

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION NO.1012 OF 2019
IN
WRIT PETITION NO.2479 OF 2017 (D)

(Hiraman Shankar Shirsat (In Person) Vs. The Maharashtra State Co-operative Bank
Ltd., Mumbai thr. its Managing Director and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Hiranman S. Shirsat (In Person).
Shri V.G. Wankhede, Advocate for Respondent Nos.1 & 2.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 13th JANUARY, 2020.

1] The applicant has declared that he has acquired a competency certificate for appearing in person in this proceeding from the committee of the Registrar under the Bombay High Court Appellate Side Rules.

2] The party in person Shri Hiranman S. Shirsat submits as follows:

A] A private Advocate should not be engaged by respondent no.1 Maharashtra State Co-operative Bank Ltd. and it should engage an AGP because the private Advocates are fraudulent.

B] Respondent nos.1 and 2 in this application should appear in person along with the AGP.

C] He has filed Contempt Petition No.3/2019 in which 21 persons are arrayed as accused

contemnors out of which seven are practicing Advocates from the Civil Courts in Khamgaon and two are Government Pleaders and five more are private Advocates practicing at the Nagpur Bench of this Court. Two out of these five are private Advocates of Mr. Shirsat.

D] He alleges fraud on the part of all these Advocates and he submits that the learned criminal Division Bench would consider the criminal contempt for deciding what fraud was played by the Advocates and the parties, on the Court.

E] Under section 529-A of the Companies Act, 1956, the legal dues payable to the applicant will have to be recovered from the properties of the Shivshakti Adivasi Magaswargiya Sahakari Sakhar Karkhana Ltd. Sujatpur, Tq. Khamgaon, Dist. Buldhana and as these properties have been taken over by respondent no.1 Bank, the applicant will have the first right for recovering his arrears of unpaid salary and legal dues.

3] Section 529-A of the Companies Act, 1956 reads as under:

529-A. Overriding preferential payments.—

(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company—

*(a) workmen's dues; and
(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues,
shall be paid in priority to all other debts.*

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

4] He had approached the Co-operative Court for his grievances and by judgment and order dated 29.03.2000, the Dispute No.631/1997 was allowed by the Co-operative Court. By judgment dated 29.04.2000, delivered by the Maharashtra State Co-operative Appellate Court, the appeal preferred by the Sugar Factory No.42/2000 was allowed.

5] The applicant Mr. Shirsat preferred Writ Petition No.1719/2000 which was allowed by judgment dated 17.09.2013 delivered by this Court and the judgment of the Co-operative Court dated 29.03.2000 was restored.

6] He preferred execution proceeding bearing Special Darkhast No.5/2014 arraying the Bank as the entire immovable properties of the Sugar Factory were taken over by the Bank. The Bank is liquidating the property through a liquidator who is an officer of the same Bank. Mr. Shirsat desires to invoke section 529-A of the Companies Act, 1956.

7] He has a grievance that his Advocate Shri V.A. Kothale, who represented him in Writ Petition

No.2479/2017, has wrongly conceded before this Court by which the entire claim of Mr. Shirsat is defeated. The said statement is recorded in the order dated 14.08.2018, which was passed by this Court (Coram: Rohit B. Deo, J.) and based on the said statement, Special Darkhast No.5/2011 was dismissed as against the Bank and the order dated 27.08.2015 passed by the Executing Court against the Bank was also set aside.

8] I have perused section 529-A and I find that the applicant has a preferential right for the recovery of all his legal dues as an employee of the sugar factory. Entire assets of the sugar factory have been taken over by the liquidator who is an officer of the Bank and the Bank is liquidating the said properties. By the statement made by the Advocate before this Court on 14.08.2018, the entire claim of Mr. Shirsat appears to be defeated.

9] The learned Advocate for the respondent Bank vehemently opposed this application. He, however, concedes that the Bank is arrayed as a respondent in the execution proceedings. The Bank has appointed its officer as the liquidator to liquidate the assets of the sugar factory.

10] In view of the above, this review application is allowed. The order dated 14.08.2018 passed by this Court is recalled as Mr. Shirsat categorically submits that he had never instructed his Advocate to make such a concession and such concession made by the Advocate without the instructions of Mr. Shirsat, would not bind him.

11] Writ Petition No.2479/2017 is therefore,

restored and consequentially, Special Darkhast No.5/2014 shall also stand restored as against the Bank. Liberty is granted to the Bank which is the petitioner in Writ Petition No.2479/2017, to circulate the petition for hearing.

12] Before I part with this matter, the strange submissions of Mr. Shirsat need to be dealt with. Firstly, he has no authority to contend as to whether the Bank should appoint an AGP or should appoint a private Advocate and he is restrained from making such submission. He is further restrained for making allegations against practicing Advocates in the proceedings in which conduct of the Advocate is not an issue. In future if he continues to make such allegations in matters which are unconnected with his grievance as against any Advocate, this Court would consider cancelling his competency certificate to appear in person.

13] Pending civil application would not survive and stand disposed off and by keeping all the contentions of Mr. Shirsat in connection with the Special Darkhast No.5/2014 and Writ Petition No.2479/2017, open.

(Ravindra V. Ghuge, J.)