

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

WRIT PETITION NO. 1504 OF 2015

Akbar Ali Khan S/o Mehboob Ali Khan ...PETITIONER

versus

Maharashtra Gramin Bank
Through its Manager ...RESPONDENTS

.....
Mr. M.A. Latiff, Advocate for petitioner
Mr. R.D. Deshpande, Advocate for respondent
.....

**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 18th JULY, 2016.

Order :-

1. Mr. Latif, learned counsel for petitioner submits that impugned order issuing warrant of arrest is illegal and without jurisdiction. According to learned counsel, recovery proceedings were not maintainable before the Debt Recovery Tribunal as the decree is passed by the Civil Court on 02-01-2008 and execution as such is required to be filed before the Civil Court only. To support his submission, learned counsel for petitioner relies on the judgment dated 11-03-2014 of Division Bench of this Court in writ petition No. 1324 of 2013 (*M/s Star Coat Farm and others vs. IDBI Bank and another*).

2. We have heard Mr. Deshpande, learned counsel for respondent.

3. Mr. Deshpande, learned counsel submits that even though the decree is passed in 2008, no amount is deposited by the petitioner with

respondent - bank. After obtaining recovery certificate, recovery proceedings was initiated before the Debt Recovery Tribunal, Aurangabad. Learned counsel further submits that respondent - Bank be permitted to file execution proceedings before the Civil Court.

4. We have considered the submissions canvassed by the learned counsel for respective parties. No provision is pointed out by the respondent to the effect that even if decree is passed in the year 2008 by Civil Court, the same can be executed before Debt Recovery Tribunal by obtaining recovery certificate. The petitioner has relied on the judgment dated 11-03-2014 of Division Bench of this Court in writ petition No. 1324 of 2013 (*M/s Star Coat Farm and others vs. IDBI Bank and another*) stating that if the decree passed by the Civil Court, the execution proceedings be filed before it.

5. In light of above, impugned order is quashed and set aside. So also, proceedings for recovery before Debt Recovery Tribunal stands quashed and set aside. Needless to state that respondent - bank shall be entitled to file execution proceeding before the Civil Court in accordance with law.

6. Writ petition stands disposed of. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]