

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

29 WRIT PETITION NO. 11312 OF 2015

RASHTRIYA SAKHAR KAMGAR UNION THROUGH ITS JOINT SECRETARY
RAMDAS NANA SHINARE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Shelke Avishkar S.

AGP for Respondents State: Mr. B. V. Virdhe

Advocate for Respondent No.4 : Mr. A. V. Hon

Advocate for Respondent No.5 : Mr. N. V. Gaware

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 25th October, 2016

ORDER:

1. Mr. Shelke, learned counsel for the petitioner states that the petitioner is a Union and the workers of respondent No.4 are its members. Their salary are unpaid so also the gratuity and provident fund amount. The learned counsel submits that even application is filed before the Labour Court under Section 33(C)(2) of the Industrial Dispute Act. The same is also pending. The Bank i.e. respondent No.5 has initiated proceedings under section 13 and 14 of the The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(the Sarfaesi Act).

2. The right of members of the petitioner Union are

required to be safeguarded. According to the learned counsel, if the Bank sales the property of respondent No.4 and adjusts the sale amount for itself, the members of the petitioner would be deprived.

3. We have heard Mr. Hon the learned counsel for respondent No.4 and Mr. Gaware, the learned counsel for respondent No.5 Bank.

4. Mr. Gaware, the learned counsel for respondent No.5 Bank submits that only a symbolic possession has been taken by the Bank pursuant to the proceedings under Section 13 of the Sarfaesi Act. Even orders are passed under Section 14 of the Act.

5. As far as provident fund amount is concerned, there cannot be any dispute with the proposition that charge of Provident Fund has priority over all other charges. As far as salary and gratuity amount is concerned, in case the Karkhana goes into liquidation, and the Bank resorts to proceedings under section 13(4) of the Sarfaesi Act, then as per provisions of section 13 of the said Act, the claim of workers payment and secured creditors are pari passu. The same would be considered, if the property is auctioned by the Bank.

6. The claim of the members of the petitioner Union are pending adjudication before the Labour Court i.e. Application (IDA) No. 14 /2013. The Labour Court, Ahmednagar where the claim of the members of the petitioner Union is pending in the proceedings under section 33(C)(2) of the Industrial Dispute Act, shall decide the same expeditiously, preferably within one year. The parties shall cooperate in expeditious disposal of the said proceeding.

7. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC