drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO.5740 OF 2017

Fulabai Bhausaheb Bansude PETITIONER
Age – 67 years, Occ – Household
R/o Moti Nagar, Latur
District - Latur

VERSUS

1. Sopanrao Gyanba Bansude RESPONDENTS
Age – 85 years, Occ – Business

2. Govind Sopanrao Bansude
Age – 50 years, Occ – Business / Agriculture

3. Shubham Govind Bansude,
Age – 20 years, Occ – Education,
Respondents No. 1 to 3
R/o “Bansude Niwas”
Malang Galli, Saraf Lane, Latur
District – Latur

4. Latur Cold Storage
C/o Satyam Trading Company,
1st Floor, Market Yard, Latur
Through its Manager,
Rajesh Hanumandas Khatod
Age – Major, Occ – Service
R/o Sindu Appartment, Signal Camp
Latur, District – Latur

5. Venkatsshwara Cold Storage
C/o Lahoti Compound, Latur
Through its Managing Director
Anand Shrinwwas Lahoti,
Age – Major, Occ – Business
R/o Lahoti Compound
Latur, District – Latur

6. Mauli Cold Storage
C/o Ashok Pandurang Loya

1st Floor, Market Yard, Latur
District – Latur

7. L. K. Warehouse,
C/o Kasturchand Raghunath and Sons,
Shop No. A, Market Yard,
Latur, Through Ajay Lalitbhai Shah,
Age – Major, Occ – Business
R/o Market Yard, Latur

8. Siddarth Ware House,
C/o Kishorilal Babulal Bhausar Lane,
Latur,
Through Vishal Rameshchandra Agarwal,
Age – Major, Occ – Business
R/o Bhausar Lane, Latur

....

Mr. Rajendra S. Deshmukh, Advocate for the petitioner
Mr. D. S. Bansude, Advocate for respondents No. 1 to 3
Mr. Swapnil S. Rathi, Advocate for respondents No. 4 to 7
Mr. Amol Joshi, Advocate for respondent No. 8

....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 4th AUGUST, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.

2. Petitioner - plaintiff has instituted Regular Civil Suit No. 19 of 2016 seeking declaration, prohibitory and mandatory injunctions, rendition of accounts and partition and separate possession. Suit properties have been categorized as properties

received by Bhausaheb Tukaram Bansude, properties earned and acquired by him on his own, business and enterprises independently started by said Bhausaheb Bansude, separate and independent bank accounts and lockers of plaintiff and personal properties of plaintiff, giving particulars into Schedules from "A" to "E" to the plaint.

3. Parties, hereinafter would be referred to by their status in aforesaid regular civil suit No. 19 of 2016 pending before civil judge, senior division at Latur *viz.*, petitioner as petitioner or plaintiff and respondents No. 1 to 8 as defendants No. 1 to 8 or respondents No. 1 to 8 in that order, respectively.

4. Present matter concerns Schedule "C" captioned *"Business and Enterprises separately and independently started by Bhausaheb"* and contents therein are sub categorized as "C (i), C (ii), C (iii), C (iii-a), C (iii-b), C (iii-c), C (iii-d), C (iii-e) and C (iv).

5. Plaintiff is widow of Bhausaheb Tukaram Bansude. Bhausaheb Bansude died on 1st April, 2015 issue-less leaving behind plaintiff as sole surviving class I heir.

6. It is the case of plaintiff that father of Bhausaheb Bansude

died during his early childhood and Bhausaheb being only son, had to take up responsibilities. In the circumstances, he had been working in a shop and had gained experience there in the business of jaggery. Bhausaheb started jaggery business in a rented shop around 1967 under firm name and style "*M/s Govind Bhausaheb Bansude*", with funds given by father of plaintiff, as financial condition of father of plaintiff had been very sound. According to the plaintiff, "*Govind*" name is related to Lord Balaji, since Bhausaheb and she being devotees of Lord Venkatesh Balaji.

7. Defendant No.1 – Sopan Bansude had been running business in partnership with one Shinde in Latur. Around 1971-72, differences arose between said partners and defendant No. 1 had been looking out for a helping hand to run his business of jaggery. Bhausaheb had then shifted his jaggery business under firm "*M/s Govind Bhausaheb Bansude*" in rented shop of Gaurishankar Nigudge, wherein defendant No. 1 had been running business, converting the firm into a partnership business from 1974. The firm later had been duly registered in 1975.

8. Jaggery business enabled the partners to start yet another firm under the name and style as "*M/s Bansude Trading*

Company" from 1976, also dealing in jaggery, having partners – Sopan – defendant No.1, Yashodabai Tukaram Bansude - mother of late Bhausaheb, Fulabai Bhausaheb Bansude – the plaintiff and Rangram Ambaji Hale. M/s Bansude Trading Company also flourished. Both the firms were earning sufficient profits.

9. From the income earned from business of two firms, a shop came to be purchased in Latur around 1992 at Saraf Lines and there upon business of M/s Govind Bhausaheb Bansude had been shifted to said purchased shop while M/s Bansude Trading Company continued to do business in the old rented shop of Gaurishankar Nigudge. In the meanwhile, the rented shop was purchased around 1985-86 in the name of M/s Bansude Trading Company.

10. Around, 1994, two partnership firms were dissolved and were converted into two separate proprietary concerns – M/s Govind Bhausaheb Bansude, a proprietary concern of Bhausaheb Bansude and M/s Bansude Trading Company into proprietary concern of defendant No. 1 Sopanrao Bansude. Since then, Bhausaheb had been separately running business.

