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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12835 OF 2016

Ambarwadikar Industries Pvt. Ltd. registered office at Plot No.212 Samarth Nagar, Aurangabad Corporate office at Gat No.103 Beed Bye pass road, Aurangabad and Factory K.K. Wagh Sahakari Sakhar Karkhana Ltd., Kakasaheb Nagar, Ranwad, Taluka:Niphad, District: Nashik.	] Petitioner] Original] third] party

V/s.

1. Karmaveer Kakasahb Wagh Sahakari Sakhar Karkhana Ltd. Kakasaheb Nagar, Ranwad, Tal : Niphad, District: Nashik Through its : Liquidator	] Respondent No.1] Original] Decree Holder
2. Chhatrapati Sambhaji Sakhar Udyog Ltd. At Chittepimpalgaon Tal & District: Aurangabad Address: K. K Wagh Sahakari Sakhar Karkhana Ltd., Kakasaheb Ngar, Ranwad, Tal.Niphad, District : Nashik.	] Respondent No.2] Original] Judgment] Debtor
3. The Commissioner of Sugar State of Maharashtra at Pune	] Respondent No.3.
4. Bank of Baroda Aurangabad Main branch Tilak Path, Paithan Gate, Aurangabad, Through its : Manager	] Respondent] No.4 and 5] Third] parties.
5. Dombivali Nagari Sahakari Bank	]

Samarth Nagar Branch]
District: Aurangabad.]
Through its : Manager]

ALONG WITH

CIVIL APPLICATION NO.2994 OF 2017
IN
WRIT PETITION NO.12835 OF 2016
WITH
WRIT PETITION NO.10658 OF 2016
WITH
WRIT PETITION NO.10899 OF 2016

State Bank of India,]
its Agriculture Commercial Branch]
at Pimpalgaon, Baswant]
Chinchked Road Bank Street] Applicant.
Taluka : Niphad, District: Nashik 422209] Intervener.
and Corporate Branch at Madame Cama Road]
Nariman Point, Mumbai 400 021.]

IN THE MATTER BETWEEN

Ambarwadikar Industries Pvt.Ltd.] Petitioner

-vs-

Karmarveer Kakasaheb Wagh
Sahakari Sakhar Karkhana Ltd and ors] Respondents.

ALONG WITH

WRIT PETITION NO.10899 OF 2016

Bank of Baroda,]
Aurangbad Main Branch] Petitioner
Tilak Path, Paithan Gate]

Aurangabad]

-vs-

1. Ambarwadikar Industries Pvt. Ltd.]
registered office at Plot No.212]
Samarth Nagar, Aurangabad] Respondent
Corporate office at Gat No.103] No.1.
Beed Bye pass road, Aurangabad]
and Factory K.K. Wagh Sahakari Sakhar]
Karkhana Ltd., Kakasaheb Nagar,]
Ranwad, Taluka:Niphad, District: Nashik.]
]
2. Karmaveer Kakasahb Wagh Sahakari]
Sakhar Karkhana Ltd.] <u>Respondent No.2</u>
Kakasaheb Nagar, Ranwad,] Original
Tal : Niphad, District: Nashik] Decree Holder
Through its : Liquidator]
]
3. Chhatrapati Sambhaji Sakhar]
Udyog Ltd.] <u>Respondent No.3</u>
At Chittepimpalgaon] Original
Tal & District: Aurangabad] Judgment
Address: K. K Wagh Sahakari Sakhar] Debtor
Karkhana Ltd., Kakasaheb Ngar, Ranwad,]
Tal. Niphad, District : Nashik.]
]
3. The Commissioner of Sugar]<u>Respondent No.4.</u>
State of Maharashtra at Pune]
]
5. Dombivali Nagari Sahakari Bank Ltd.]
Samarth Nagar Branch] Respondent No.5
District Aurangabad]
Through its Manager]

<u>ALONG WITH</u>

WRIT PETITION NO.10658 OF 2016

Dombivali Nagari Sahakari Bank Ltd]
A Scheduled Co-operative Bank]
Registered under Co-operative]

Societies Act, 1960	]	
Through its Manager	]	Petitioner
Plot No.52 MIDC, phase II, Kalyan Shil	]	
Sonarpada, Dombivali East	]	
Thane 421 204	]	

