IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3958 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
SADHANA SAMIR PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3959 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
ARATI PRAMOD PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3960 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
SANDIP KASHINATH PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3961 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
SUNITABAI MADHUKAR PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3962 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS

RADHABAI UKHA PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3963 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
SANJITABEN JAYESH PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3964 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
SARIKABEN ARVIND PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3965 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
USHABEN KASHINATH PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3966 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
KASHINATH DAGADI PATIL AND OTHERS

WITH WRIT PETITION NO. 3967 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS

MADHUKAR LAXMAN PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3968 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
VIMALBEN SUDAM PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3969 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
RAMCHANDRA DASHRATH PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3970 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
SANGITABAI SANDIP PATIL AND ANOTHER

WITH
WRIT PETITION NO. 3971 OF 2018

ASTORIA AGRO AND ALLIED INDUSTRIES PVT LTD
THROUGH ITS GENERAL MANAGER C Z MARATHE
VERSUS
SAMIR KASHINATH PATIL AND ANOTHER

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Advocate for the Petitioner : Shri N. V. Gaware
Advocate for Respondent No. 1 : Shri G. D. Jain
AGP for Respondent No.2 : Shri S. R. Yadav - Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 15th APRIL, 2019.

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PER COURT :

1. In all these identical matters, the petitioners are aggrieved by the identical orders dated 23/12/2016 passed by the Maharashtra State Co operative Appellate Court, Mumbai, Bench at Aurangabad, in Misc. Application Nos. 83/2016, 73/2016, 77/2016, 78/2016, 85/2016, 84/2016, 75/2016, 76/2016. 82/2016, 87/2016, 87/2016, 86/2016, 80/2016, 79/2016 AND 74/2016.

2. I have heard the learned Advocates for the respective sides at length. In Writ Petition No. 3966/2018, as respondent No.1 Kashinath has passed away. The learned Advocate for the petitioner in this petition has already carried out an amendment by adding the L.Rs. and Shri Jain has caused his appearance.

3. The liquidator – respondent No.2 Shri Ajit S. Muthe had sought permission to take guidance of the Regional Deputy Director, Sugar and Commissioner of Sugar, State of Maharashtra to engage the service of the Government Pleader.

The learned AGP submits on instructions from the representative of Shri Muthe, Shri Sandip Shantaram Patil, Auditor Grade -I that the proposal is still pending. As such, rather than adjourning all these matters, which are pending adjudication for almost 10 months, I have permitted the learned AGP to render assistance to the Court on behalf of the liquidator.

4. The petitioner in all these petitions is a private limited company which has been registered under the provisions of the Companies Act, 1956. The erstwhile Pushpadanteshwar Sahakari Sakhar Karkhana Limited was a duly registered factory under the Provisions of Maharashtra Cooperative Societies Act, 1960 and the Rules of 1961. The said factory went into heavy losses and the Regional Joint Director of Sugar, Aurangabad, therefore, passed an interim order on 30/05/2011, appointing a liquidator as per Sections 102 and 103 of the 1960 Act. The said interim order was subsequently confirmed and the Management of the factory was handed over to the liquidator.

5. The record reveals that the erstwhile sugar factory, respondent No.2, appearing through the liquidator, had obtained loan from the Maharashtra State Cooperative Bank Limited, Mumbai in 1988. Further loans were obtained in 2003. The repayment became overdue and respondent No.2 created a charge in favour of the bank and entries were accordingly taken in the record of rights.

6. In view of the above, the bank then initiated proceedings under the ***Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act)***. On 30/10/2010, after the bank had taken possession of the assets of the factory inclusive of the plant and machinery, issued the sale notice for effecting the sale of assets. The opening of the tender was scheduled on 01/12/2010 and the earnest amount was of Rs. 1,50,000/-. The petitioner herein was one of the bidders and had offered the amount of Rs. 45.48 crores which turned out to be the higher bid by anybody amongst the bidders. On 30/08/2011, the sale certificate was issued and the physical possession of the plant and machinery and immovable property was handed

over to the petitioner.

7. Respondent No.1 in all these matters initiated proceedings against the petitioner without adding the bank as a party, by raising a dispute before the Cooperative Court in 2010, at Jalgaon seeking a recovery of amounts mentioned therein alongwith interest. Neither the bank was arrayed as a respondent, nor was the petitioner. Grievance of the petitioner is that, with such suppression of facts and by avoidance of arraying necessary parties as respondents, the first respondents succeeded in getting an order from the Cooperative Court as regards attachment of the properties of the sugar factory. In fact the properties of the sugar factory were already handed over to the petitioner, who was in possession. Respondent No. 2 had appeared in the proceedings and, according to the petitioner herein, fraudulently accepted the claim as regards liability when it was on the verge of liquidation of its other assets. By the judgment dated 28/03/2011, the Cooperative Court allowed the dispute. Grievance of the petitioner is that the said judgment and award is sought to be executed against the present petitioner.