11. It is further the case of the plaintiff that relationship between Bhausaheb and defendant No. 1 Sopan and other

relatives had been cordial and there had been exchange of funds in the proprietary concerns of each other by Sopanrao and Bhausaheb.

12. Bhausaheb Bansude had in the year 1983-84 started a shop in a leasehold plot of market yard, Latur and had been running business under the name and style as M/s Govind Bhausaheb Bansude. In said shop defendant No. 1 – Sopan was allowed to start '*adat*' commission agency in the name and style M/s Bansude Trading Company. The independent character of M/s Govind Bhausaheb Bansude had never been given up by Bhausaheb Bansude.

13. Defendants No. 1 to 5 were not giving any particulars and details of proprietary business which Bhausaheb Bansude was carrying on, under name of his firm M/s Govind Bhausaheb Bansude, from April, 2014 onwards to plaintiff.

14. While plaintiff had been unsuspecting and had been unaware about machinations of defendants No. 1 to 4, an application had been moved by defendant No. 1 Sopan for mutation of properties along with copy of the alleged "*will*" and a notice came to be published in pursuance of the same in newspaper around 31st May, 2015 calling for objections. Plaintiff

had been shocked and surprised to know about activities and had accordingly enquired with Municipal Corporation, Latur and subsequently, plaintiff probed the matter and realized that the so called "*will*" is a forged document.

15. While from March 2014, health of Bhausaheb Bansude declined and had become critical, he had been shifted to Bombay Hospital. He was taken to various other hospitals subsequently. Taking disadvantage of the situation a "*will*" had been forged by defendants No. 1 to 4 claiming the same to have been executed by Bhausaheb Bansude on 28th February, 2015, which is a fabricated document. Plaintiff had been unaware of said machination of the defendants No.1 to 4.

16. Plaintiff had resisted attempts to grab properties by defendants and had published a notice in newspaper in June, 2015 requesting and exhorting concerned departments, organizations, institutions, banks, not to record any alteration on the basis of "*will*". Various letters were also issued to warehouses and cold storages, where goods of firms M/s Govind Bhausaheb Bansude had been stored, asserting and affirming that M/s Govind Bhausaheb Bansude was exclusive and proprietary firm of her late husband Bhausaheb Tukaram Bansude.

17. Plaintiff has averred that business of M/s Govind Bhausaheb Bansude firm was being looked after by defendant No. 3 as power of attorney holder of her husband Bhausaheb Bansude, from 2000 onwards, while defendants No. 1 and 4 had been helping him in the business.

18. Plaintiff contends that after death of her husband, defendant No. 3 in collusion with defendants No.1 and 4 moved ahead to grab entire business, business capital, stock of firm of M/s Govind Bhausaheb Bansude and were canvassing that plaintiff has no concern with property of late Bhausaheb Bansude. They had indulged in nefarious activities *viz.,* issuance of fake and bogus cheques in favour of M/s Bansude Trading Company, after death of Bhausaheb Bansude. Plaintiff has lodged a complaint in respect of various misdeeds and defendants are being accordingly prosecuted.

19. Plaintiff has further adverted to that defendants No. 1 to 5 have instituted Regular Civil Suit No. 328 of 2015 against plaintiff and her advocate making various defamatory allegations, seeking injunction. Said defendants have taken a stand in said suit that defendant No. 4 had been adopted son of late Bhausaheb Bansude and sought declaration on that basis

and have sought production of "will" claiming that "will" had been handed over to her. In application at Exhibit-15, in said suit, civil court had directed parties to maintain *status quo* till decision on application Exhibit-5.

20. The plaintiff averred that there have been counter complaints by defendants against various persons including advocate. Defendants No. 1 to 5 also tried to disturb possession of plaintiff over shop of M/s Govind Bhausaheb Bansude in the market yard. Plaintiff claims that stock of soyabean, jaggery and gram (chana) had been stored in various godowns and cold storages in the name of M/s Govind Bhausaheb Bansude and M/s Bansude Trading Company. Those actually belong to said firms and not to farmers, whose affidavits have been filed in regular civil suit No. 328 of 2015. Said so called farmers are supporters of defendants No. 3 and 5.

21. Plaintiff, as such, claims declaration against defendants No. 1 to 5 that plaintiff is exclusive owner of suit properties under Schedules "A" to "E", *inter-alia* further claiming *mesne* profits, damages and compensation for wrongful use and occupation of properties along with interest and to deliver and hand over goods described in paragraph No. 1 of Schedule C (iii-a) to C (iii-

e) stored with defendants No. 6 to 12. And seeking restraint on defendants No. 1 to 5 from causing interference with properties at Schedule A to Schedule E to the plaint with a further prayer to direct defendants No. 1 to 5 to render true and correct accounts of firm M/s Govind Bhausaheb Bansude and to pass a decree for partition and separate possession in respect of two shops described in Schedule E (i) and E (ii) to the plaint with a further declaration as to entitlement of the plaintiff to collect amount under Schedule D (i) to D (vii), shares in Schedule D (viii) to D (ix) and other properties in Lockers 2/23, key No. 1 and 2/8 key No. 15 of Osmanabad Janata Sahakari Bank Limited, Branch Ganj Golai, Latur as mentioned in Schedule D (x).

