

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO. 21461 OF 2022**

Rajendra Eknath Dhande and ors.

....Petitioners

Versus

The Sugar Commissioner and ors.

....Respondents

Mr. Y. S. Jahagirdar, Senior Advocate along with Mr. Akshay Petkar and Mr. Pranav Shah, Advocates for the Petitioners.
Ms. M. S. Bane, AGP for Respondent No.2 - State.
Mr.S. S. Panchpor, Advocate for Respondent No.3.
Mr. Saurabh Butala i/b. Mr. Harshad Sathe, Advocate for Respondent No.4.

**CORAM : PRASANNA B. VARALE &
KISHORE C. SANT, JJ.**

DATE : 30th AUGUST, 2022.

P.C. :

1. Not on board. Mentioned by way of praecipe. As urgency is claimed in the matter, without waiting for papers, we have heard Mr.Jahagirdar, learned senior counsel appearing on behalf of the petitioners.

2. Our attention was invited to a resolution dated 31st March, 2021. Perusal of the resolution shows that respondent No.3- Maharashtra State Cooperative Bank, Mumbai, in view of certain proceedings initiated under SARFAESI Act took possession of private

sugar factory viz. Shree Adhinath Sahakari Sakhar Kharkhana Limited, Shelgaon-Bhalwani, District Solapur. Post taking over possession, the said Bank thought it fit to lease out the said sugar factory. One private entrepreneur- the Baramati Agro Limited submitted its offer in tender process for leasing out the said factory. The subject in respect of parties to enter into settlement was placed before the members in the Annual General Meeting on 31st March, 2021. Due to peculiar circumstances viz. outbreak of Covid-19 pandemic, the resolution was put to voting by online mode. The resolution was passed by majority members i.e. 98% votes were in favour of the settlement, whereas 13 members opposed the settlement.

3. Mr. Jahagirdar, learned senior counsel appearing on behalf of the petitioners, submitted that certain proceedings were initiated before the Debts Recovery Tribunal, Pune, at the instance of Shree Adhinath Sahakari Sakhar Kharkhana Limited. It seems that the act of handing over possession was opposed. An application was also filed in the proceedings vide order dated 29th June, 2022. The Presiding Officer, Debts Recovery Tribunal, Pune, was pleased to dismiss the application and consequently directed the applicant – Karkhana shall hand over possession of the secured assets to defendant – Bank within a week from the date of order, which in turn, shall handover to defendant No.26 Baramati Agro Limited in view of Indenture of Lease dated

13th May, 2022. The initial order of directing the parties to maintain status-quo was also vacated and this reference is in clause (C) of the order which reads that “Status Quo order passed on 18th May, 2022 is hereby vacated”. A copy of this order is placed on record at Exhibit -E, page 54. Being aggrieved by the said order, immediately the said sugar factory viz. Shree Adhinath Sahakari Sakhar Kharkhana Limited preferred an appeal before the Debts Recovery Appellate Tribunal at Mumbai. Now, two orders passed on the application are placed on record at Exhibit – F, page 66 and Exhibit – G, Page 68. The first order passed on 6th July, 2022 at Exhibit – F, page 66 was on application whereby waiver of pre-deposit was sought for. The application was directed to be posted on 11th July, 2022 and at the same time, the Appellate Tribunal was pleased to direct the appellant to voluntarily hand over peaceful possession to the Bank and it is further specifically stated that further decision of handing over the possession to the leasee shall await orders of this Tribunal (emphasis supplied).

4. Now, it seems that there was some controversy insofar as whether the possession was handed over pursuant to the order of the Tribunal and this controversy gave rise to the order dated 12th July, 2022 which is annexed at Exhibit -G, Page 68. The Appellate Tribunal, by making reference to the controversy, further reiterated in following words:

“Without any comments on the dispute regarding the presence of the parties, it is hereby directed that the possession of the factory shall be handed over to the Bank at 12.00 noon on 19.07.2022. The order regarding further handing over possession to the Lessee shall await as ordered earlier”.

5. It seems that the sugar factory had approached this Court by filing writ petition stamp No.17391 of 2022. The petition was listed before the Division Bench of this Court on 19th July, 2022. Though, there are certain other observations made by the Division Bench, suffice to say that in the backdrop of the fact that the matter is pending before the Appellate Tribunal, the Division Bench of this Court was not inclined to entertain the writ petition and ultimately, the petition was disposed of with these observations :

“Petitioner is at liberty to raise all these points before DRAT tomorrow and DRAT may consider the submissions made by the parties and pass such orders as it deems fit in accordance with law.”

6. Mr. Jahagirdar, learned senior counsel, vehemently submitted before this Court that there is pressing urgency and the petitioners are praying for interim orders whereby the interest of the petitioners can be protected.

7. Though, Mr. Jahagirdar, learned senior counsel, prayed for interim orders, considering the above referred sequence of the facts firstly, secondly, the grounds raised in the petition indicates a disputed question of fact viz. as to whether the settlement entered into between the parties is legal or otherwise and thirdly, the parties is having an efficacious remedy in the nature of seeking participation in the proceedings before the Tribunal by filing necessary proceedings and then can pray for interim order or modification of the orders or vacation of orders passed by the Tribunal, we are not inclined to entertain the petition. In our opinion, entertaining this petition would lead to permit the parties to proceed with parallel proceedings at the same time. On these counts, we are not inclined to entertain this petition. **The petition is disposed of at the admission stage itself.**

8. The parties are at liberty to avail appropriate remedies as available under the provisions of law if they are so accordingly advised.

9. Needless to state that this Court has not observed anything on the merits of the matter and all rights and contentions of the parties are kept expressly open.

10. Mr.Panchpor, learned counsel submitted that he has

instructions to appear on behalf of respondent No.3- Bank and as such, he be permitted to file his vakalatnama. The Registry is, accordingly, directed to accept the vakalatnama if the same is filed by 5th September, 2022.

(KISHORE C. SANT, J.)

(PRASANNA B. VARALE, J.)