-vs-

1. Ambarwadikar Industries Pvt. Ltd.	]	
registered office at Plot No.212	]	
Samarth Nagar, Aurangabad	]	Respondent
Corporate office at Gat No.103	]	No.1.
Beed Bye pass road, Aurangabad	]	
and Factory K.K. Wagh Sahakari Sakhar	]	
Karkhana Ltd., Kakasaheb Nagar,	]	
Ranwad, Taluka:Niphad, District: Nashik.	]	
	]	
2. Chhatrapati Sambhaji Sakhar	]	
Udyog Ltd.	]	<u>Respondent No.2</u>
At Chittepimpalgaon	]	Original
Tal & District: Aurangabad	]	Judgment
	]	
3. Karmaveer Kakasahb Wagh Sahakari	]	
Sakhar Karkhana Ltd.	]	<u>Respondent No.3</u>
Kakasaheb Nagar, Ranwad,	]	Original
Tal : Niphad, District: Nashik	]	Decree Holder
Through its : Liquidator	]	
	]	
4. Bank of Baroda	]	
constituted under Banking Companies	]	
(Acquisition and Transfer of Undertakings)]		
Act 1970, having its Corporate Office: Baroda	]	
Corporate: Plot C.26 Block Bandra Kurla,	]	Respondent
Bandra (East), Mumbai 400 051 and having	]	No.4.
local branch at Tilak Path, Pathan Gage	]	
Aurangabad 431 001.	]	

<u>ALONG WITH</u>

CIVIL WRIT PETITION NO.2093 OF 2017

Niphad Sakhar Kamgar Sabha Shakha Kakasahebnagar Registered and recognized organization Bhausaheb Nagar, Niphad, Dist. Nashik Through its President Shri. Suryabhan Bhagwant Jadhav age: 58 years,Occn.Servie, r/o Vinchur Tal. Niphad, District: Nashik	]	Petitioner

-vs-

1. Karmavir Kakasaheb Wagh Sahakari Sakhar Karkhana Ltd Kakasaheb Nagar, Tal. Niphad Dist.Nashik 2. Chhatrpati Sambhaji Sakhar Udyog Ltd. Dindayal Nagar, Aurangabad Tal & Dist. Aurangabad 3. Dombivali Nagari Sahakari Bank Ltd. Having its registered office at Madhukunj, plot NO.52,MIDC Phase II, Kalyan Shil ,Sonarpada Dombivali East, Thane 421 204 4. Bank of Baroda Having its corporate office plot No.C.26, G Block Bandra Kurla Bandra East Mumbai 4-00 051. and also having its local branch at Tilak Path Pathan Gate, Aurangabad.	]	respondents.

Mr. Atul Damle, Senior Counsel with Mr. Suresh M. Sabrad, for the Petitioner in W.P. No.12835 of 2016.
Mr.Ketan Gupta i/by Legale Y. Associates,for the Applicant in Civil Application No.2994 of 2017.

Mr. Ajinkya Jaibhave i/by Sneha G. Sanap, for the Petitioner in W.P. No.2093 of 2017.

Mr. Rishabh Shah a/w Ms. Shirin Shaikh i/by Raval Shah and Co. for the petitioner in W.P. No.10658 of 2016.

Mr. Siddheshwar Thombre, a/w Mr. Govind Solanke I/by S.B. Solunke, for the petitioner in W.P. No.10899 of 2016.

Mr. P.K. Dhakephalkar, Senior Counsel a/w Mr. Siddhesh Pilankar and Mr. Swpnil Patil i/by Uday P.Warunjikar, for respondent No.2. in all Writ Petitions.

Mr. Prasad Dani and Mr. Ashish Gaikwad a/w Ms. Bhavana Khichi and Mr. Abhishekh Mishra, for respondent No.1 in W.P. No.12835 of 2016 and for respondent No.2 in W.P.No.10899 of 2016.

Mr. Pramod Patil, Senior Advocate a/w Mr. Ashish Gaikwad a/w Bhavana Khichi, for respondent No.3 in W.P. No.10658 of 2016.

Mr. A.A. Alaspurkar, AGP for State.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

CLOSED FOR ORDER : 21st MARCH, 2018.

JUDGMENT PRONOUNCED ON : 6th APRIL, 2018.

COMMON JUDGMENT:

1] Heard learned Senior Counsel for the petitioners and learned Senior Counsel for the respondents .

2] Rule.

3] Rule is made returnable forthwith with the consent of learned Senior Counsel for both the parties and these Petitions are taken up for final hearing.