22. In response, the defendants have resisted claims of plaintiff contending that suit has been filed at instigation of step brother and relatives of plaintiff in collusion with legal advisor. Suit suffers various deficiencies *viz.,* non joinder of necessary parties, misjoinder of parties and misjoinder of causes of action. Plaintiff has no concern or any legal right, *inter-alia,* to movable properties *viz.,* stock of goods which belong to various farmers, clients, customers and traders and plaintiff has no right to claim said properties. Court has no jurisdiction to entertain suit. There have been two earlier suits, *viz.,* Regular Civil Suit No. 328 of

2015 and Regular Civil Suit No. 549 of 2015 pending in respect of almost all the properties involved in present suit. Suit has been instituted with intention of causing loss, damage and destruction of properties. Plaintiff has been misguided. The monies of joint family are being used for malicious, collusive and baseless suit. Additionally, contents in the plaint that properties in Schedule B – i, and certain other properties were earned independently and / or acquired by late Bhausaheb Bansude personally, are denied. It is averred that Bhausaheb Bansude had been acting as *Karta* of joint family. It is denied that subject matter of suit, properties referred to were received by husband of the plaintiff in partition or were self acquired properties, earned from his individual business or properties have been received by him in gift by plaintiff. Schedule of the properties to the plaint has not been disputed. So called gift is not a gift in law and has been brought about under by misrepresentation and coercion as plaintiff had been unwilling to co-habit with Bhausaheb Bansude without recording properties in her name.

23. It has been denied that M/s Govind Bhausaheb Bansude was exclusive and independent firm started by Bhausaheb Bansude claiming that no business or enterprise had ever been started by Bhausaheb Bansude in his lifetime.

24. While the writ petition challenges order passed by appellate judge letting properties in Schedule "C" to be released to defendant No. 3, it would be relevant to note that defendants in paragraph No. 17 of the written statement have denied that properties under Schedule C to the plaint, particularly Schedule C (iii), C (iii – a), C (iii – b), C (iii – c), C (iii – d), C (iii – e), *viz.,* jaggery loads, chana (gram) and soyabean in various warehouses and cold storages of defendants No. 6 to 10 belong to Bhausaheb Bansude or for that matter plaintiff has any right, title or interest in the same. It is claimed that since 2000-2001 Bhausaheb Bansude had disengaged himself from business and had partially retired from the same, taking away more than his undivided share in profits. The entire joint family business of jaggery had been managed by Bhausaheb and Govind for over 35 years. Bhausaheb Bansude had executed power of attorney in favour of defendant No. 3 – Govind fifteen years before. Bhausaheb Bansude had been a nominal proprietor of firm M/s Govind Bhausaheb Bansude, since 29th November, 2001. Bhausaheb Bansude, in Regular Civil Suit No. 537 of 2007, at Exhibit-77 had solemnly sworn and admitted that defendant No. 3 Govind is the sole proprietor of both the firms – M/s Govind Bhausaheb Bansude and M/s Bansude Trading Company.

Defendants have all the rights to carry on business without interference from plaintiff of firm M/s Govind Bhausaheb Bansude, a joint family concern. Bhausaheb Bansude had been doing accounting work and was looking after the accounts as *karta* of the family. Defendants had been carrying on actual business of *adat* of jaggery on commission basis and earned goodwill and reputation in the market and also earned good business. Defendants have won confidence of people at large and particularly of customers, clients, farmers who used to stock and store their goods *viz.,* jaggery, soyabean, gram etc. Even during 2015 in ordinary course of business, farmers had routinely stocked their goods with firm M/s Govind Bhausaheb Bansude, which in turn had stored the same in warehouses and cold storages in the name of M/s Govind Bhausaheb Bansude. Reputation and name has been earned due to hard work by defendants, the farmers are encouraged and solicited by the same and accordingly had been stocking their goods with warehouses and cold storages in the name of M/s Govind Bhausaheb Bansude. Majority of stocks are owned by customers and farmers. Its accounts, bills and stock registers are maintained by defendant No. 3. However, mischievously, in order to have unlawful gain, plaintiff has applied to the warehouses and cold storages objecting to release of stocks owned by clients, customers and farmers. It is further being averred that advocate of the plaintiff is legal advisor of a few of the warehouses and cold storages. It is contended that plaintiff, getting misguided, while her relatives and others have colluded to destroy goodwill and reputation of defendants earned by years of hard labour. Customers and farmers being owners of goods stocked in warehouses and cold storages, the warehouses and cold storages would not be entitled to hold back stocks and goods and the warehouses and cold storages cannot be obstructed and restrained and defendants and owners of goods cannot be restrained from selling goods at proper market value and earn profit. Farmers and customers have been approaching defendants and had been to warehouses and cold storages in July, 2015, however, warehouses and cold storages suggested to obtain orders from court for releasing goods.

25. Defendants No. 3 to 5 have filed an application seeking restraint on plaintiff from causing obstruction to release of goods and stocks with warehouses and cold storages. Plaintiff has kept back this material fact and has approached the court with unclean hands.

26. Defendants have particularly averred that farmers and customers are owners of goods stored in warehouses and cannot be restrained from lifting their own goods. Defendants have referred to various reasons and causes as to why and how goods stocked with warehouses and cold storages deserve to be released and had also apprehended that there would be several litigations about the same causing vexation and harassment to the defendants.

