

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

WRIT PETITION NO. 1562 OF 2015

THE MAHARASHTRA STATE CO OPERATIVE BANK LIMITED,
NANDED
VERSUS
DIGAMBAR VISHWANATHRAO MANE AND ANOTHER

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Advocate for the Petitioner : Shri Sandeep Gorde Patil
Advocate for Respondent No. 1 : Shri S.S.Choudhary
Advocate for Respondent No. 2 : Shri S.R.Deshpande

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 20th JUNE, 2018.**

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PER COURT :

1. I have heard the learned advocates for the respective sides at length.

2. The petitioner has put forth the following prayers in this petition :-

15(B) By appropriate writ order or directions in the nature of writ the execution proceedings No. 204 of 2011 and the impugned order passed below Exhibit 42 dated 27/08/2014 and order below Exhibit 53 dated 09/01/2015 thereby, issuing attachment warrant needs to be quashed and set aside and for that purpose issue necessary orders.

15(C) By appropriate writ order and directions in the nature of the writ the impugned order passed by the ld. Lower Court below Exhibit 53 on dated 09/01/2015 thereby, issuing attachment warrant against the petitioner bank in Spl.D.No. 204 of 2011 may kindly be quashed and set aside.

3. It is revealed that the petitioner, who is not added as a respondent in Special Darkhast No. 204/2011, was served with a copy of the application Exhibit 50 dated 14/10/2014. The application dated 7/11/2014 was filed by this petitioner praying for reasonable time to submit a detailed reply to Exhibit 50. Exhibit 50 has been allowed without passing any order on the request application made by the petitioner.

4. Learned Advocate for the decree holder submits, on instructions, from his client present in the Court that the order below Exhibit 50 can be set aside and the petitioner can be granted an opportunity of filing a detailed reply, pursuant to which the Court can decide Exhibit 50 on its own merits. Learned advocate for the petitioner is agreeable.

5. In so far as the impugned order dated 09/01/2015

below Exhibit 53 is concerned, the said order has its foundation in application Exhibit 50. The impugned order dated 09/01/2015 has been passed on Exhibit 53 on the ground that the petitioner bank failed to submit its response to Exhibit 50. Now that Exhibit 50 has been restored so as to enable the petitioner to file its detailed reply, the impugned order dated 09/01/2015 will have to be set aside as Exhibit 53 would not survive. As such, order dated 09/01/2015 is set aside and application Exhibit 53 is disposed of.

6. In so far as the order on application Exhibit 42 is concerned, which has been impugned by this petitioner in this petition, the petitioner had tendered a detailed reply. Exhibit 31 was preferred by the decree holder under Order 21 Rule 46 (D) of the Code of Civil Procedure. After considering Exhibit 31 and the say of this petitioner at Exhibit 42, the Executing Court passed an order below Exhibit 42 under Order 21 Rule 46(D) and rejected the say of the petitioner.

7. I find from Order 21 Rule 46(D) that the Court can order a party to appear before it and state the nature and

particulars of its claim, if any, if the third party has a lien or charge or interest in such a debt that may belong to a third party. The said application Exhibit 42 has been rejected by the Executing Court by concluding that the attachment of the salary is prohibited even if the bank is a secured creditor.

8. The grievance is that this petitioner bank had never prayed for being added as a party through its objection under Exhibit 42, while posting its say on application Exhibit 31. It had only tried to make out a case that it has no relationship with the decree holder, who was an employee of the judgment debtor Sugar Factory who had claims recovery of his unpaid wages from the said sugar factory. The Executing Court by the impugned order dated 27/08/2014 appears to have focused on an issue which was never posed by this petitioner and held that the petitioner bank has miserably failed to prove that it is a necessary party to the execution proceedings and is not required to be added in the said proceedings.

9. I find that the Executing Court could have considered the reply of the petitioner Exhibit 42 only in relation to the

notice issued under Order 21 Rule 46(D) to find out whether it can have any claim to that portion of the amounts, which the decree holder is seeking recovery of. It is undisputed that, the Vithal Sai Sahakari Sakhar Karkhana Limited was held to be a garnishee and the decree holder has sought attachment of the lease amount which was payable by the garnishee.

10. Learned advocate for the decree holder submits that Exhibit 31 was filed under Order 21 Rule 46 (B) and the impugned order below Exh. 42 was also under Order 21 Rule 46(B). Exhibit 31 and the order below Exhibit 42 do not indicate that Rule 46(B) was invoked by the decree holder.

11. Considering the above, I find that application Exhibit 42 which is the say of this petitioner bank in response to application Exhibit 31 needs to be re-considered in order to ensure that the Executing Court would focus only on the say of the petitioner- bank and avoid considering that the bank is making a request to be added as a respondent in the execution proceedings. The impugned order dated 27/08/2014 below Exhibit 42, therefore, stands set aside and Exhibit 42 is

restored in the Special Darkhast No. 204/2011 to be re-considered by the Executing Court after hearing all the sides in view of Exhibit 31 and the say Exhibit 42 under Order 21 Rule 46(D).

12. This petition is, therefore, partly allowed in terms of the order passed in the foregoing paragraph Nos. 4, 5 and 11 in relation to Exhibit 31, Exhibit 42, Exhibit 50 and Exhibit 53.

13. The litigating sides would appear before the Executing Court on 13/07/2018. The petitioner bank would also remain present through its counsel on the said date and shall tender its detailed reply to Exhibit 50 without seeking an adjournment. Thereafter, the decree holder as well as the petitioner bank and other litigating parties would canvass their submissions on Exhibit 42 and Exhibit 50 on the date on which the Executing Court would post such hearing in the matter.

14. Needless to state, though this Court has avoided making any observations on the merits of the matter, the Executing Court shall not be influenced by any observations of this Court

appearing in this order.

15. Since the issue of unpaid wages of a worker is involved in the execution proceedings, the Executing Court would endeavor to decide Special Darkhast No. 204/2011 as expeditiously as possible and in any case on or before 28/02/2019.

16. The Executing Court would be at liberty to reject applications for adjournments filed by any party if they appear to be based on unreasonable or trivial ground.

(RAVINDRA V. GHUGE, J.)

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