8. Based on the above, all these such respondent No.1, who are disputants before the Cooperative Court, preferred Regular Darkhast (execution proceeding) in 2012. The executing Court has passed orders rejecting the objections of the petitioner under Order 21 Rule 23 of the CPC and directed attachment under Order 21 Rule 54 restricting this petitioner from dealing with the property. Pursuant to such orders, the revenue authorities carried out mutation entries and created a charge on the properties of the petitioner in the "*other rights*" column with regard to its various parcels of land.

9. It was, in this backdrop, that the petitioner moved applications before the Maharashtra State Cooperative Appellate Court seeking leave to challenge the judgment of the Cooperative Court. By the impugned orders, the Appellate Cooperative Court has rejected applications after concluding that the petitioner was aware of the appointment of a liquidator and hence there is no reason to grant *post facto* leave to appeal against the liquidator. The grievance of the petitioner is that the Appellate Court itself concluded that it is

a well settled principle that a person who is not a party to a litigation, is entitled to prefer an Appeal with the leave of the Court and such leave should be granted if he would be prejudicially affected by a judgment which has been delivered in the proceeding.

10. The petitioner has placed reliance upon the following judgments :-

(a) Jatan Kumar Golcha Vs. Golcha Properties Private Limited, 1971 AIR (SC) 374 (Three Judges Bench),

(b) Smt. K. Ponnalagu Ammal vs. The State of Madras, AIR 1953 Madras 485 (Division Bench),

(c) United Commercial Bank Vs. Hanuman Synthetics Ltd. and other, AIR 1985 Calcutta 96 (Division Bench) and

(d) Baburao Dadarao Kolhe and others vs. State of Maharashtra and others, [2004(2) Mh.L.J.] 898 (Bom.) Division Bench.

11. The learned Advocate appearing on behalf of the identically placed first respondent in these matters has strenuously opposed these petitions. He prays that the petition

be dismissed with heavy costs. He further submits that these respondents, who are original disputants before the Cooperative Court, had deposited various amounts with the sugar factory. The factory had issued a receipt of having received such a deposit and had agreed to repay the deposit with interest at the rate of 21 % p.a. Until about November and December 2008, the factory was paying the interest amount. When it is stopped paying the interest, these disputants realized that they would have to recover the amounts from the factory. After discussions with the Directors of the Factory, cheques were issued to the disputants for and on behalf of factory and such cheques were dishonoured. Because the factory promised to repay the amounts, no criminal action was initiated by these disputants.

12. He further submits that the factory appeared in the Cooperative Court and plainly admitted the claim of the disputants. Nevertheless, it was admitted by the factory that it had obtained loans from the bank and as the bank resorted to proceedings under the SARFAESI Act, the property of the factory was attached by the bank. It was in these set of facts

that the Cooperative Court, Jalgaon had allowed their claims.

13. He then relies upon paragraph 17 of the terms and conditions of the tender which was quoted by the bank for selling the plant and machinery of the sugar factory. Clause 17 of the terms of the tender would indicate that the bank did not take any responsibility of making any payments due from the sugar factory to anybody and all taxes and payments of the sugar factory were declared to be the responsibility of the purchaser. Clause 17 further provides that "*purchaser has to find out all such liabilities.*"

14. He then submits that Clause 22 of the tender also declares that the bank is not responsible for any encumbrances upon the sugar factory and the property would be sold on " As it is *where it is basis*". He then relies upon the judgment of the learned Division Bench of this Court in the matter of ***Waman Vyenkatesh Ruikar vs. Registrar, Co-Operative Societies, Maharashtra State, Pune and others 2002 (3) CLR 981*** to contend that under Section 107 of the 1960 Act, permission to prosecute proceedings is not required to be taken from the

Registrar, by workmen who intend to recover their dues from any establishment which is under liquidation.

15. The learned Advocate for the petitioner submits that since it was not a party to the dispute put forth before the Cooperative Court, the petitioner establishment is merely seeking leave to prosecute the Appeal before the Appellate Court. Whether it has a good case on merits or not would be an issue to be considered by the Appellate Court. The law should not deprive the petitioner of an opportunity to prosecute his Appeal if it can *prima facie* be seen that the petitioner is aggrieved by the order and has a case which needs to be considered.

16. I find from the record and especially from the tender document that it would be for the Appellate Cooperative Court to consider the effect of clauses 17 and 22 of the tender conditions and as such, whether, the present petitioner could have any defence. As has been held in *Waman Ruikar (supra)*, that in similar proceedings under Section 107, the Registrar is expected to grant permission so as to enable a party to contest

the matter on its merits.

17. In the peculiar facts and circumstances of this case, the first respondent had approached the Cooperative Court arraying the second respondent which is under liquidation. Neither the petitioner nor the bank has been arrayed. Even if it is presumed that the first respondent disputant was not aware that the machinery and immovable property of the factory was sold in auction to the petitioner, the sugar factory which appeared in the dispute was under an obligation to place all the facts before the Cooperative Court, whether or not they would impact the proceedings. It is not for a litigant to assess as to which fact should be brought to the notice of a Court and which fact would deserve suppression. The Honourable Apex Court, in the matter of ***Bhaskar Laxman Jadhav & Ors. Vs. Karamveer Kakasaheb Wagh Education Society, (2013) 11 SCC 531,*** has laid down the law that all aspects of the case have to be brought to the notice of a Court and no litigant can be heard to say that he did not find it appropriate to disclose a particular fact. When the sugar factory was aware of the auction sale whether before, during

or after the institution of the dispute, it should have been fair in informing the Cooperative Court about such a sale, through its written statement.