4] As all these Writ Petitions are arising out of same proceedings and are raising the common questions of facts and law, they are being decided by this common judgment.

5] Writ Petition No12835 of 2016 is preferred by the third party namely, Ambarwadikar Industries Pvt. Ltd., (hereinafter referred to as, "Ambarwadikar" for short), challenging the order dated 18.12.2015, passed by the District Judge-1, below Exh.25 in Arbitration Darkhast No.165 of 2014, thereby rejecting their claim made under Order 21 Rule 58 of the Code of Civil Procedure.

6] Writ Petition No.10899 of of 2016 is preferred by Bank of Baroda and W.P. 10658 of 2016 is preferred by Dombivali Nagari Sahakari Bank Ltd., aggrieved by the orders, in the same proceeding below their applications at exh.47 and 50, respectively, filed under Order 21 Rule 58 of the Code of Civil Procedure.

7] W.P. No.2093 of 2017 is filed by Niphad Sakhar Kamgar

Sabha, challenging the order passed below their application at Exh.68, seeking impleadment in the same Execution Proceeding.

8] Facts giving rise to these Writ Petitions, can be stated as follows :-

9] Respondent No.1 is the Decree Holder Karmaveer Kakasaheb Wagh Sahakari Sakhar Karkhana Ltd. As per order passed by the State Government under Section 103 of the Maharashtra Co-operative Societies Act, 1960, the Liquidator was appointed to run the said sugar factory and he was conferred with all the powers under Section 105 of the Maharashtra Co-operative Societies Act, 1960.

10] On 27.11.2012, the Decree Holder prepared lease agreement with respondent No.2 the Judgment Debtor Chhatrapati Sambhaji Sakhar Udyog Ltd., for running the said sugar factory from crushing season of the year 2012-13 till the end of crushing season of the year 2017-18. The Commissioner of Sugar, Pune granted permission for lease in favour of respondent No.2 Judgment Debtor and accordingly lease agreement came to be executed on 18.3.2013 between respondent Nos. 1 and 2. However, dispute arose between them in respect of the outstanding loan and other liabilities.

Accordingly as per clause No.38 of the lease agreement, both the parties approached the Arbitrator with their grievances for determination of their rights and for resolving the dispute.

11] On 25.4.2014, the Arbitrator passed the award. Respondent No.2 the Judgment Debtor, however, challenged the said award by filing Application, before the District Court under Section 34 of the Arbitration Act. The said application came to be rejected. Similarly, Application at Exh.19, filed therein by the Decree Holder, for issuance of injunction against the Judgment Debtor, restraining from selling the sugar stock which was stored in the sugar factory, also came to be rejected.

12] Being aggrieved by the said order, respondent No.2 the Judgment Debtor preferred Arbitration Appeal Nos. 35 and 36 of 2015, before this Court. During the pendency of those appeals, the matter came to be amicably settled between them and accordingly the Consent Terms were filed before this Court on 7.12.2015. Both the appeals were accordingly disposed in view of the Consent Terms.

13] On the basis of those Consent Terms, on 14.10.2014, the Decree Holder filed the Execution Proceeding against respondent

No.2 the Judgment Debtor. During the pendency of this Execution Proceeding, on 9.9.2015 the warrant of attachment of sugar stock, came to be issued under Order 21 Rule 43 of the Code of Civil Procedure. After the order of attachment was passed, the petitioner Ambarwadikar, moved an application before the Executing Court as third party under Order 21 Rule 58 of the C.P.C., requesting the Court to recall its order dated 9.9.2015, passed below Exh.14 for attachment of sugar stock on the count that the petitioner Ambarwadikar is the owner of the sugar stock attached in the execution proceeding. It was contended by the petitioner Ambarwadikar that on the basis of the resolution dated 3.12.2012, passed by the Board of Directors of respondent No.2 Judgment Debtor and in pursuance of the sub lease agreement executed on the same day, petitioner Ambarwadikar has been conferred with the right to run the said sugar factory. The petitioner Ambarwadikar has obtained the loans from the banks by pledging the sugar stock with the banks and at present sugar stock was in the custody of the banks. The petitioner Ambarwadikar claimed that the petitioner is lawful claimant of sugar stock and therefore, prayed before the Executing Court for setting aside the order of attachment of sugar stock. The Executing Court, after hearing learned counsel for both the parties, was pleased to reject this application at Exh.25 and hence they have come before this Court, challenging the said order.

