

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

Writ Petition No. 10399 of 2014

District : Nanded

Bhaurao Chavan Sahakari Sakhar
Karkhana Ltd.,
Laxmi Nagar, Deogaon-Yelegaon,
Taluka Ardhapur,
District Nanded,
Through its Managing Director,
Mr. Ghanshyam Ramnath Pandey,
Age : 61 years,
Occupation : Service,
R/o. as above.

.. Petitioner.

versus

01. The Commissioner of Sugar,
Maharashtra State,
Central Building, Pune.

02. Dattatraya Bhausaheb Shinde,
Age : Major,
Occupation : Service,
As Managing Director,
R/o. C/o. Manjra Sahakari Sakhar
Karkhana Limited, Vilasnagar,
Taluka and District Latur.

.. Respondents.

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*Mr. Nitin B. Suryawanshi, Advocate, for the
petitioner.*

*Mr. P.S. Patil, Asst. Government Pleader, for
respondent no.01.*

*Mr. N.B. Khandare, Advocate, holding for
Mr. A.M. Gaikwad, Advocate, for respondent no.02.*

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**CORAM : S.V. GANGAPURWALA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 01ST NOVEMBER 2017

ORAL JUDGMENT [Per S.V. Gangapurwala, J.] :

01. Rule. Rule made returnable forthwith. With the consent of parties, heard finally.

02. Mr. N.B. Suryawanshi, learned Counsel for the petitioner, submits that the petitioner is a purchaser of the moveable and immoveable assets of Hutatma Jaywantrao Patil Sahakari Sakhar Karkhana, Suryanagar, Taluka Hadgaon, District Nanded [**For short, "HJPSSK"**]. The said assets were auctioned by the bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [**For short, "SARFAESI Act"**]. The learned Counsel submits that the respondent no.01 directed the petitioner to pay salary of respondent no.02 for a period, respondent no.02 was in employment with HJPSSK. He submits that the Commissioner of Sugar does not have the jurisdiction to pass such an order. The learned Counsel further submits that the petitioner having purchased only the assets of HJPSSK, is not liable to pay dues of the employees of HJPSSK.

03. Mr. N.B. Khandare, learned Counsel appearing for respondent no.02, submits that the Commissioner of Sugar has jurisdiction to pass the said order.

The petitioner has purchased the property along with all encumbrances and salary of respondent no.02 is also an encumbrance. As such, the petitioner cannot ignore its liability to salary of respondent no.02. He relies on judgment of Division Bench of this Court delivered in Writ Petition No. 2220 of 2017 (*Bhaurao Chavan Sahakari Sakhar Karkhana Ltd. Vs. The State of Maharashtra & others*) dated 01st August 2017.

04. It is trite that in case, assets are purchased in an auction under Section 13(4) of the SARFAESI Act, then purchaser of the assets would not be liable to pay dues of the workers of the erstwhile company / Karkhana sold in auction unless specifically agreed. The distinction is made between sale of the assets and sale of the business of defaulter company / Karkhana. In the present case, moveable and immoveable assets of HJPSSK are only sold. The sale certificate also lays down that the purchaser has accepted all the encumbrances present thereon the property and that may arise in future and agreed to pay them as per tender conditions accepted by the purchaser. The purchaser was liable to pay encumbrances thereon the property only and not on the business.

05. The sale certificate also nowhere lays down that the petitioner will be liable to pay dues of the workers.

06. Considering the above, the petitioner could

not have been directed to pay salary of respondent no.02 for the period he was working with HJPSSK.

07. In the light of above, the writ petition is allowed. Rule is made absolute in terms of prayer clause "d". It is made clear, that if respondent no.02 has any other remedy open, it is for respondent no.02 to prosecute the same. In the circumstances, there shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

(S.V. Gangapurwala)
JUDGE

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