IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.226 OF 2011
IN
WRIT PETITION NO. 5690 OF 2004

THE MAHARASHTRA STATE CO-OPERATIVE BANK LIMITED
VERSUS
THE STATE OF MAHARASHTRA & OTHERS
...
Advocate for Applicant : Mr. R N Dhorde, Senior Advocate a/w. Mr. P. S. Dighe, Advocate
Addl.G.P. for Respondents / State : Mr. S. B. Yawalkar
Advocate for Respondent No. 4 : Mr. G. N. Chincholkar
Advocate for Respondent No. 5 : Mr. N. K. Choudhari h/f. Mr. K. B. Choudhari
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CORAM: S. V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.
DATE: 06th DECEMBER, 2019

PER COURT:

1. The applicant seeks review of the order dated 04.05.2006 in Writ Petition No. 5690 of 2004.

2. According to the parties, the writ petition is still pending.

3. Under order dated 04.05.2006, the Court modified the interim order dated 24.10.2005 passed

by the court. Under order dated 24.10.2005, the parties were directed to maintain *status quo*. The order was modified by the Court on the basis of the consent terms arrived at by the parties. The Court further observed that consent terms are taken on record. The parties to the petition including the intervenors have agreed to act upon the consent terms. The interim order was modified in view of the consent terms.

4. According to Mr. Dhorde, learned Senior Advocate, the applicant is a secured creditor. The proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. As per Section 13(9) of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the secured creditor and the workers charge is *pari passu*. The dues has to be paid *pro rata*. According to the learned Senior Advocate, the petitioner’s dues are more than Rs. 45.97 crores

whereas the dues of the workers even as per the respondent was not more than Rs. 4.27 crores.

5. In view of that, as per the dues the distribution of the sale proceeds has to be made. The workers are already paid the amount of more than Rs.4.27 crores. Now no amount is due and payable to the workers.

6. Mr. Dhorde, learned Senior Advocate further submits that even assuming the contention of the respondent that Section 13(9) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 would not apply, then the provisions of the Maharashtra Cooperative Societies Act, 1960 would be made applicable and in that case secured creditor has the priority charge and the workers are not entitled for *pari passu* charge. The learned Senior Advocate submits that the modification of the interim order, as such, is improper and seeks review of the said order. The learned Senior Advocate further submits that

Rs.5.86 crores are paid to the provident fund department. The same are also the workers dues. The learned Senior Advocate further submits that the consent terms do not lay down that the entire workers dues are to be paid. The learned Senior Advocate refers to Clause 'f' of the consent terms and submits that the legitimate dues of the employees are only required to be considered. The legitimate dues would be dues according to the *pari passu* charge and nothing more.

7. Mr. Dhorde, learned Senior Advocate relies on the judgment of the Apex Court in case of ***Pegasus Assets Reconstruction Private Limited Vs. Haryana Concast Limited and another*** reported in ***(2016) 4 Supreme Court Cases 47*** to submit that the scheme as envisaged U/Sec. 529A of the Companies Act, 1956 and 13(9) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has to be read as envisaged in the consent terms. The consent terms cannot be dehors the legal provisions. They have

to be legal and valid and in consonance with the legal provisions.

8. The learned A.G.P., Mr. Chincholkar and Mr. Choudhari the learned counsel for the respective respondents submit that the consent terms very specifically states that the workers dues would be paid in priority. The applicant / bank has categorically accepted the same, now, it can not resile. The consent terms were already subject matter of consideration in Writ Petition No. 1756 of 2009. This Court has interpreted the said consent terms under order dated 04.10.2011 in Writ Petition No. 1756 of 2009.

9. We have considered the submissions canvassed by the learned counsel for the respective parties.

10. The parties had arrived at consent terms in Writ Petition No. 5689 of 2004 and 5690 of 2004. The consent terms were filed in the Court. The said terms are admitted by the parties and accepted. The consent terms are binding on the parties.

11. The consent terms are not subject matter of challenge. The consent terms is an agreement between the parties. The parties agreed to take action jointly in the matter of sale of properties of the Marathwada Sahakari Sakhar Karkhana Ltd., Dongarkhada that was in liquidation and the sale proceeds realised were to be kept in joint account of secured creditor and the Liquidator. Clause 'd' and 'f' of the consent terms are relevant to be considered with regard to the payment of the workers dues. Clause 'd' and 'f' reads thus-

> *"d. The Authorized officer of the Bank and the Liquidator shall decide the amount of expenditure incurred during the liquidation proceedings and shall recover the same and after the amount payable to employees shall be arrived at in consultation with the office bearers of Employees Union, by Authorized officer of the bank and the Liquidator and pay the same."*
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> *"f. From the said amount of Rs.15.88 Crores which is sale proceed for the sale of the said liquidated Marathwada Sahakari Sakhar Karkhana The authorized officer of the Bank and The Liquidator shall decide the amount of expenditure incurred during the liquidation proceedings and shall recover the same and after that, the Authorised officer of the petitioner M.S.C.Bank and the Liquidator will settle the legitimate dues of employees in consultation with the office bearers of the*

employees Union and pay the same from the joint account.”

