IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11749 OF 2014
WITH WP/11754/2014 WITH WP/11750/2014 WITH WP/11751/2014 WITH WP/11752/2014 WITH WP/11753/2014 WITH WP/11755/2014 WITH WP/11756/2014 WITH WP/11757/2014 WITH WP/11758/2014 WITH WP/11759/2014 AND WP/11797/2014

DHUDKU S/O MADHAVRAO MANE AND ORS
VERSUS
PRADHIKRUT ADHIKARI AND COURT RECEIVER AND ORS
...
Advocate for Petitioners : Shri Salunke V.D.
Advocate for Respondents 1 & 2 : Shri Suryawanshi Nitin B.
AGP for Respondents 3 & 4 : Shri Basarkar A.P.
Advocate for Respondent 5 : Served
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: April 29, 2016
...

PER COURT :-

1. By an order dated 13/04/2016, this Court had observed as under :-

"1. This Court pursuant to the order dated 1.12.2015 would be considering the following three aspects :-

[a] Unpaid wages from 1988-99 onwards,

[b] Unpaid bonus at the rate of 8.33 % and

[c] Unpaid leave encashment.

2. It is made clear that subject to the outcome of this petition, the employees would be at liberty to avail of the remedies under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Payment of Gratuity Act, 1972 with regard to the provident fund contribution and unpaid gratuity, if any.

3. S.O. 28/04/2016 at 2.30 p.m. at the request of the respondents.

4. Learned Advocates submit that these matters could be decided finally on the adjourned date.”

2. I have heard the learned Advocate Mr.Salunke for the petitioners, Mr.Suryawanshi for respondent Nos. 1 and 2 Bank and the learned AGP for respondent Nos. 3 and 4. Despite service of court notice, respondent No.5 has chosen to remain absent and has not entered an appearance either through an Advocate or in person.

3. The learned Advocates for the respective sides have argued at length on 28/04/2016 as well as today. However, considering the statement of the learned Advocate for the petitioners in the light of which I would be passing this order, I am not required to advert to the entire submissions of the learned Advocates.

4. The undisputed facts are as under :-

(a) All the petitioners had preferred a group of complaints u/s 28(1) r/w Items 5, 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. (In short, Act of 1971).

(b) The details of the complaints filed by these petitioners and the purported delay caused in filing the said complaints is set out in Annexure R-1 at page No.76 of the petitioner paper book which has been produced by Mr.Suryawanshi alongwith the affidavit in reply on behalf of respondent Nos. 1 and 2 dated 26/04/2016.

(c) All the petitioners had claimed unpaid wages for the period March 1998 till December 1999, unpaid bonus, unpaid leave encashment, provident fund contributions/accumulations and unpaid gratuity.

(d) All the complaints have been filed in the years 2007, 2009 and 2012.

(e) A liquidator has been appointed by order dated 14/03/2002 and the District Collector, Jalgaon has taken over as the Liquidator for winding up the factory by name Vasant Sahakari Sakhar Karkhana Ltd., Kasoda, Tal.Erandol, Dist.Jalgaon which is respondent No.5 in all the petitions.

(f) All the complaints have been dismissed primarily on the following grounds :-

(i) These complaints suffer from inordinate delay and an application for condonation of delay is not filed.

(ii) After the liquidator was appointed on 14/03/2002, the petitioners did not implead the liquidator as the respondent so as to represent the employer/factory.

(iii) There was no evidence with regard to the unpaid wages and actual working for 22 months for which period the wages have been claimed, has not been proved.

(iv) Hence, all the complaints are held untenable in Law.

(g) In the process of advancing their submissions before this Court, Mr.Suryawanshi has fairly brought it to the notice of this Court on the basis of paragraph No.14 of the respondents' affidavit in reply as under :-

