IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6628 OF 2019

THE ALLAHABAD BANK THROUGH AUTHORIZED OFFICER AND ANOTHER
VERSUS
VIJAY EKNATH NIMBALKAR AND OTHERS

...
Advocate for the Petitioners : Shri Narwade Narayan B.
Advocate for Respondents 1 to 17 : Shri Barde Parag Vijay
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th August, 2019

<u>Per Court</u>:

1 The petitioner Bank is aggrieved by the interlocutory order dated 11.01.2018 passed by the Industrial Court, Ahmednagar, by which, the application Exhibit U/2 filed by the workers in Complaint (ULP) No.103/2017, has been allowed and the petitioner Bank is directed to preserve the amount of Rs.78 lakhs by maintaining the same in a Fixed Deposit Receipt (FDR) or deposit the same with the Industrial Court.

2 The learned advocate for the petitioner Bank has strenuously criticized the impugned order. My attention is drawn to the grounds formulated in the memo of the petition. It is submitted that the Industrial Court does not have jurisdiction to pass an order of blocking Rs.78 lakhs

so as to assess the legal dues of the workers which the employer had to pay. The petitioner Bank had loaned huge amounts to the employer/ respondent no.18 and the properties of the employer were mortgaged. The petitioner Bank has resorted to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, hereinafter referred to as “the Securitisation Act, 2002”) and the Industrial Court cannot exercise jurisdiction over such transaction involving the petitioner Bank since there is no "employer-employee" relationship between the original complainants/ workers and the petitioner Bank.

3 The learned advocate for the workers submits that they had approached the Labour Court under Section 33(C)(2) of the Industrial Disputes Act, 1947. Their claims to the extent of unpaid wages have been crystallized. They have not been paid their discharge compensation amounts and gratuity amounts though the employer has closed down the factory. The entire plant and machineries have been mortgaged to the petitioner Bank and these workers would not be able to recover the dues if the petitioner Bank is permitted to dispose of the plant and machineries.

4 In the matter of ***Employees' Provident Fund Commissioner vs. O.L. of Esskay Pharmaceuticals Limited, AIR 2012 SC 11***, the Honourable Supreme Court dealt with the issue of priority of payment of dues towards provident fund contributions as well as other dues of the

employees. It has been concluded in paragraph 27 of the said judgment that the dues of the workers will have to be considered first and the Securitisation Act, 2002 would not permit the secured creditor to enforce the security.

5 It is apparent that if the petitioner Bank disposes of the entire plant and machineries keeping in view that it has loaned an amount of more than Rs.6 crore to the employer, these workers would not be able to recover their unpaid dues, their discharge compensation amounts and gratuity amounts. These workers are hand to mouth and if their claims are rendered unexecutable or non-recoverable, it would cause miscarriage of justice. Keeping in view the law laid down by the Honourable Supreme Court in the matter of ***Employees' Provident Fund Commissioner (supra)***, I do not find that the interlocutory order passed by the Industrial Court could be termed as being perverse or erroneous. This writ petition being devoid of merit is, therefore, dismissed.

6 Needless to state, the petitioner Bank would be at liberty to liquidate the entire mortgaged properties subject to the interlocutory order passed by the Industrial Court. The pending complaint can be decided expeditiously by the Court.

kps **(RAVINDRA V. GHUGE, J.)**