

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4757 OF 2016

Bank Of Baroda

...Petitioner

Versus

M/s Ambarwadikar Industries Pvt Ltd.

And Ors.

...Respondents

....

Mr.Avinash B. Avhad i/b. Mahesh Rawool, Advocate for the
Petitioner.

Mr. P.B. Shah, Advocate for Respondent No.1.

Mr. Ashish S. Gaikwad, Advocate for Respondent No.2.

Mr. Uday Warunjikar, Advocate for Respondent No.3.

Ms. Vaishali Nimbalkar, AGP, for Respondent No.4- State.

Mr. Virendra Pethe i/b.Mr.A.Gole, Advocate for Respondent No.5.

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CORAM : R. G. KETKAR, J.

DATE : 22nd APRIL, 2016

P.C.

1. Heard Mr. Avinash Avhad, learned Counsel for the
petitioner, Mr. P.B. Shah, learned Counsel for respondent No.1,
Mr. Ashish Gaikwad, learned Counsel for respondent No.2,
Mr.Uday Warunjikar, learned Counsel for respondent No.3,
Ms.Vaishali Nimbalkar, learned AGP for respondent No.4 and
Mr. Virendra Pethe for respondent No.5, at length.

2. By this Petition, under Article 227 of the Constitution

of India, the petitioner has challenged the judgment and order dated 8.3.2016 passed by learned District Judge-1, Niphad below Exhibits-47 and 50 in Arbitration Execution Proceeding No.165/2014. By that order, learned District Judge dismissed the applications made by the petitioner and respondent No.5 under Order 21 Rule 58 of Code of Civil Procedure, 1908 (for short, 'CPC') for setting aside order dated 9.9.2015 passed by the learned District Judge-1 below Exhibit-14 in Regular Darkhast No.165/2014.

3. By order dated 9.9.2015, learned District Judge ordered issue of warrant under Order 21 Rule 43 of CPC for attachment of gunny bags of the sugar as mentioned in list Exhibit-16 as despite service of notice judgment debtor No.1 (respondent No.3), it remained absent.

4. Mr.Avhad submitted that the petitioner and respondent No.5 are not made parties though the order dated 9.9.2015 vitally affects their interest. He submitted that the learned District Judge did not consider whether in the facts and circumstances of the case, Order 21 Rule 43 of CPC is applicable or not. Order 21 Rule 43 of CPC permits attachment

of movable property, **other than agricultural produce, in the possession of the judgment debtor.** In the first place, the learned trial Judge has not considered whether the sugar is '**agricultural produce**' or not and secondly, whether it is in possession of the judgment debtor in the Darkhast. In fact in paragraph-7 of the impugned order dated 8.3.2016, after considering the bailiff's report along with panchnama, the learned District Judge held that the security agency appointed by the petitioner and respondent No.5 are in possession of the sugar stock kept in the godowns. The Administrative Officer of decree holder sugar factory as also the Chief Accountant of judgment debtor who were present on the spot submitted their written say before the bailiff wherein they contended that godowns No.1 and 2 are in possession of Star Agriwarehousing & Collateral Management Limited and Manager Shri Pinjari of security agency and godowns No.3 and 4 are in possession of NCML security agency and the keys of the locks of said godowns are also in their possession. The statement of sugar stock filed by decree holder along with list of documents Exhibit-16 *prima facie* shows that 79,263 quintals sugar is in possession of the petitioner and 83,853 quintals sugar is in possession of

respondent No.5. Said fact *prima facie* shows that at present the security agencies of the petitioner and respondent No.5 are in possession of the sugar stocks. He, therefore, submitted that the learned District Judge was not justified in passing order dated 9.9.2015 and issuing warrant under Order 21 Rule 43 of CPC for attachment of gunny bags of sugar.

5. On the other hand, learned Counsel appearing for respondent Nos.2 and 3 supported the impugned order. They submitted that in fact the Director of respondent No.1 herein was not authorized to borrow the amounts from the petitioner and fifth respondent herein. It was submitted that there is collusion between the petitioner, respondent No.1 and respondent No.5 herein and, therefore, no case is made out for interfering with the impugned order.

6. After arguing the matter for some time, learned Counsel for the respondent Nos.2 and 3 submitted that by consent, the order dated 9.9.2015 as also order dated 8.3.2016 may be set aside. The petitioner–Bank of Baroda and respondent No.5–Dombivali Nagrik Sahakari Bank shall be impleaded as party respondent in the Darkhast. They submitted that the

petitioner and respondent No.5 may be directed to file reply and the learned trial Judge may be directed to dispose of the application Exhibit-14 expeditiously.

7. Mr. Gaikwad, upon taking instructions from Mr.P.P. Shinde, and Mr. Warunjikar upon taking telephonic instructions from Mr.Shivaji Shrimant Takle consented for setting aside these orders.

8. In view thereof, by consent of the parties, the petition is disposed of as under :

[i] The order dated 9.9.2015 passed by the learned District Judge, Niphad below Exhibit-14 in Arbitration Execution Proceeding No.165/2014 is set aside. The petitioner Bank of Baroda and respondent No.5 – Dombivali Nagarik Sahakari Bank shall be impleaded in Arbitration Execution Proceeding No.165/2014.

[ii] The petitioner and respondent No.5 shall file reply to application Exhibit-14 in Arbitration Execution Proceeding No.165/2014 within one week from today and serve copy in advance on respondent Nos.2 and 3.

- [iii] Learned trial Judge is requested to dispose of the application below Exhibit-14 in Arbitration Execution Proceeding No.165/2014 as expeditiously as possible and preferably within two weeks from today.
- [iv] Learned trial Judge will also consider appointing an agency for conducting auction of the sugar;
- [v] Petition is disposed of in aforesaid terms. All contentions of the parties are expressly kept open.

(R. G. KETKAR, J.)

Deshmane (PS)