IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2355 OF 2011

Maharashtra State Co-operative
Bank having its Regional Office
at Town Centre, CIDCO, Aurangabad,
through its Assistant Manager,
Sudhir s/o Mahadeo Mehetre,
Age : 46 years, Occu. Service,
R/o Aurangabad **PETITIONER**

VERSUS

Gangapur Sahakari Sakhar
Kharkhana Ltd., Gangapur,
Tq. Gangapur, Dist. Aurangabad,
through its Managing Director
and others **RESPONDENTS**

Mr. R.N. Dhorde, Senior Advocate instructed by
and with Mr. V.R. Dhorde, Advocate for the petitioner
Mr. K.J. Suryawanshi, Advocate for respondent No.1
Mr. V.S. Badakh, A.G.P. For respondent Nos.2 to 4
Mr. S.S. Pawar, Advocate for respondent Nos.5 to 62

CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.

DATE : 4th DECEMBER, 2018

JUDGMENT (PER : S.V. GANGAPURWALA, J.) :

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the respective parties, heard finally.

2. Petitioner is the Apex Bank. Respondent No.1 Sugar Factory had obtained loan from the petitioner bank. Respondent No.1 executed security documents, such as mortgage of agricultural land, plant and machinery, hypothecation of movables and pledge of the goods. The petitioner has the status of a secured creditor. The account of respondent No.1 became non-performing asset. The petitioner invoked provisions of Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act", for short). Respondent No.1 did not comply with the notice issued under Section 13(2) of the SARFAESI Act. The petitioner proceeded under Section 13(4) of the SARFAESI Act and the possession was taken by the petitioner Bank of the secured assets of respondent No.1 on 31st October, 2008. The petitioner proceeded to auction the secured assets of respondent No.1 by issuing a public notice for sale on 4th July, 2009. The proceedings continued. In the interregnum, respondent Nos.5 to 62 viz. the employees of respondent No.1 approached respondent No.2 for payment of their gratuity amount. Respondent No.2 allowed the application of respondent Nos.5 to 62 and directed respondent No.1

to pay the amount of gratuity to these respondents with simple interest at the rate of 9% per annum. The said order was passed on 30^{th} May, 2009. On or about 11^{th} June, 2010, the Revenue Recovery Certificate was issued in favour of respondent Nos.5 to 62 for recovery of total amount of gratuity to the tune of Rs.71,52,105/-. Respondent No.3 - the District Magistrate/Collector was directed to attach the land owned by respondent No.1, being Gat Nos.44/1, 44/2 and 44/3 for recovery of the said amount. In the meanwhile, the tender of a party was accepted on or about 5^{th} August, 2010. The landed properties of respondent No.1 bearing Gat Nos.44/1, 44/2 and 44/3 were attached on 5^{th} August, 2010 by respondent No.4. The petitioners have assailed the said action in the present writ petition.

3. Mr. R.N. Dhorde, learned Senior Counsel, appearing for the petitioner, submits that the petitioner is a secured creditor. It had already taken over the possession of the secured assets, including land bearing Gat Nos.44/1, 44/2 and 44/3 on 31^{st} October, 2008 and a public notice as required under the provisions of SARFAESI Act was also issued in local newspapers. The learned Senior Counsel submits that once

action under the provisions of the SARFAESI Act has been initiated, respondent Nos.3 and 4 could not have exercised their jurisdiction on the said secured assets. The petitioner Bank being a secured creditor, has first charge over all other claims. The learned Senior Counsel submits that the recovery of the gratuity amount as per the provisions of the Payment of Gratuity Act, 1972 is as arrears of land revenue. The recovery to be made as arrears of land revenue would not supersede the claim of the petitioner Bank. The learned Senior Counsel placed reliance on the judgment of the Apex Court in the case of ***Union of India and others Vs. SICOM Limited and another (2009)2 SCC 121,*** so also the judgment of this Court in the case of ***Tata Metaliks Limited and another Vs. Union of India and others 2008 (4) Bom.C.R.853.*** The learned Senior Counsel further submits that pursuant to the amendment to the SARFAESI Act by introducing Section 26E, the charge of the secured creditor overrides all other charges and the same shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

4. Mr. S.S. Pawar, learned counsel appearing for respondent Nos.5 to 62, submits that the claim of these respondents is towards the payment of gratuity. The dues are of the employees. The dues of the employees, more particularly under the Payment of Gratuity Act is a part of social welfare legislation and would require a liberal construction so as to secure the relief contemplated by the Act. The recovery has to be made as arrears of land revenue, meaning thereby the same is crown debt and the same would supersede the claim of the petitioner Bank. The amount is of gratuity, due and payable to the employees of respondent No.1 that has remained unpaid. The learned counsel, in support of his submissions, relied on the following judgments of the Apex Court :-

(i) ***Allahabad Bank and another Vs. All India Allahabad Bank Retired Employees Association 2010(1) ALL MR 941***

(ii) ***Pegasus Assets Reconstruction Private Limited Vs. Haryana Concast Limited and another (2016)4 SCC 47***

(iii) ***Employees Provident Fund Commissioner Vs. O.L. Of Esskay Pharmaceuticals Limited 2012(1) ALL MR 923 (S.C.)***

5. We have considered the submissions canvased by the learned counsel for the respective parties.

6. The factual matrix, as narrated supra, is not much debated. It is not disputed that the petitioner bank is a secured creditor of respondent No.1. The account of respondent No.1 was classified as Non Performing Asset (N.P.A.). The petitioner Bank resorted to the provisions of SARFAESI Act. The notice under Section 13 (2) of the SARFAESI Act was issued on or about 16th June, 2008. Respondent No.1 did not comply with the notice. The petitioner initiated the proceeding under Section 13(4) of the SARFAESI Act and the possession of the secured assets of respondent No.1 was taken by the petitioner on 31st October, 2008.