12. Reading the said clauses, it is manifest that after the amount of expenditure incurred during liquidation is recovered from the sale of the societies assets the amount payable to the employees shall be arrived at in consultation with the office bearers of the employees union, the authorised officer of the bank and the liquidator and the same shall be paid. Under clause ‘f’, the authorised officer of the petitioner bank and the liquidator will settle the legitimate dues of the employees in consultation with the office bearers of the employees union and pay the same.

13. The consent terms nowhere specifies that the workers dues shall have *pari passu* charge with the dues of applicant bank.

14. Section 13 (9) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 also provides for the *pari passu* charge in respect of the workers *qua* the secured creditors. The same appears to be

in tune with Section 529A of the Companies Act, 1956 providing *pari passu* charge of the workers dues. In the present matter, the applicant bank is a cooperative society whereas the workers are of the Karkhana which is also a cooperative society.

15. Moreover, the consent terms are acted upon. The property is sold pursuant to the consent terms. The consent terms are to be abided by the parties.

16. The aforesaid consent terms were also subject matter of consideration in Writ Petition No. 1756 of 2009 under order dated 04.10.2011. The Division Bench of this Court interpreted the consent terms in the said order as under-

> *"4. In the consent terms, the parties agreed inter alia that from the sale proceeds, after paying the workmen's dues, the balance amount be kept in separate joint account opened in the name of the Authorized Officer of the petitioner Bank and the Liquidator. Thereafter, the parties would obtain orders from this Court for the purposes of action to be taken for appropriation of the balance of the amount. As regards determination of the workers' dues, Clause No. (d) of the consent terms is as under:*
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> > *"The Authorized officer of the Bank and the Liquidator shall decide the amount of*

expenditure incurred during the liquidation proceedings and shall recover the same and after the amount payable to employees shall be arrived at in consultation with the office bearers of Employees Union, by Authorized officer of the Bank and the Liquidator and pay the same."

5. The petitioner Bank now submits that the Liquidator has determined the amount of dues of the workers at Rs.9,65,42,570/- without consultation with the Authorized Officer of the petitioner Bank. Further, on 26th September, 2007, the Recovery Officer of the Respondent No. 5 – the Assistant Provident Fund Commissioner had informed the Liquidator to pay an amount of Rs.2,30,75,162/- for the period of May, 1995 to November, 2000. In a meeting held in the office of the Hon'ble State Minister for cooperation, it was decided to pay an amount of Rs.4.27 crores towards the workers' dues. The petitioner Bank agreed for the same. However, it is not now possible to pay the Provident Fund arrears. The amount of Rs.4.27 crores is already disbursed by the Liquidator without any consultation. The petitioner Bank has repeatedly requested the Liquidator to return the balance of the amount in the joint account of the petitioner and the Liquidator. The Liquidator, however, informed that in view of pendency of Writ Petition No. 5690/2004, he would not deposit the amount (This writ petition is filed by the petitioner Bank which is pending and in which applicability of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is in question.) Under the circumstances, claiming that the Provident Fund Authority had no authority to issue notice and that the Liquidator is bound to return the entire balance amount to the Joint accounts, the petitioner Bank wants that the notice be declared as illegal and an Arbitrator should *be appointed to settle the dues of the workers.*

6. The parties, however, vide their consent terms, accepted by this Court, have clearly agreed that from the sale of the Assets and Liabilities of the Sugar Factory, firstly workers' dues would be paid. The determination of the amount is to be made by the Authorized Officer of the petitioner Bank and the Liquidator. The contesting respondents have placed before us the Minutes of the Meeting, dated 4th November, 2009. The meeting took place in presence of the Authorized Officer of the petitioner by the Liquidator wherein the representatives of the Workers' Union as well as the representative of the Sugar Commissioner were present. The Minutes show that the Labour Welfare Officer of Dongarkada Sahakari Sakhar Karkhana had calculated the claim of the workers at Rs.8,77,00,000/- which includes an amount of Rs.4.27 crores already paid. Further, the original arrears of Rs. 2.30 crores of the Provident Fund dues had now increased due to accrual of interest to Rs.9.87 crores, was also informed. The Authorized Officer of the petitioner Bank, however, submitted in the meeting that certain deficiencies are there in calculation of the amount. When the Liquidator/Collector asked for the details of the deficiencies, the Authorized Officer of the petitioner Bank did not given any details and, therefore, the meeting was adjourned."

17. The consent terms have already been interpreted by this Court and upon perusal of the consent terms we find ourselves in agreement with the interpretation made by this Court under order dated 04.10.2011 in Writ Petition No. 1756 of

2009. Reading the consent terms in a manner as sought by the review applicant would be rewriting the consent terms. The same is not permissible.

18. There cannot be any dispute with the proposition that the consent terms have to be lawful. The contract shows an agreement between the parties wherein consensus *ad idem* has been arrived at. Both the parties have agreed upon the same thing in the same sense. The consent terms is voluntary act of the parties and the parties at their own volition have entered into the consent terms.

19. In light of the above, the review application is disposed of.

[AVINASH G. GHAROTE, J.] [S. V. GANGAPURWALA, J.]

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