14] After the said application at Exh.25 was decided, the other petitioners namely the Bank of Baroda and the Dombivali Nagari Sahakari Bank, have filed two applications at Exh.47 and 50 before the Executing Court, under Order 21 Rule 58 of Code of Civil Procedure, for declaration that being the Pawnees they have got primary right, title and interest over the sugar stock, kept in the godown Nos. 1 to 4, hence the order dated 9.9.2015 passed below Exh.14 for attachment of the sugar stock may be cancelled and they may be permitted to adduce documentary and oral evidence. According to both these banks, on the basis of agreements of pledge executed by the petitioner- Ambarwadikar, in their favour, they have got priority right, title and interest in the sugar stock and actually they are in possession of the said sugar stock. Therefore, unless their claims are satisfied the sugar stock cannot be disposed.

15] The Executing Court has, vide its detailed order passed below the said applications on 9.5.2016, rejected their applications also. Hence being aggrieved thereby, they have preferred two separate Writ Petitions, challenging the said order.

16] Meanwhile, Niphad Sahakhar Kamgar Sabha, has also filed an application at Exh.68 before the Executing Court, contending inter aliaalia that the Consent Terms arrived at between the Decree Holder and Judgment Debtor in the Arbitration Appeals, clearly contain a provision for payment of Rs.6,86,00,000/- to the members of Niphad Kamagar Sabha and therefore, they are also entitled to be impleaded as party to the proceeding, so as to receive this amount towards the lawful dues of their workers.

17] The Executing Court, rejected this application also, vide its order dated 16.12.2016, as the petitioner therein failed to satisfy the said Court as to how the said application was tenable in the Execution Proceeding. Moreover, it was held that the petitioner has no concern with the alleged decree or movables of the Decree Holder or the Judgment Debtor, which were attached under attachment order. Being aggrieved by this order, the Niphad Sakhar Kamgar Sabha has also come before this Court.

18] At this stage, it may be stated that even the State Bank of India, which has also advanced the finance to the Judgment Debtor, has also filed application in this Court for its impleadment, in the writ petition filed by the Ambarwadikar. However, they have not preferred any application before the Executing Court.

19] Now, coming first to the claim of the third party, namely Ambarwadikar Industries Pvt. Ltd., the facts stated herein above are not disputed by any of the parties and as such they are beyond the realm of dispute.

20] It is a matter of record that in view of the appointment of Liquidator for the Decree Holder Karmveer Kakasaheb Wagh Sahakari Sakhar Karkhana Ltd, the lease agreement came to be executed for running the said sugar factory with respondent No.2 the Judgment Debtor Chhatrapati Sambhaji Sakhar Udyog from the crushing season of the year 2012-13 till the end of crushing season of the year 2017-18.

21] As regards this lease agreement, it is not disputed that the Commissioner of Sugar, Pune has also granted permission for the said lease. It is again a matter of record that on account of dispute between the Decree Holder and the Judgment Debtor, the Arbitrator, was appointed and after the award was given by the Arbitrator, the appeals were preferred against the said award, which came to be dismissed and then the matter was reached to this Court. In the Writ

Petition preferred in this Court, the mutual consent terms came to be signed between the parties. In view thereof, the appeals came to be disposed of and for implementation of those Consent Terms, the Execution Proceeding is preferred before the Executing Court. In this Execution Proceeding, the Executing Court has passed the order of attachment of sugar stock on 9.9.2015.

22] It is also a matter of record that, meanwhile the Judgment Debtor has executed sub lease agreement dated 18.03.2013 in favour of the petitioner Ambarwadikar., On the basis of this sub lease agreement, petitioner Ambarwadikar, was running the sugar factory. In view thereof, Ambarwadikar is raising it's claim against the sugar stock. Thus, in the first place as Ambarwadikar is claiming through the Judgment Debtor, on the basis of the Agreement of sub-lease, it has to be held that Ambarwadikar has no independent right. Hence it's claim cannot be considered in the Execution Proceeding.

23] Moreover, the question arising for consideration is whether the sub-lease agreement executed by Respondent No.2 the Judgment Debtor Chhatrapati Sambhaji Sakhar Udyog in favour of Ambarwadikar, is legal and proper and whether on the basis of such sub lease agreement, the petitioner Ambarwadikar can raise any claim against the attached sugar stock.