27. Defendants are in possession of receipts issued by warehouses and cold storages along with certain other books *viz.,* stock register accounts, etc. Plaintiff neither has legal right, title or interest nor does she have any knowledge or correct information of goods stocked. She has absolutely no concern with the goods stocked, however, yet, at the instigation of others, she is purporting to lay claim over goods in order to coerce the defendants. Plaintiff has given erroneous particulars of goods stocked. It is averred that neither plaintiff nor Bhausaheb Bansude had any concern with goods jaggery, gram or soyabean stocked in warehouses or for that matter with cold storages. Bhausaheb Bansude had been taking treatment in various hospitals during relevant period. Defendant No. 3 is taking all efforts to protect goodwill and reputation of family

business. In order also to arrest further damage, it is incumbent and necessary to have release of goods forthwith. It is contended that step relatives of plaintiff have been keeping greedy eye on Bansude family property, who had been jealous of economic progress made by the family. As a matter of fact, while with a view to help out plaintiff's paternal family members, one of her step brothers had been engaged in new firm M/s Deepak Bhausaheb Bansude, providing him with education and capital for business and also had organized his marriage etc. Said relative has embezzled lots of amounts of firm. He has dishonestly sold some property belonging to defendants' joint family. It is ultimately claimed that plaintiff is not entitled to any of the reliefs claimed or those can never be granted legally to her and that suit should be dismissed with costs of Rs.5,00,000/- each to be paid by plaintiff and advocate jointly and severally.

28. Exhibit-15 had been filed by plaintiff seeking direction to defendants No. 6 to 10 to deliver and hand over goods stored with them as described in paragraph No. 2 of Schedule C to the plaint [items (iii-a) to (iii-e)] in the same on such terms and conditions. It is claimed by plaintiff that she is exclusive owner of property at Schedule A to E. It is further referred to that Schedule C (iii-a) to Schedule C (iii-e) referred to in the plaint

are goods stored in cold storages and warehouses and those have been deposited in the name of firm M/s Govind Bhausaheb Bansude, which was proprietary concern of her late husband Bhausaheb Bansude, after this death a forged will has been created and some prosecution has already been set in motion. Regular Civil Suit No. 328 of 2015 for perpetual injunction against plaintiff has been instituted by defendants, without paying court fees on the goods stored in the godowns. Originals of receipts are with defendant No.3, because he was managing affairs of the firm M/s Govind Bhausaheb Bansude, under power of attorney. Defendant No. 3 is only power of attorney and agent of husband of the plaintiff, who has no right and interest in said goods. Even income tax returns submitted by M/s Govind Bhausaheb Bansude would support this fact. Defendants No. 1 to 3 are intending to grab properties of late Bhausaheb Bansude along with stocks of goods, which is worth around Rs.1 crore 23 lacs approximately. Copies of receipts produced by defendants No. 3 and 5 are under Exhibit-44 list at serial No. 24, were produced with the application to show that all the goods described therein have been deposited by Govind Bhausaheb Bansude and some of the receipts are in the name of Govind Bhausaheb Bansude, in which defendants have no right, claim or interest. Originals of these goods deposit receipts are in the custody of defendant No. 3 as a power of attorney holder of Bhausaheb Bansude, but defendant No. 3 nor his family members have any right to said goods and those belong to plaintiff. Plaintiff is entitled to said goods and as such, goods be handed over and delivered to plaintiff. Documents on record support case of plaintiff, as *prima facie* the goods lying in warehouses and cold storages are food grains and would deteriorate and value of the same may go down and plaintiff is ready to give security.

29. Exhibit-93, is an application filed by defendants claiming as stated above that they have been running business of the firm and goods concerned belong to farmers, customers etc., praying thus -

> “ *1. That directions may be given to defendant no. 6 to 10 to deliver the stock of perishable goods entrusted with them by defendant no. 3's firm Govind Bhausaheb Bansude, vide original warehouse receipts by accepting their legal freight forthwith to the concerned farmers & firm customers through defendant no. 3 as their commission agent or by appointment of court commissioner vide section 151 read with order 39 rule 1 of C.P.C. 1908.*
>
> *2. That, defendant no. 3 is ready to give security or indemnity bond and written undertaking as directed by this Hon'ble court & obey all the directions given by the Hon'ble court, say of plaintiff & defendants No.*

6 to 10 may be called.

3. *That, any other just and equitable relief which the defendant's legally are entitled may be granted to them* ”

30. Exhibit-70 is an application by defendant No. 8 and Exhibit-75 is an application by defendant No. 6 referring to that goods have been stored in their warehouses in the name of M/s Govind Bhausaheb Bansude and the same being perishable, cannot be stocked for longer period, in order to save economic damage, the goods be sold through court commissioner and let the warehouses and cold storages recover their rent amounts.

31. Trial court went on hearing all the four applications *viz.;* Exhibits-15, 70, 75 and 93 of respective parties together and had rejected all the applications under order dated 3rd December, 2016. Learned judge, after hearing learned advocates for the parties had considered that plaintiff had filed various documents and also defendants have filed several documents as referred to in his oder.

32. Having regard to rival claims, wherein plaintiff claims to be owner of goods after death of her husband claiming that firm M/s Govind Bhausaheb Bansude had been exclusive proprietary concern of deceased Bhausaheb Banusde and goods have been

deposited in the name of the firm and she is entitled for the same, on the other hand, it is defendants' contention that goods be handed over to farmers and customers as entire business was being run by the defendants and they are, in the due course of business, in possession of receipts issued by warehouses along with certain other accounts maintained of farmers and others. Whereas cold storages and warehouses – defendants No. 6 to 8 have submitted, by appointing court commission, said goods be sold out and they may be permitted to recover rent.

