No.5 has filed affidavit-in-reply and has made the stand clear. According to learned A.G.P., the respondent No.4 Sugar Factory is in default of Rs.62,09,000/- towards the payment of statutory minimum price to the sugarcane growers. The respondent No.2 Commissioner, as such, has passed the impugned order. The District Collector, Latur is authorised to recover the amount as arrears of land revenue and recovery certificate in accordance with the revenue recovery as arrears of land revenue.

4. We have considered the submissions canvassed by

learned counsel for the respective parties.

5. It is not disputed by the respondent No.4 that the respondent No.4 is defaulter of the petitioner Bank. The assets of respondent No.4 Karkhana are secured for the loan advanced by the petitioner to the respondent No.4. It is also placed on record that the petitioner has initiated action under Section 13(2) followed by action under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The possession of the said assets has been taken by the petitioner.

6. The Apex Court, in the case of Union of India Vs. Sicom Limited (referred supra), has observed that the financial Corporation has a preferential claim in relation to its secured debts. The same cannot be interfered with. The action is already initiated under the Securitisation Act wherein the petitioner has taken over possession of the secured assets. In view of Section 13(13), after the receipt of the notice under sub-section (2) of Section 13, no borrower is entitled to transfer by way of sale, lease or otherwise any of the secured assets referred in without prior sanction of the secured creditors.

7. As the Karkhana has gone in liquidation, the other provisions of Section 13 would also apply. However, as far as the impugned order is concerned, the Government could not have directed attachment and sale of the secured assets for the purpose of payment of the statutory minimum price.

8. In light of the above, the impugned order is quashed and set aside.

9. It is made clear that there is no impediment for the respondent authority to proceed for realisation of the amount to be paid to the cane growers in respect of the statutory minimum price by any other mode as is permissible in law. Rule accordingly made absolute. Writ Petition disposed of accordingly. No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)