24] According to the Decree Holder and now even according to the Judgment Debtor also, the Judgment Debtor had no right to execute the agreement of sub-lease in favour of the petitioner Ambarwadikar. Whereas according to the petitioner Ambarwadikar, the clause No.27 of the lease agreement executed between the Decree Holder and the Judgment Debtor, the Judgment Debtor was permitted to create such sub-lease. As the entire dispute revolves around the interpretation of this clause No.27 of the lease agreement, it would be useful to reproduce the said clause as follows :-

> "27. The lessee shall be responsible for making arrangements of contractors and sub contractors for entire operation of industrial unit, for the purpose of cutting, harvesting and transportation of sugar and other miscellaneous contracts during the crushing season 2012-13 and upto the expiry of lease period. However, while making such arrangements, the lessee shall give preference to such contractors vehicle owners, who are doing such work with the Karkhana from the area of operation of the Karkhana on merit. The lessee shall be liable to make payment to sugarcane supplier, harvesting and transport contractor/merchants/suppliers etc. towards any transaction entered in to by the lessee with them

during the period of this agreement".

25] As rightly observed by the Executing Court, perusal of this clause makes it clear that by this clause the lessee-Judgment Debtor was merely authorized to make arrangement of contractor or sub contractor for entire operation of industrial unit for the purpose of cutting, harvesting and transportation of sugarcane. A plain reading of this clause, thus, does not indicate in any way that the Decree Holder -lessor has granted in favour of the Judgment Debtor any right or permission to sub lease the said unit of sugar factory to be run by any third person.

26] Except for this clause, no other clause is pointed out by the petitioner Ambarwadikar to show that the lessee-Judgment Debtor has been given any right to sub lease the said factory in favour of third person.

27] According to learned counsel for the petitioner, the lease agreement does not contain any clause to expressly bar the lessee from executing sub-lease agreement and therefore, on the basis of this clause No.27, one can infer that lessee had right to get the business of sugar factory conducted by any contractor, who may be in this case, the sub-lessee also.

28] However, in considered opinion of this Court, in the absence of any specific clause, authorizing the lessee to sub lease the factory in favour of third person, it becomes difficult to hold that the lessee has such right to do so, especially in the absence of any permission from the lessor. In the instant case, admittedly no such permission from the Decree Holder lessor has been obtained prior or even subsequent to said sub-lease agreement, in favour of the petitioner. It is pertinent to note that no such permission has been obtained by the Judgment Debtor-lessee, even from the Commissioner of Sugar, Pune, which was essential in the instant case, as the Decree Holder -lessor was the factory in liquidation. It is pertinent to note that the Decree Holder is also not a party to this sub-lease agreement.

29] In view thereof, it becomes difficult to accept the legal status of the petitioner Ambarwadikar as any independent entity to consider it's claim in the Execution Proceeding. In this respect one cannot also close eyes to the facts that the lease agreement between the Decree Holder and the Judgment Debtor was prepared on 17.11.2012 and it came to be executed on 16.3.2013 and it was notarized on 18.3.2013. However, surprisingly this sub-lease agreement came to be executed by the Judgment Debtor in favour of the Petitioner Ambarwadikar on 03.12.2012 itself, that is much before the execution of the lease agreement between the Decree Holder and the Judgment Debtor . There is nothing on record to show that the Judgment Debtor was authorized to do so, as stated above. Conversely, clause No.2 of the lease agreement specifically provides that the Judgment Debtor was permitted to run the sugar factory after prior approval from the Commissioner of Sugar, Pune and that permission, as stated above is obtained only after the execution of the sub lease agreement. No specific permission of the Commissioner of Sugar, Pune, was, however, obtained for the said sub lease.

30] Moreover, all along, all the memos /bills to sell sugar produced by the factory in the market, were issued in the name of the Judgment Debtor and never in the name of the petitioner Ambarwadikar. Even the licences to manufacture spirit and molasses were issued in the name of the Judgment Debtor and not in the name of sub-lessee.

31] In view of these material facts on record, the Executing Court has rightly held that the petitioner Ambarwadikar has failed to prove its legal right over the sugar stock, as in the first place the sub lease agreement is executed before the lease agreement and, thus, it is executed without having any authority to do so and without the permission from the Commissioner of Sugar and without the Decree Holder lessor being a party to such sub-lease agreement. Hence it cannot be accepted that on the basis of such sub-lease agreement, the petitioner Ambarwadikar is having any rights over the attached sugar stock.