33. Parties have submitted that their claims are genuine cases. In the circumstances, trial court appears to have considered it appropriate that unless and until entire evidence has been recorded after giving opportunity to the parties, it would not be just and proper to come to any firm conclusion about plaintiff being entitled to the goods or defendants No. 1 to 5. Further there have been several disputes between plaintiff and defendants. In the circumstances, if goods are returned to farmers and customers or if returned to plaintiff this may lead to multiplicity of litigation. Defendants No. 6 and 8 have referred to that goods are likely to be damaged, however, since there is no corresponding material produced about there being such damage, till the goods are kept in warehouses and cold storages,

it may not be a case wherein it can be said that there is substance in the contentions on behalf of the parties and as such, until entire evidence is recorded by affording proper opportunity to the parties, it is not just and proper to come to any conclusion. As such, trial court went on to reject all the applications.

34. Defendants No. 1, 3 and 5 – respondents No. 1, 2 and 3 herein had preferred Miscellaneous Civil Appeal bearing No. 4 of 2017 against aforesaid order passed on Exhibit-93 by trial court, rejecting their application seeking release and delivery of stock of goods entrusted with warehouses and cold storages. In the appeal, learned District Judge – 1 Latur had framed three points as to whether defendant No. 3 have *prima facie* case to have release of goods; irreparable loss would be suffered by him and whether impugned order of rejection of Exhibit-93 is legal and proper.

35. Before appellate court, petitioner's case had been that, the plaintiff being exclusive owner of properties described in Schedules "A" to "E" to the plaint including goods stored with warehouses and cold storages and defendants No.1 to 5 having been engaged in nefarious activities and particularly having

regard to that late Bhausaheb Bansude had been proprietor of the firm M/s Govind Bhausaheb Bansude, defendants had no right and interest in the goods deposited by the firm with warehouses and cold storages and defendant No. 3 after death of Bhausaheb Bansude would not have any right to claim delivery of goods. Further, purportedly questioned maintainability of appeal. It was contended that appeal is liable to be dismissed. It had been requested to sell the goods stored with warehouses and cold storages by public auction.

36. Defendants No. 6, 7 and 9 – warehouses and cold storages, had called upon defendant No. 3 to get appropriate orders from court and had referred to that there had been a *status quo* order in another suit bearing Regular Civil Suit No. 364 of 2016 and had requested for dismissal of the appeal. Whereas, defendant No. 8 and other warehouses and cold storages had submitted that suitable order be passed in the interest of justice.

37. Respondents No. 1 to 3 (Defendants No. 1, 3 and 5) had reiterated before appellate court that goods stocked with warehouses and cold storages are owned by customers, farmers and clients of the firm M/s Govind Bhausaheb Bansude.

Defendant No. 3 who had in fact been conducting business had been in possession of original receipts and under the provisions of the Maharashtra Warehouses Act, warehouses and cold storages were under obligation to deliver goods to defendant No. 3. The goods are perishable and require urgent release and delivery to defendant No. 3 for stalling further damage and loss to the firm. The plaintiff is unaware of nature of carrying on business. She is being misguided by persons who are keeping greedy eye on the properties.

38. Appellate court has taken into account that warehouses and cold storages have been granted licence to carry on business under the Maharashtra Warehouses Act. The goods, such as, jaggery, gram (*chana*) and soyabean, referred to in clauses (iii-a) to (iii-e) of schedule "C" to the plaint, had been stocked with them in the name of M/s Govind Bhausaheb Bansude firm and said warehouses and cold storages had issued receipts in the name of the firm and receipts were in possession of defendant No. 3 who had been carrying on business and had been claimed to be an agent and power of attorney holder of Bhausaheb Tukaram Bansude by plaintiff - petitioner.

39. Appellate court, considering that facts in the present case

are very peculiar and to a large extent business of warehouses would be regulated by the Maharashtra Warehouses Act. It had referred to definitions under the same of the terms “depositor” and “receipt” and had considered that position of warehouses had been analogous and close to that of baillee governed and controlled by certain provisions and receipt is recognized as an important document in the mode for effecting delivery of commodities and had further referred to section 32 of the same which speaks about entitlement of a person depositing to receive goods stored. Further, with reference to section 26 of the Maharashtra Warehouses Act, it had been considered that warehouses are under obligation to deliver goods stored to depositor, subject to conditions of section 17 of the Act, which in turn require that warehouses in the absence of reasonable or lawful excuse shall deliver goods to depositor on demand and on payment of charges.

40. Appellate court went on to consider that there is no question of detention of goods considering their nature and the whole business is likely to get affected and as such, it was incumbent to deliver goods when demanded. Appellate court has further considered, may be that there was dispute pending between plaintiff and defendants No. 1 to 5, however, same

would not be sufficient to detain delivery of goods as goods are perishable and the warehouses are supposed to act pursuant to section 16 of the Maharashtra Warehouses Act giving notice to the depositor asking him to take delivery of goods immediately and in case of such notice depositor does not comply with the requirements, warehouseman can sell goods by public auction. Appellate judge considered that in the face of such position, in the given facts and circumstances, it appears that warehouses and cold storages have faltered in adhering to the provisions of Maharashtra Warehouses Act.