7. The focal point of the dispute would be the power and jurisdiction of respondent Nos.3 and 4 to attach the immovable property of respondent No.1, that is mortgaged with the petitioner bank.

8. The property bearing Gut Nos. 44/1, 44/2 and 44/3, totally admeasuring 95 Hectors 96 Ares is the subject matter of mortgage and a security interest of the petitioner bank is created over the said property. The said property has been taken in possession by the petitioner bank on 31st October, 2008. Once the

possession of the secured assets has been taken, it would not be permissible for the respondent authorities to attach the said property for recovery of the amount under the Payment of Gratuity Act. Section 8 of the Payment of Gratuity Act provides that if the amount of gratuity payable under the said Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector who shall recover the same together with compound interest thereon as "arrears of land revenue" and pay the same to the person entitled thereto.

9. The amount payable under the Payment of Gratuity Act is to be recovered as arrears of land revenue. The Apex Court in the case of ***SICOM Limited and another*** (supra) has considered the priority of realisation of dues i.e. Crown debts vis-a-vis secured debts of a secured creditor and it was held that the debts of the secured creditor will have a priority over the Crown debts.

10. The judgment in the case of ***Employees Provident Fund Commissioner*** (supra) was interpreting Section 11

(2) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ("EPF Act", in short) and it was held that Section 11(2) of the EPF Act overrides the provisions of Section 529A of the Companies Act and preferential payment as per Section 11(2) of the EPF Act will have to be considered as the Employees Provident Fund is having the first charge.

Under the Payment of Gratuity Act, there is no such provision similar to Section 11 (2) of the EPF Act. On the contrary, the Payment of Gratuity Act provides for priority of realisation of dues as arrears of land revenue.

11. The judgment of the Apex Court in the case of ***Pegasus Assets Reconstruction Private Limited*** (supra), relied on by the learned counsel for respondent Nos.5 to 62, would also be of no avail to these respondents inasmuch as the Apex Court was considering the provisions of Sections 529 and 529-A of the Companies Act, wherein the principle of pari passu charge is considered.

In the present case, the petitioner and respondent No.1 are the Cooperative Societies, registered under the Maharashtra Cooperative Societies Act. There is no provision under the Maharashtra Cooperative Societies Act similar to Sections 529 and 529-A of the Companies Act.

12. There cannot be any dispute with the proposition that the welfare legislation will have to be liberally construed and the payment of gratuity would be a part of welfare legislation as has been held by the Apex Court in the case of ***All India Allahabad Bank Retired Employees Association*** (supra). In the said case, the question before the Apex Court was whether the retired employees of the appellant Bank therein were entitled for the payment of gratuity under the provisions of Payment of Gratuity Act. In that context, the Apex Court had observed that the said remedial statute will have to be liberally construed.

13. In the present case, the dispute would be about the priority of claim, whether the claim of the petitioner bank would have a priority over the claim under the Payment of Gratuity Act vis-a-vis the provisions of the SARFAESI Act. The Apex Court in the case of ***SICOM Limited and another*** (supra) has unequivocally held that considering the statutory right

of the Financial Corporation under the State Financial Corporations Act and the non obstante clause occurring therein, the Corporation had a preferential claim. Similar view is taken by this Court in the case of ***Tata Metaliks Limited and another*** (supra).

14. The SARFAESI Act has also been amended and Section 26E is introduced with the non obstante clause giving a priority claim over all other debts.

15. The employees i.e. respondent Nos.5 to 62 will be entitled to claim the amount of gratuity as determined if the surplus amount remains after the sale of the assets of respondent No.1 and realisation of the dues of the petitioner. At the same time, the prayer of the petitioner for quashing the recovery certificate cannot be granted. The recovery certificate has been legitimately and validly issued. However, pursuant to the said recovery certificate, the secured assets of respondent No.1 with the petitioner bank cannot be attached under the said recovery certificate and as observed above, after the sale of the assets of respondent No.1 and realisation of the dues of the petitioner, if certain amount remains, then respondent Nos.5 to 62 would be entitled for the same.

16. In light of the above, the attachment over the secured assets with the petitioner bank i.e. the properties of respondent No.1 bearing Gat Nos.44/1, 44/2 and 44/3 is quashed and set aside. However, the prayer of the petitioner for quashing recovery certificate is rejected. Rule is made partly absolute accordingly. Writ Petition stands disposed of. No costs.

17. In view of disposal of Writ Petition, Civil Application No.14916 of 2011 does not survive and hence, stands disposed of.

[R.G. AVACHAT]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

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