32] What is most important to note in this case is that the petitioner-third party was all along very much aware as to the disputes between the Decree Holder and Judgment Debtor and the fact that rights of the Judgment Debtor were decided by the Arbitrator and even by the District Court and High Court, in the Arbitration Appeals and the Writ Petition, respectively. However, the petitioner Ambarwadikar has not stated at any time or in any of these proceedings that on the basis of the sub-lease agreement, the Judgment Debtor has granted its rights and interest in the sugar factory in their favour. The petitioner has kept totally silent through out all the proceedings in the finalization of the Consent Terms and thereby suppressed the material facts from the Arbitrator, the District Court and this Court and allowed the amicable settlement to be arrived at by the mutual consent between the Decree Holder and the Judgment Debtor. Hence, now it is too late in a day for the petitioner Ambarwadikar to raise any claim against the attached sugar stock, for the first time in the Execution Proceeding.

33] Moreover, as per clause (n) of the Consent Terms executed between the Judgment Debtor and the Decree Holder, it is clarified that the Judgment Debtor will settle any internal dispute amongst themselves and/or any agents, servants, representatives or any one claiming through them and will solely and only be responsible, for such dues or disputes; the Decree Holder will not be responsible for it in any manner whatsoever. Clause No.38 of the sub lease agreement executed by the Judgment Debtor with petitioner Ambarwadikar also states that if any dispute arose between the Judgment Debtor and the petitioner Ambarwadikar, it would be referred to the Arbitrator and the decision of the Arbitrator shall be binding on both the parties. Despite that the petitioner Ambarwadikar has not filed any such dispute before the Arbitrator in respect of its rights and interests in the sugar factory or goods therein, on the basis of the said sub lease agreement. The petitioner Ambarwadikar has also not raised any claim against the Judgment Debtor on the basis of clause No.(n) in terms of Consent terms arrived at between the Judgment Debtor and the Decree Holder .

34] As a matter of fact, as the sub-lease agreement is executed by the Judgment Debtor in favour of the petitioner Ambarwadikar, without any authority or permission being given to it by the lessor – Decree Holder and, thus, without permission of the lessor, it follows that the petitioner Ambarwadikar is not having any independent right against the Decree Holder and hence cannot claim any independent rights over the attached sugar stock. At the most, the petitioner Ambarwadikar can raise its claim against the Judgment Debtor by taking appropriate proceeding. In this Execution Proceeding filed by the Decree Holder – lessor, against the Judgment Debtor lessee, the petitioner Ambarwadikar cannot have any independent right to be impleaded or to raise claim against the sugar stock which is attached.

35] In view thereof, the Executing Court has rightly rejected the petitioner's application filed at Exh.25, for recalling of the attachment order. In this writ petition, therefore, no interference is warranted in the said order and the Writ petition has to be dismissed.

36] This brings me, to the claim of two other petitioners namely the Bank of Baroda and the Dombivali Nagari Sahakari Bank Ltd. They are raising the claim on the count that the sugar stock was pledged with them and it is lying in their godown as Pawnee, and therefore, they are entitled for their claim to be decided in this Execution Proceeding, as they are having primary right and title over the said stock. The Executing Court has rejected their claim, mainly, on the ground that the sugar stock was pledged with these banks by the petitioner Ambarwadikar, which itself has no right do so, being the sub lessee of the Judgment Debtor and that too, without any permission from the lessor or the Commissioner of Sugar. Pune. The Executing Court also found that these banks have not acted in good faith, nor taken proper care and precaution before disbursement of the loan and therefore, their claim cannot be considered in this proceeding.

37] It is true that the petitioner Ambarwadikar, as the sub lessee had no independent right to pledge the sugar stock with these two banks. Moreover, there is also non compliance of certain terms and conditions of the sanction order. The Executing Court is justified in observing that as per disbursement condition No.8 of the loan, both the banks were expected to ensure that borrowing company, that is petitioner Ambarwadikar, was holding statutory permission or licence with clearances from the competent authorities. These banks were also aware that the consent/permission of the Decree Holder as well as approval from the Commissioner of Sugar, Pune, was required to pledge the sugar stock in favour of the banks prior for disbursement of loan to petitioner Ambarwadikar. Indisputably both the banks have not obtained such permission. Thus, there are, as stated above, definitely several lapses committed by these banks. Hence as against the claim of the Decree Holder, these banks cannot raise any right. They have no locus standi to do so.