41. The appellate judge has referred to various decisions relied on and considered that the cases cited had different factual and circumstantial background and would not cover the case in favour of the plaintiff.

42. Appellate court had considered Order XXXIX, Rule 1 of the Civil Procedure Code speaking about injunction would be issued when property is in danger of being wasted or damaged and the court can pass such order for the purpose of prevention of waste and damage and to prevent irreparable loss or serious injury, which would not be compensated in terms of money and opined that in the circumstances having regard to that goods are

perishable in nature, it ought to have been considered expedient to pass immediate order.

43. Appellate court has also referred to that the *status quo* order passed in Regular Civil Suit No. 364 of 2016 and also noted that there were no further orders passed on the pending applications and the order of *status quo* had been passed after about a year from the demand of delivery of goods by defendant No. 3.

44. It has further been considered that it would not be appropriate to let parties suffer under the procedure of the court and having regard to the nature of goods, it is imperative to consider request made by defendant No. 3 under application Exhibit-93 and further has referred to section 151 of the Civil Procedure Code referring to power with the court to make ends of justice meet.

45. Appellate court has particularly referred to that demand of defendant No. 3 for delivery and release of goods is with reference to him being carrying on business and in possession of warehouse receipts and not on the basis of alleged will. The court found that three ingredients *viz., prima facie* case, balance of convenience and irreparable loss, required for issuance of

injunction, as such, are in favour of defendant No. 3.

46. Appellate court has considered that the nature of application Exhibit-93 and the non exercise of power by trial court to issue order, particularly without reference to warehouse receipts placed on record, an appeal is provided under Order XLIII, Rule 1 (r) of the Civil Procedure Code and as such, considered the appeal to be maintainable.

47. Appellate court has set aside the order of trial court on Exhibit-93. Exhibit-93 had been allowed and defendants No. 6 to 10, warehouses and cold storages were directed to deliver / release goods stocked in the name of M/s Govind Bhausaheb Bansude, referred to in clauses (iii-a) to (iii-e) in Schedule "C" to the plaint, to defendant No. 3 on submission of original warehouse receipts and payment of charges due till the date of demand i.e. 13th July, 2015. Defendant No. 3 Govind had been directed to furnish bank guarantee of rupees one crore within seven days before trial court and after taking delivery of goods he shall render its account before trial court within one month. The parties were asked to bear their own costs.

48. Against rejection of Exhibit-15, it appears that the plaintiff – petitioner had been before this court in writ petition No. 1684

of 2017 and under an order dated 10th March, 2017, Hon'ble Single Judge of this court has opined that goods may be allowed to be disposed of through impartial agency and sale proceeds may be deposited in court so that at the time of final disposal of suit an appropriate decision can be made regarding making over of the value of the goods to the party whose right to claim them would be upheld. The court further had observed that considering nature of goods, writ petition be disposed of finally at admission stage.

49. It has been contended on behalf of the plaintiff – petitioner that writ petition No. 1684 of 2017 came to be filed since application Exhibit-15 had been considered to be referable to section 151 of the Civil Procedure Code and no appeal would lie. It is being stated that there had been objection to maintainability of writ petition in the face of alternate remedy available. While prime consideration that had weighed before high court about preservation of property, the petitioner had sought liberty to file an appropriate application and proceed with the same before trial court. It is in these circumstances, while the writ petition came up for consideration on 16th March, 2016, same came to be withdrawn by the petitioner seeking leave with liberty to file fresh application pertaining to perishable goods. According to

learned advocate for the petitioner, such application had already been filed, however, its progress is getting dillydallied at the instance of the defendants.

50. Mr. R. S. Deshmukh, learned advocate for the petitioner, during the course of his submissions has purportedly adverted to orders hitherto passed by Hon'ble Single Judges of this court in respect of two matters arising from regular civil suit No. 328 of 2015 instituted by present respondents as plaintiffs. It is being contended that in regular civil suit No. 328 of 2015 while the matter for adjudication with respect to valuation of the suit and about proper payment of court fee has been referred back to trial court by Hon'ble Single Judge, its hearing is getting procrastinated and protracted at the instance of present respondents. The respondents do not want to pay court fees. Further he purports to advert to certain observations of Hon'ble Single Judge, in another matter, which according to learned advocate for the petitioner throw light on the intention of the defendants to flee from litigation after taking away the goods. He submits that there is no substance in contentions on behalf of the respondents that the goods belong to farmers or customers and that purpose is to prevent claims against the firm and to save reputation and good will of firm M/s Govind Bhausaheb

Bansude. The purpose and intention is writ large and otherwise, to deprive the plaintiff from her legitimate claims and entitlement and to flee away with the loot, as observed by the court.

51. During the course of submissions, Mr. Deshmukh, also purports to refer to power of attorney executed by late Bhausaheb Bansude and submits, said power of attorney would evince that it did not empower defendant No. 3 to carry on business of M/s Govind Bhausaheb Bansude, but it only lets the power of attorney holder to manage bank accounts and litigation and no further.

