

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

WRIT PETITION NO.8915 OF 2014

Panjabrao Ramrao Narwade and others

Petitioners.

Versus

The State of Maharashtra and others.

Respondents

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Advocate for Petitioners : Mr. Deshmukh Mahesh S.

AGP for Respondents: Mr. S W Munde

Advocate for Respondents 3,4 : Mr Gorde Patil S.,

Mr Kulkarni Abhishek For R/5

Mr N B Suryawanshi Advocate for Respondent No.6.

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CORAM : N.M. JAMDAR, J.

Dated: December 05, 2018

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ORAL ORDER :-

By this petition, the petitioners have challenged the notice issued by the Special Recovery Officer dated 8 September 2014 calling upon the petitioners to deposit the amount of ₹ 5,15,23,307.

2. The petitioners are members of Hutatma Jaywantrao Sahakari Sakhar Karkhana Limited Suryanagar, Tq. Hadgaon, District Nanded. A loan was obtained from the respondent no.3 bank. The respondent no.3 bank filed a dispute since the amount of loan was not

repaid. The Cooperative Court allowed the dispute. Thereafter, the appeal was also filed against the order passed by the Co-operative Court on 27 October 2005. The appeal was dismissed on 29 September 2009. Thereafter, the Recovery Officer issued the impugned notice directing the petitioners to pay an amount of ₹ 5,15,23,307.

3. I have heard the learned counsel for the parties.

4. The main contention advanced by the petitioners is that, though, the appeal against award has been dismissed, in view of the subsequent sale of the property of the Karkhana, which the sale certificate itself shows that the amount claimed under the impugned notice has already been recovered by the respondent no.3 bank. The learned counsel for respondents have contested this assertion. According to them, repayment is in respect of some other dues and liability of the petitioners under the award, is not satisfied.

5. The petitioners, after the notice was issued, have directly filed this petition. Various questions of fact arises in view of the submissions advanced by the learned counsel for the parties, as to whether there was in fact repayment as contended of the loan amount in question. Section 156 of the Maharashtra Cooperative Societies Act

states that the Registrar is a Civil Court for the purpose of the powers to be exercised for recovery. Rule 107 of the Maharashtra Cooperative Societies Rules 1961 also provides a lodging of objections, which the registrar to decide. If it is the case of the petitioners that entire loan stands satisfied by way of repayment, then this factual aspect more appropriately can be dealt with by the Registrars/Special Recovery Officer. Learned counsel for the parties also agree that this would be an appropriate course of action to be adopted.

6. In these circumstances, the parties are directed to appear before the Special Recovery Officer on 17 December 2018 at 11.00 am in the Office of the Special Recovery Officer. The petitioner will prepare a chart alongwith all the supporting documents in respect of his contentions, to demonstrate how the entire loan of ₹ 5,15,23,307- has been repaid. This chart will be given to the respondents in advance. On the date of appearance before the Registrar, the same shall be given to the Registrar alongwith other explanations.

7. Registrars will accordingly give opportunity to the petitioners and respondents to put forth their case by way of written documentations, representations and thereafter, after appearance of the parties will determine the issue regarding the liability of the petitioners within a period of five weeks from today. Accordingly, till the

Registrars disposes of the proceedings as directed above, the interim order granted in this petition to continue.

8. The learned AGP states that he will communicate the order to the Special Recovery Officer/Registrar. Writ Petition is accordingly disposed of in above terms. Since all the parties are represented in this petition, no separate notice for them to appear before the Registrar is necessary.

9. Writ Petition is accordingly disposed of.

(*N.M. Jamdar, J.*)

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