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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.13739 OF 2017**

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| IDBI Bank Ltd and others | ... | Petitioners |
| V/s. | | |
| Shri. Neelkanth Tukaram Pawar and others | ... | Respondents |

Mr. Kiran S. Bapat i/by Rahul D. Oak, for the Petitioner.

Ms. Ranjana Todankar a/w Ms. Sonali Humane, for respondent No.1.

Mr. Rohan Sathaye, a/w Ms. Kalyani Singh i/by MLM Legal Venture, for respondent No.2.

Ms. Pooja Bhaidkar i/by Aagam J. Doshi, for respondent No.3.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 27th NOVEMBER, 2018.**

**P.C. :**

1] Heard learned counsel for the petitioner and respondents.

2] Admit.

3] The petition is taken up for final hearing with the consent of learned counsel for both the parties.

4] This petition takes an exception to the order dated 7.11.2012, passed by Labour Court, Ratnagiri, in Complaint (ULP)

No.6 of 2002, which was confirmed by the Industrial Court, Kolhapur, by its judgment and order dated 18.3.2018 in Revision Application (ULP No.91 of 2013).

5] The only contention raised for consideration in this petition is whether the petitioner banks who have undertaken to pay the dues as per Consent Terms with respondent No.2 company and which Consent Terms were recorded by this Court also in Suit No.1116 of 2005, can be held liable to pay back-wages of the employee that is respondent No.1, whose termination order is held to be illegal and therefore, his reinstatement is directed along with balance amount of retrenchment compensation to the tune of Rs.4,38,035/-..

6] Both the Labour Court and the Revisional Court, have held that as the petitioner banks have undertaken, as per the Consent Terms, to discharge the said liability, they cannot be exempted from it.

7] The grievance of learned counsel for the petitioners is that, there is no privity of contract between the petitioners banks and respondent No.1. In the complaint also, no relief or claim was made against the petitioners banks. They were only added as parties subsequently. It is submitted that as per Consent Terms, the charge of these employees is only by *paripassu* under Section 529-A of the Companies Act, Section 529-A of the Act, will come into operation only in the case of winding up of the company. The company is still running and as such according to learned counsel for the petitioners both the Courts below have committed an error in fastening the liability on the petitioners for payment of retrenchment compensation to the respondent No.1.

8] Now in order to deal with this contention, it is necessary to take recourse to the Consent Terms, copy of which is produced on record. Clause Nos. 3 and 4 of the Consent Terms are relevant and they read as follows :

> "3. In so far as workers are concerned, if they have obtained any award or decree from any court of competent jurisdiction and if they are entitled to *paripassu* charge under Section 529 -A of the Companies Act, then in that event, plaintiffs and other Banks and financial institutions to whom the sale proceeds have been paid under this order shall discharge that liability, in accordance with the principles of *paripassu* charge provided under Section 529A of the Act.
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> 4. In so far as other employees are concerned who are not entitled to such protection under Section 529-A, they will stand along with unsecured creditors and their rights will be covered by the same provision, as made in respect of unsecured creditors".

9] Thus, these Consent Terms make it clear that, in case of workers, if they have obtained any award or decree from any court of competent jurisdiction, and if they are entitled to *paripassu* charge under Section 529-A of the Companies Act, then it would be the responsibility of the petitioner banks to discharge that liability in accordance with the principles of *paripassu* charge provided under Section 529-A of the Act.

10] Therefore, plain reading of these two clauses in the Consent Terms, does not contemplate at all that only if the company goes into process of winding up, the liability of the petitioner banks can be invoked. In fact it was specifically provided in clause Nos. 3 & 4 of the Consent Terms, that the charge of the employees who have obtained award or decree from any court or competent jurisdiction and if they are entitled to *paripassu* charge under Section 529 of the Company Act, their compensation will be paid as secured creditors.

11] Thus, both the Labour Court and Revisional Court, after considering the entire Consent Terms and after having regard to the provisions of law, have rightly fastened the liability of payment of compensation, on the present petitioners.

12] In Writ Petition, no interference is warranted in the impugned order. Hence writ petition stands dismissed.

13] Learned counsel for the petitioners seeks stay to order of this Court, on the count that during the pendency of this petition a statement was made by learned counsel for respondent No.1 that respondent No.1 will not take any coercive steps to implement the order. Learned counsel for respondent No.1, strongly opposes the said request.

14] In my considered opinion also such statement made during the pendency of this petition cannot be extended, once the petition itself is dismissed on merits, especially having regard to a meager pecuniary liability being fastened on the petitioner. Hence, the request, made by learned counsel for the petitioner banks, stands rejected.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**