52. Mr. Deshmukh further submits that while much ado is being made about goods having been deposited with warehouses and cold storages by defendant No. 3, yet, one should not lose sight of the fact that those have been submitted under his hand as an agent of the firm M/s Govind Bhausaheb Bansude and not in any other capacity. As such, owner of the goods is the firm, which is entitled to the goods and/or release of goods and no other person. The firm M/s Govind Bhausaheb Bansude had been exclusively owned by late Bhausaheb Bansude and had been his exclusive proprietary firm and defendants have no concern with

the firm or its business. Death of her husband is taken disadvantage of in order to grab property left behind by him, which is legally, legitimately, rightfully owned by the plaintiff and cannot in any way belong to defendants or defendants can have control over the same in law and in fact.

53. Learned advocate further refers to that defendants have been taking various stands, which are inconsistent and incompatible. He submits that a theory of "*adoption*" and "*will*" has been developed in other suits, whereas it is claimed that by virtue of statement in some other litigation, which has little relevance in the present matter that M/s Govind Bhausaheb Bansude firm is a proprietary concern of defendant No. 3. In view of aforesaid he urges to allow the writ petition and to sell the goods by public auction.

54. On the other hand, Mr. D. S. Bansude, learned advocate appearing on behalf of defendants – respondents claims that it is unfortunate that the matter is being stretched this far by plaintiff, while both the parties would ultimately be put to detriment in the process. The goods are perishable in nature. It does not require any corroboration looking at admitted position that goods stocks are soyabean, gram and jaggery, would

deteriorate and its value would keep decreasing. Thus, what is of paramount importance is preservation of property by protecting its value or rather transformation and translation of property in another form, fetching its proper value. As such, release of goods is the central thing which should be looked at instead of wasting value of goods, which would be of no use either to plaintiff or for that matter to defendants. Both the parties would be at loss in the same.

55. Mr. Bansude further submits that defendants have been carrying on business of M/s Govind Bhausaheb Bansude for over fifteen years. Various circumstances have been referred to under which business has been carried. There is voluminous record depicting that defendants had in fact been running business. Defendants have shown their *bonafides* and readiness by willing to give security in the form of bank guarantee. Defendants have candidly submitted that goods belong to customers and farmers and the firm has been doing commission agency business. Whereas plaintiff purports to claim ownership over the goods is eloquent enough to show her ignorance of way of carrying business of commission agency. She is not aware of the way and manner of doing business of the firm. She does not know business practices of commission agency / *adat.* She is being

misguided by ill-wishers of defendants with a view to have unlawful gain for them in the process. He submits that it is in nobody's interest to let condition of goods deteriorate which are perishable in nature. When there is sufficient voluminous record available showing that the goods are in fact while doing business for the firm M/s Govind Bhausaheb Bansude, have been stored by defendant No.3 with defendants No. 6 to 8 and while defendants No. 1 to 5 are ready to give security by way of bank guarantee, pursuant to the appellate court's order, the interest of plaintiff in the litigation gets sufficiently protected. In the circumstances, *prima facie* case, balance of convenience and irreparable loss all are factors which are in favour of defendants and as such, order of the appellate court does not require any interference with under writ jurisdiction.

56. Learned advocate for the respondents has referred to various provisions of law, particularly provisions of the Maharashtra Warehouses Act and a few provisions, particularly sections 16, 148 and 202, of the Contract Act. He, therefore, earnestly requests not to indulge into request under the writ petition.

57. He submits, the plaintiff herself, to quite some extent has

considered that the respondents, particularly, respondent No. 3 had been carrying on business of M/s Govind Bhausaheb Bansude firm. The same gets support from deposition of Bhausaheb Bansude, who has referred to defendant No. 3 as the proprietor of Govind Bhausaheb Bansude firm. Case of the plaintiff is that defendant No. 3 can at the most be an agent of M/s Govind Bhausaheb Bansude firm and has deposited goods with warehouses in his said capacity.

58. Learned advocate Mr. Bansude submits, appellate court's order exhibits principles of justice, equity and good conscious have been duly adhered to. Exercise of discretion is by following judicial principles. It is absolutely not an arbitrary order. He, therefore, submits that the appellate court has not committed any error and as such, writ petition deserves to be dismissed.

59. After hearing learned advocates for parties in the writ petition and on perusal of judgments, hitherto and pleadings of parties, apparently at least, it is not seriously disputed by plaintiff – petitioner that business of the firm was being looked after by defendant No. 3, may be attributing capacity of agent or for that matter power of attorney holder, during lifetime of Bhausaheb Bansude. Albeit, it is contended that power of

attorney does not empower defendant No. 3 to carry on business, yet, it appears, to a considerable extent, that defendant No. 3 had been handling business from quite some time, may be under the aegis of Bhausaheb Bansude. This may also come forth having regard to averments of the petitioner and plaint also refers to that defendants No. 1 to 5 were not giving particulars and details of proprietary business which Bhausaheb Bansude had been carrying on under the firm name M/s Govind Bhausaheb Bansude, from April, 2014 onwards. Defendant No. 3 appears to be conversant with the carrying on of the business of the firm.

60. It is not much in dispute that goods have been stored with the warehouses and cold storages under the hand of defendant No. 3. It is also not in much dispute that defendant No. 3 is in possession of warehouse receipts.

61. It also emerges that Bhausaheb Bansude had not been keeping good health from March, 2014 and had succumbed to the health problems in April, 2015. The situation, thus, emerges that business of the firm has been handled by defendant No. 3. He, *prima facie* appears to be in know of the things in respect of goods, release of which is sought. He had deposited goods

claiming the same to be owned by farmers, customers and clients and it is him, who appears to be controlling the business. Further, he has supported request for release of goods by showing his readiness and willingness to secure interest of the plaintiff and / or parties and execute security documents, *inter-alia* indemnity bond.