38] However, as against the Judgment Debtor the claim of banks definitely lies. This Court cannot close eyes to the fact that the sub-lease agreement was executed in favour of the petitioner Ambarwadikar by the Judgment Debtor and the Judgment Debtor has, vide its letter dated 12.11.2012 sought permission from the Liquidator for execution of the sub-lease. The resolution to that effect was also passed by the Judgment Debtor for sanction of the cash credit facility to the petitioner Ambarwadikar. The Judgment Debtor has, even written a letter dated 4.1.2014, to the Branch Manager, Bank of Baroda, for providing financial assistance to Ambarwadikar Industries Pvt. Ltd., further informing that the Judgment Debtor was having no objection to avail loan to their associate, from the esteemed bank against the sugar stock. Not only that, the corporate guarantee was also executed by the Judgment Debtor in favour of the Bank of Baroda on 4.1.2014, for financial credit given to the petitioner Ambarwadikar. Accordingly, the pledge agreement came to be executed between the petitioner Ambarwadikar and the Bank of Baroda. Similar is the case as regards Dombivali Nagar Sahakari Bank. Both these banks had also given an undertaking to the Executing Court.

39] Thus, the claim of these two banks which is in their capacity of Pawnees and which is against the sugar stock of which the attachment is made, cannot be rejected out rightly. Assuming that they have not taken proper care as observed by the Executing Court, as the act of petitioner Ambarwadikar, of pledging the sugar stock with these banks was on the basis of "no objection certificate" given by the Judgment Debtor and the corporate guarantee also given by the Judgment Debtor, the Judgment Debtor cannot just wash its hands off, from its liability to these two banks. It was essential for the Judgment Debtor to consider this liability also, when the Judgment Debtor has entered into the Consent Terms with the Decree Holder. Their lawful claims against the sugar stock cannot be defeated against the amount due to the Judgment Debtor, particularly in the facts of the case, wherein the Judgment Debtor and the Decree Holder are entering into mutual Consent Terms as to distribute amongst themselves all the profits and assets of the sugar factory and thereby depriving the lawful claims of others. Merely on the count that certain conditions remained to be fulfilled, the money lawfully due to the banks cannot be allowed to be appropriated by the Judgment Debtor.

40] As a matter of fact, as held by the Apex Court, in the case of *The Bank of Bihar –vs- The State Bank of Bihar and others, [(1972) 3 SCC 196],* and by this Court in the case of *Kolhapur District Central Co-operative Bank Ltd –vs- State of Maharashtra and others, [2011 (3) Mh. L.J. 634],* these banks being the Pawnees, they cannot be deprived of the amount. Their rights are having precedence and primacy over any other rights. Hence the claims of these banks need to be considered and to that extent, the impugned order passed by the Executing Court, rejecting their applications, outrightly needs to be quashed and set aside. Otherwise by Consent Terms between the parties like the Judgment Debtor and the Decree Holder, the rights of the banks, which include rights on the public money held by the banks will also be defeated. Their rights need to be protected and hence the claims of these two banks need to be considered by the

Executing Court as against the Judgment Debtor, from the amount which the Judgment Debtor is likely to receive as per the Consent Terms.

41] Paragraph No.3(c) and 3(f) of the Consent Terms reads as follows :-

> "3(c) It is also agreed between the parties that the lease Karkhana will not claim any right, title and interest in future all the movable and immovable properties of the Respondent No.1 i.e. Karkhana including sugar which is attached as per the court order dated. 10.9.2015, passed by Addl. District Court, Niphad in Darkhast No.165 of 2014. All other products produced by the Appellant/Applicant have their own right. In both the Appeals the Appellant hereby undertake to resolve all the disputes and claims in future as against the Appellant and appellant individually and indemnify all the consequences thereof and Respondent No.1 will not be responsible for any payment and dues and claims as against the Appellant for the lease period of 2012/2013, 2014/2015 including any claim of member, shareholders, sugarcane suppliers farmers harvesting and transport contractors, employees during this period by the Appellant including their salaries, bonus retention allowance, gratuity, provident fund, any secured and unsecured creditors financial institutes and any claim of any individual claimant as against the Appellant during the tenure of crushing season of 2012/2013 2013/2014, 2014/2015.

