

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

Writ Petition No.610 of 2016

* The Jalgaon District Central
Co-op. Bank Ltd., Jalgaon
Through its Manager (Non Agri.)
Shri. Pralhad s/o Bhavrao Sapkale. .. **Petitioner.**

Versus

- 1) The Abhishek Enterprises,
Chalisgon, District Jalgaon
Through its Proprietor
Santosh Mishrilal Sharma,
Age 44 year,
Occupation : Business,
R/o. Gandhi Chowk,
Chalisgon, District Jalgaon.
- 2) The Belganga Sahakari Sakhar
Karkhana, Bhoras,
Taluka Chalisgaon,
District Jalgaon
Through its Liquidator,
Shri. P.B. Wankhede,
Special Auditor Grade-1,
Cooperative Societies (Sugar)
Jalgaon. .. **Respondents.**

Shri. V.D. Salunke, Advocate, for petitioner.

Shri. V.R. Dhorde, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 2nd SEPTEMBER 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both the sides for final disposal.

2) It appears that the property was mortgaged with the petitioner bank on 23-3-2000. The action was taken under the Securitisation And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 and the property was attached in the year 2006 for recovery of the amount due to the bank. As against this, it is the case of respondent No.1, Abhishek Enterprises that it had supplied goods to the said sugar factory, debtor in the year 2000 and for recovery of the price of the goods, suit was filed in the year 2002. The suit came to be decreed in the year 2003 and the execution petition came to be filed in the year 2003. In the execution proceeding attachment of the property which is with the petitioner, was sought and it appears that by making some observations in respect of the provisions of the Securitisation Act, the civil Court held that it has the power to attach the property though it is attached under the aforesaid special legislation.

3) Even if the position of special law is ignored, the fact remains that the property was already mortgaged and the rights of respondent No.1 materialised when he obtained decree and subsequently went for attachment of the property. This Court asked the learned counsel for the petitioner to make statement as to whether the Bank is taking steps to sell the property so that the dues of other persons like respondent No.1 can also be realised. The learned counsel, after making inquiry with the officer of the bank made statement that auction notice is already published and steps are being taken. So if such auction is held then there will be liberty to the respondent No.1 to approach appropriate forum.

4) In view of these observations, the writ petition is allowed. The order of the Civil Court is set aside. Rule is made absolute in the aforesaid terms.

Sd/-
(T.V. NALAWADE, J.)

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