"14 I say that it is necessary to mention here that Rashtriya Kamgar Union, which was representing workers of Vasant SSK Ltd., had approached this Hon'ble Court by filling separate writ petitions. Said group of writ petitions was heard and decided by this Hon'ble Court vide order dated 11th July, 2011. This Hon'ble Court, in writ petition no.2503 of 2011 and group of writ petitions came to the conclusion that – **(i)** The bank may proceed with the sale in accordance with the law. **(ii)** The sale proceeds shall be deposited in a separate account i.e. "No Lien Account" in the bank. Unpaid wages and other legal dues of the workers shall be paid from this account once the dues are quantified by a competent court. **(iii)** The provident fund dues shall be deposited with the Provident Fund authorities, immediately on the sale of the property and before applying the proceeds to any other debt, including the banks claim. **(iv)** All other contentions raised by the petitioners in the present petitions may be agitated by them before the Debt Recovery Tribunal under Section 17 of the Securitization Act. **(v)** The order passed by this Hon'ble Court was subject matter of Special Leave Petition (Civil) No. 27740 of 2011. The Hon'ble Apex Court,

vide order dated 17th October, 2011, was pleased to observe that the answering respondents will be entitled to process sale of the properties, however the sale proceeds be kept in separate non lien account. **(vi)** Annexed herewith and marked as ANNEXURE "R-2 is the copy of the order dated 17th October, 2011 passed by the Hon'ble Apex Court in Special Leave Petition (Civil) No.27740 of 2011."

(h) The issue of the dues to be paid to all the workmen which would also include the petitioners is pending before the Hon'ble Supreme Court in Spl.Leave Petition (Civil) No.27740/2011.

(i) By the order of the Hon'ble Supreme Court dated 17/10/2011 in the said pending SLP, the sale proceeds of the employer Sugar Factory are directed to be kept in a separate Non-Lien Account.

5. In the light of the above, the issue before this Court is to scrutinize the legality of the impugned judgment of the Industrial Court, by which the complaints filed by the petitioners have been dismissed. So also, the directions of this Court in its order dated 11/07/2011, reproduced above,

ought not to be ignored. Learned Advocates for the petitioners and the respondents before this Court do not dispute that eventually the SLP NO.27740/2011 would decide the fate of all the employees of the employer/factory, who have been working during the period March 1998 till December 1999 and the same would also apply to these petitioners.

6. Confronted with the dilemma as to whether the petitioners should seek a remand of their complaints for a re-hearing or whether the interest of the petitioners would be safe guarded by approaching the Liquidator of the employer/factory under liquidation and tender their demands/dues, learned Advocate for the petitioners submits on instructions that the petitioners would prefer to approach the Liquidator and submit details of their unpaid dues.

7. Considering the fact that as the complaints have been dismissed since applications for condonation of delay were not filed, the liquidator was not arrayed as a respondent to represent the employer/factory under liquidation and coupled with other issues, these complaints could have been remanded back to the Industrial Court for enabling the petitioners to file their applications for condonation of delay and to have the said issue decided first. This could also lead to the Industrial Court considering whether the complaints filed in 2007, 2009 and 2012 suffer from inordinate delay and if the inordinate delay was not to be condoned, the complaints would be rejected.

8. Considering the above and especially since all the complaints have been dismissed for being untenable in Law, I find the statement made by the learned Advocate for the petitioners to be in the interest of the petitioners.

9. Mr.Suryawanshi has submitted that if the petitioners approach the liquidator, they would only be in a position to put forth their demands with regard to all alleged unpaid dues. Same would, therefore, be subject to the decision of the Hon'ble Supreme Court in the SLP No.27740/2011 since the issue of all the employees is represented by the Rashtriya Kamgar Union in the Apex Court. Consequentially, the decision of the Hon'ble Supreme Court would be the last word on this count. The fact that the Hon'ble Supreme Court has subsequently passed an order on 17/02/2012, which is as under :-

> *"............. There will be stay of further action in terms of the impugned notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002."*

10. In the light of the above and on considering the statements made, all these petitions are disposed of with the observation that the rejection of the complaints of these petitioners for being untenable, would not be an impediment for them to put forth their details of unpaid dues before the liquidator of the Vasant Sahakari Sakhar Karkhana, Kasoda, Tal.Erandol, Dist.Jalgaon, within a period of 8(eight) weeks from today. After the petitioners file these representations before the Liquidator, he shall initiate

the process of verifying the claims of the petitioners and shall take into account the documents and submissions/stand of all the parties concerned including respondent Nos. 1 and 2/Bank.

11. Needless to state, the Liquidator, after verifying the claims, shall not pass a final order till the Hon'ble Supreme Court decides SLP No.27740/2011 alongwith connected SLP's. In short, the Liquidator shall abide by the directions as may be issued by the Hon'ble Supreme Court and would then pass necessary orders on the claims of the petitioners within the framework of such directions.

(RAVINDRA V. GHUGE, J.)

...

khs/d