18. In *Jatan Kumar (supra)*, the Honourable Apex Court, while dealing with a somewhat similar issue, observed in paragraph Nos. 3 and 4 as under :-

> "*In the order of the High Court reference has been made to Rule 139 of the Companies (Court) Rules 1959 and it has been pointed out that since the appellant had not appeared before the Company Judge she was not entitled to maintain the appeal. It was conceded that no notice had ever been sent to her either by the Official Liquidator or the Company Judge before the order appealed against relating to appellants property was made. The High Court was of the view that the only remedy of the appellant was by way of a suit after obtaining leave of the Company Judge under Section 446 of the Act. Now an appeal lies under Section 483 of the Act from any order made or decision given in the matter of winding up of a company by the Court and it lies to the same Court to which, in the same manner in which and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction. There can be no manner of doubt that an appeal was competent*

against the order made by the Company Judge on July 21, 1969 in view of the terms of Section 483. The only question is whether because the Official Liquidator failed to discharge his duties properly by having a notice issued to the appellant, whose rights were directly affected by the order proposed to be made, the appellant was debarred from filing the appeal. In our opinion apart from Rule 139 to which reference has been made by the High Court the Official Liquidator as well as the learned Company Judge were bound by the rules of natural justice to issue a notice to the appellant and hear her before making the order appealed against. If there was default on their part in not following the correct procedure it is wholly incomprehensible how the appellant could be deprived of her right to get her grievance redressed by filing an appeal against the order which had been made in her absence and without her knowledge. It would be a travesty of justice if a party is driven to file a suit which would involve long and cumbersome procedure when an order has been made directly affecting that party and redress can be had by filing an appeal which is permitted by law. It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate Court and such leave should be granted if he would be prejudicially affected by the judgment.

4. Rule 103 of the Companys (Court) Rules provides for taking out summons for directions not only with *reference to the settlement of the list of contributories and the list of creditors but also the exercise by the official liquidator of all or any of the powers under Section 457(1) and any other matter requiring directions of the Court. The exercise of the power under Section 457 (1) (c) of the Act to sell the immovable and movable property of the Company by public auction or private contract would certainly fall Within the ambit of the Rule. That Rule expressly provides for issuing of a notice of the summons to the petitioner on whose petition the order for winding up was made. It is implicit that if the directions which have to be given by the Court would affect any person prejudicially he must be served with a notice of the summons under the general rule of natural justice and that no order should be made affecting the rights of a party without affording a proper opportunity to it to represent its case. The High Court was thus clearly in error in not entertaining and deciding the appeal preferred by the appellant who was the owner of the land in which lease hold rights said to have been created by her in favour of the Company in liquidation were sought to be sold.*"

19. It was thus concluded that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be

prejudicially affected by the judgment. The Cooperative Appellate Court has made an identical observation in the last four lines on internal page 5 of its judgment in Misc. Application No. 83/2016. However, leave to appeal is denied. After realizing that some of the immovable properties of this petitioner, have been placed under a charge, due to the order of the Cooperative Court, I wonder, what more factors were required to be brought to the notice of the Appellate Cooperative Court that these petitioners would be prejudicially affected and more so when the sugar factory knew of the auction sale and did not inform the Cooperative Court or even the Appellate Court.

20. Considering the above, I am of the view that the impugned order passed by the Appellate Cooperative Court has resulted in depriving the petitioner of a right to test the order of the Cooperative Court on its merits. Without such an opportunity, it would be impossible for the petitioner to put forth its case and test the legality of the order passed by the Cooperative Court. Needless to state, if the Appellate Cooperative Court ultimately draws a conclusion on the merits

of the Appeal that the case of these petitioners is frivolous or amounts to vexatious litigation, it could proceed to impose costs on these petitioners.

21. Considering the above, these petitions are allowed in terms of prayer clause 'B' which reads as under :-

> "*[B] Quash and set aside the impugned order dated 23.12.2016 passed by ld. Maharashtra State Co-operative Appellate Court, Aurangabad, in Misc. Application No. 83/2016 and consequently said application may kindly be allowed and for that purpose issue necessary orders.*"

22. I am not reproducing prayer clause 'B' from each petition since all impugned orders are identical and I am quashing all the impugned orders and allowing the Misc. Applications filed by these petitioners. Consequentially, the Appeals filed by the petitioners would be registered by the Cooperative Appellate Court.

23. All the litigating sides shall appear before the Maharashtra State Cooperative Appellate Court at Aurangabad

on 10/06/2019. Formal notices need not be issued.

(RAVINDRA V. GHUGE, J.)

shp/-