> 3(f) It is agreed between both the parties that the above mentioned payment is only after the satisfaction of the Respondent No.1 i.e. the liquidator of the Karkhana of the Respondent No.1 the dues to be paid in respect of payment. It is agreed between the parties that the Respondent No.1 will proceed on the basis of the order of attachment of sugar which is stored in the stock of the godown of the Respondent No.1. The total no. of sugar is of 1,63,000 sugar quintal approximately and will take appropriate steps for sale of the said attached sugar as per the order dated 10/09/2015. The Appellant will not oppose the further proceeding and steps to be taken for the sale of the said sugar in any manner whatsoever nature and will give the consent for the sale of said sugar duly directed to attach by the order 10/09/2015 issued by the District Judge No.1 and the Additional Sessions Judge, Taluka: Niphad, Dist. Nashik.

42] Paragraph 3(h) of the Consent Terms further provides that the sale of the attached sugar stock will be made by the Liquidator of Respondent No.1 and he will deposit the amount of sold sugar in any nationalized bank on its own discretion. The subsequent paragraphs of the Consent Terms provide that out of the said amount, an amount of Rs.2798.79 lacs, will be paid to the respondent No.1-Decree Holder towards the full and final payment. <u>The Liquidator will transfer the remaining amount upon payment mentioned herein above, in the account of the respondent No.2- the Judgment Debtor</u>

<u>the Chatrapati Sambhaji Raje Sakhar Udyog Ltd.</u>

43] Thus, these Consent Terms clearly provide that, if any amount remain from the sale of the sugar stock, the full and final payment is made to Decree Holder towards its dues, and then the remaining amount will be transferred by the Liquidator to the Judgment Debtor. Hence, as regards this amount which the Judgment Debtor may receive after the settlement of the claim of the Decree Holder as per the Consent Terms, in my considered opinion, the other two petitioners namely Bank of Baroda and Dombivali Nagari Sahakari Bank are entitled to raise their claim. As stated above, the Judgment Debtor has given no objection to the third party Ambarwadikar for obtaining loan from the banks for raising sugar-cane crop and further given corporate guarantee. Hence, the Judgment Debtor cannot evade its liability towards the Banks in respect of attached sugar. To that extent only, the claim of the other two petitioners namely the Bank of Baroda and the Dombivali Nagar Sahakari Bank needs to be allowed as against the Judgment Debtor.

44] As regards Niphad Kamgar Sabha, the Consent Terms show that the amount of Rs.686.09 is to be paid to the Decree Holder for the workers payment (salary, provident fund, bonus, retention allowance, gratuity, leave salary etc.) Therefore, if at all Niphad Kamgar Sabha is having any claim, they can sue for that claim to the Decree Holder or they can get it decided independently against the Decree Holder. They cannot have any claim against attached sugar stock. Therefore, writ petition filed by Niphad Kamgar Sabha is required to be dismissed.

45] To sum up, therefore, the Writ Petition No.12835 of 2016 filed by third party Ambarwadikar Industries Pvt. Ltd, and Writ Petition No.2093 of 2017 filed by Niphad Kamgar Sabha stand dismissed

46] Writ Petition No.10899 of 2016, filed by the Bank of Baroda and Writ Petition No.10658 of 2016, filed by the Dombivali Nagari Sahakari Bank Ltd., are allowed as against the respondent No.2 Judgment Debtor only.

47] The Executing Court is directed to disburse/pay the amount recovered from the sale of sugar stock first to the respondent No.1 the Decree Holder as per the Consent Terms. Thereafter, if the Executing Court finds that any amount remains in balance, to be payable to the respondent No.2 the Judgment Debtor, then the

Executing Court to determine the dues payable to the Bank of Baroda and Dombivali Nagari Sahakari Bank and settle their payments in accordance with law.

48] The Civil Application No.2994 of 2017, filed by the State Bank of India, is disposed off with a liberty to it to file application before the Executing Court for determination of its claim.

49] At this stage, Mr. S. M. Sabrad, learned counsel for the petitioner Ambarwadikar, requests that the order which was passed by this Court on 23rd November 2016 that the amount deposited in the Court, in pursuance of the auction held shall not be disbursed by the Executing Court till final decision of the Writ Petition, be continued for further period of six weeks, in order to enable the petitioner Ambarwadikar to approach the Hon'ble Supreme Court against the order passed by this Court. Learned counsel for Respondent No.1, the Decree Holder strongly opposes the said prayer.

50] However, in the interest of justice, the same order is continued for further period of six weeks, with a clear understanding that in no case it will be extended further.

[DR.SHALINI PHANSALKAR-JOSHI, J.]