

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 5973 OF 2016**

Associated Engineering Corporation  
Through its Power of Attorney holder  
Surendrasing s/o Jalamsing Deore ... Petitioner

Versus

Panzarkan Sahakari Sakhar Karkhana Ltd.  
Bhadne and another ... Respondents

....

Ms Madhaveshwari D. Thube Mhase, Advocate for the petitioner  
Mr. A. B. Chate, AGP for respondent No.1  
Mr. S. B. Gorde Patil, Advocate for respondent No.2

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**CORAM : R. G. AVACHAT, J.**

**DATED : 08<sup>th</sup> FEBRUARY, 2021**

**PER COURT :-**

. The challenge in this writ petition is to the order dated 20.01.2016 passed by the 2<sup>nd</sup> Joint Civil Judge, Junior Division, Dhule below Exh.59 in Special Darkhast (execution proceeding) No.27 of 2001. The petitioner herein is the original decree holder. Respondent No.1 is the original judgment debtor. Respondent No.2 Maharashtra State Central Co-operative Bank is the intervener in the execution proceeding.

2. The petitioner had filed suit against the respondent for money decree. It was a suit, being Special Civil Suit No.130 of 1999. The suit was decreed on 19.04.2001, directing respondent No.1 to pay the petitioner a sum of Rs.9,50,731/- together with 22% interest p.a. on the principal amount of Rs.6,03,397/- till the realisation of the said amount. The petitioner filed the execution proceedings (Special Darkhast No.27 of 2001). He moved application for attachment of the immovable properties of respondent No.1 – judgment debtor. The executing Court allowed the application and attached the immovable properties of the judgment debtor. Respondent No.2 intervened in the execution proceedings and moved application Exh.59 for withdrawal of the order of the attachment of the immovable properties of the judgment debtor. The executing Court vide its order dated 20.01.2016 allowed application Exh.59. It also recalled the orders dated 02.02.2009 and 12.11.2009 of attachment and sale of certain immovable properties passed below Exh.32 and Exh.40. The immovable properties described in the application were freed from the said attachment.

The aforesaid order is under challenge in this writ petition.

3. Ms Madhaveshwari D. Thube Mhase, learned Advocate for the petitioner would submit that the petitioner holds a decree that was passed before the immovable properties of the judgment debtor came to be attached by the intervener bank. The claim of the petitioner – decree holder shall have a priority over all other claims of the respondent intervener bank. The executing Court erred in passing the impugned order. According to the learned Advocate, Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ‘the Act of 2002’), saves operation of any other law for the time being inforce. She, therefore, urged for setting aside of the impugned order.

4. Learned Counsel for respondent No.2 – intervener bank would on the other hand submit that the bank is a secured creditor. It has initiated proceedings under the Act of 2002 in enforcing its security interest. The petitioner has a remedy of appeal under Section 17 of the Act of 2002. According to him, the writ petition is not maintainable.

5. Admittedly, respondent No.2 – intervener bank is a secured creditor. It has initiated measures under Section 13 of the

Act of 2002 for enforcement of its security interest. The petitioner is an unsecured creditor. The intervener bank has taken over possession of the mortgaged properties of the judgment debtor sugar factory. The intervenor bank has a preferential charge on the properties of the judgment debtor, respondent No.1. The executing Court has rightly observed that civil Court cannot attach the properties which are already attached and taken in possession by the secured creditor. If the petitioner has any grievance against the order/orders passed under the Act of 2002, it has a remedy under Section 17 of the Act of 2002. Section 17(1) of the Act of 2002 reads thus:

***“17. [Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.”***

In the case of ***Marathwada Gramin Bank vs. Maharashtra State Co-operative Bank Ltd. and others*** reported in ***2007(2) Mh.L.J. 594***, it has been observed thus:

***“(b) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), S. 17 and Constitution of India, Art. 226 –***

*Efficacious alternate remedy – Rule of alternate remedy before a writ is granted is a rule of self imposed limitation, a rule of policy and discretion than a rule of law.”*

6. In view of the above, the petitioner ought to have availed the remedy under Section 17 of the Act of 2002. The executing Court has passed well reasoned order.

I do not find any jurisdictional error in the impugned order. The writ petition is therefore liable to be dismissed. The same is thus, dismissed.

[ R. G. AVACHAT, J. ]

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