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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.2907 OF 2014

IN

WRIT PETITION NO.7451 OF 2009

Kadwa Sahakari Sakhar Karkhana Ltd.	... Applicant
<u>In the matter between</u>	
Kadwa Sahakari Sakhar Karkhana Ltd.	... Petitioner
Vs.	
The Union of India and Ors.	... Respondents

Ms. Priyanka Patil a/w Mr. Gopal Ozalwar i/by Mr. Bhushan V. Mahadik,
for the Applicant/Orig. Petitioner.

Mr. Y.S. Bhate a/w Mr. A.R. Varma, for the Respondent Nos.1 to 4.

Mr. V.P. Malvankar, AGP 'A' Panel, for Respondent Nos.5 and 6.

Mr. Bhushan A. Walimbe, for Respondent No.7.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 14th JANUARY, 2015

PC.

. Heard the learned counsel appearing for the Applicant. The prayer in this application is for modification of the order dated 20th April, 2010 passed by this Court on Civil Application No.875 of 2010. On the basis of the interim order passed by this Court in the main Writ Petition, the Applicant (Writ Petitioner) has sold certain quantity of sugar and has recovered a sum of Rs.8,11,49,256/-. In terms of the order of this Court, the said amount has been deposited with the seventh Respondent – the Maharashtra State Co-operative Bank

Limited. The order dated 20th April, 2010 makes a reference to the prayer made by the Applicant for permitting the Applicant to utilize the said amount of Rs.8,11,49,256/- for the purposes of repayment of the loan. Under the said order dated 20th April, 2010, an undertaking of the Applicant was recorded that in the event the Writ Petition fails, the Applicant will bring back the entire amount (of Rs.8,11,49,256/- and interest accrued thereon) along with interest at the rate of 14% per annum to be paid to the first to fourth Respondents or such other higher rate of interest as may be ordered by this Court at the time of final hearing. The Applicant was directed to furnish a bank guarantee in the sum of Rs.9 Crores in addition to the aforesaid undertaking. Clause 7 of the said order records that the amount deposited with the seventh Respondent Bank will be allowed to be utilized subject to giving the undertaking and subject to furnishing a bank guarantee of a Nationalised Bank to the extent of Rs.9 Crores.

2. Now, the prayer in this application is for issuing a direction to discharge the bank guarantee and permit the Applicant to utilize the amount of Rs.9 Crores which is lying with the seventh Respondent for discharge of its obligations.

3. The learned counsel appearing for the Applicant submits that every time when the bank guarantee is renewed, the Applicant has to pay a huge amount to the Bank and, therefore, the aforesaid modification is sought.

4. On one hand, the Applicant wants to utilize the amount as permitted under order dated 20th April, 2010 for discharge of its liability. This Court directed the Applicant to furnish the bank guarantee with a view to ensure that the entire amount with interest thereon is secured in the event the Applicant fails in the Writ Petition. Therefore, if the prayer made in the Application is granted, adequate security will not be available for such a large amount of Rs.8,11,49,256/- with interest accrued thereon. In the event, the Applicant fails in the Writ Petition, the first to fourth Respondents are entitled to the said amount with interest accrued thereon. Therefore, the prayer in this Application cannot be granted and, accordingly, the Application is rejected.

(A.K. MENON, J)

(A.S.OKA, J)