62. Whereas, on the other side the plaintiff appears to be concerning herself to the business only after death of her husband and purports to claim goods to be belonging to the firm and thus, owned by her. To a large extent, it appears to be her apprehension that the property in goods would be permanently lost to her. It is not her case that she is aware of the way in which business is carried on of the firm or way in which such businesses are carried on. On the other hand, she also contends and suggests that goods have been stored in the warehouses and cold storages under the signature of defendant No. 3, who had been looking after business of the firm M/s Govind Bhausaheb Bansude in his capacity as agent / power of attorney holder. While she has also shown her willingness to give security, yet she does not appear to be in know of the way and manner in which business is run. She does not appear to know the source of the goods coming to the firm. Whereas, it is the case of

defendant No. 3 that release of goods would be required to protect goodwill and business of the firm.

63. It appears that appellate court has considered that appeal may lie, having regard to Order XXXIX, Rule 1 (a) of the Civil Procedure Code, wherein the primary object is to have preservation of the property in dispute and further that an injunction would issue under the same while the property is in danger of being wasted or damaged. Having regard to present facts and circumstances, a proper injunction of the nature prayed for under Exhibit-93 would issue and a refusal to grant injunction, is an order appealable under Order XLIII, of the Civil Procedure Code. As such, objection in the facts and circumstances of the case and having regard to nature of disputed goods and the application Exhibit-93, it does not appear that it can be sustained and is expedient.

64. In the circumstances, may be the defendants have been putting up claims to the property and making some allegations, yet looking particularly at the nature of the goods and further that the plaintiff personally does not appear to be conversant and familiar with the business being carried out in such type of goods and even if it is assumed that she may have claim in

respect of said goods, yet, in such a case, where preservation of property in goods is possible by transformation of it in monetary value and while it appears that defendant No. 3 had been doing business of the firm, it appears to be expedient in the circumstances to let him allow release of goods for the purpose as he has contended, especially when he has shown readiness and willingness to have release of goods on certain conditions, including indemnification as would emerge from the prayers.

65. The appellate court has allowed release of goods to him on furnishing bank guarantee the same would reasonably secure interest of plaintiff in the property concerned. It appears to be more convenient way of securing interest on either side as defendants claim also to preserve goodwill of the firm doing the business claiming further that property belongs to farmers and certain other persons.

66. Even a third party intervention for sale of goods at this juncture is unlikely to secure interest of all concerned and further passage of time on this count would not be in the interest of the parties. Value of goods appear to have been sufficiently secured by directing to furnish bank guarantee.

67. Taking overall view in the matter, it may have to be

considered that defendant No. 3 all along has been referring to that goods stored with warehouses and cold storages have been entrusted to the firm and the property / goods are owned by farmers, clients and customers. Worth of the goods is stated to be more than rupees one crore. Defendant No. 3 is ready to furnish bank guarantee / indemnity bond. Whereas, claim of the plaintiff is that goods are owned by her. While property is admittedly of perishable nature, value of the same will have to be kept intact and preserved getting it transformed for which readiness and willingness has been shown by defendant No.3. In such a case, bank guarantee being furnished to a large extent would secure claimed interest of the plaintiff in the property.

68. As such, considerations, which have weighed with appellate court while passing the order to which challenge is purportedly posed in the writ petition, in the facts and circumstances, appear to be appropriate and emerge to be reasonable and pragmatic.

69. In the circumstances, it does not appear that any fruitful purpose would be served by passing order in writ petition when there appears to be urgent need of a pragmatic order which precisely is the order by appellate court. So far as the claim of

the petitioner is concerned it would not be in the interest of the plaintiff or any of the parties to pass an order intercepting the one passed by appellate court.

70. However, in order to have another layer of protection in the interest of plaintiff, in the facts and circumstances of the case, it would be expedient to direct defendant No. 3 to execute an indemnity bond of like amount as that of bank guarantee in addition to the bank guarantee as directed by the appellate court. Additionally, defendant No. 3 shall also deposit warehouse / cold storage charges for the period from 14th July, 2015 to the date of this order.

71. Thus, to protect claims and interests on all sides, it appears to be expedient to let defendant No. 3 have release / delivery of goods as directed by appellate court. It is further made clear that the bank guarantee shall be kept alive throughout the suit, so shall be the indemnity bond.

72. Thus, in addition to the bank guarantee, defendant No. 3 shall also furnish an indemnity bond to the tune of rupees one crore and further defendant No. 3 shall deposit warehouse and cold storage charges in trial court for the period from 14th July, 2015 to the date of this order for its appropriation upon

adjudication of the matter. Adjudication with regard to warehouse / cold storage charges shall not in any case detain release of goods as directed. Concerned goods / commodities be released as directed by appellate court immediately on furnishing bank guarantee and indemnity bond and charges as referred by appellate court and this court. With this modification, the impugned order of the appellate court stands maintained. Prayers of the petitioner to set aside order of the appellate court and pass other orders stand rejected. Writ petition, is dismissed. Rule stands discharged.

73. Mr. Deshmukh, learned advocate, at this stage, requests to stay effect of this order for a period of six weeks, to enable the petitioner to pose challenge to the same. As such, aforesaid order to take effect upon expiry of six weeks from today.

drp/wp5740-17 **[SUNIL P. DESHMUKH, J.]**