IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5901 OF 2016

The Maharashtra State Co Operative Bank
Ltd Through its Asst Manager. .. Petitioner.
Versus
Ramprasad Natha Shejul And Others .. Respondents.

WITH
WRIT PETITION NO.5900 OF 2016

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Murlidhar Harlal Pawar & Ors. .. Respondents.

WITH
WRIT PETITION NO.5902 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Bapurao Sitaram Sose & Ors. .. Respondents.

WITH
WRIT PETITION NO.5903 OF 2016
WITH
CIVIL APPLICATION NO. 4526 OF 2021

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Dnyandeo Kanhoji Veer & Ors. .. Respondents.

WITH
WRIT PETITION NO.5904 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir

Mahadeo Mehetre .. Petitioner.
Versus
Devidas Kondibhau Kawle & Ors. .. Respondents.

WITH
WRIT PETITION NO.5905 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Ashok Shankarrao Deshmukh & Ors. .. Respondents.

WITH
WRIT PETITION NO.5906 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Vishnu Jija Ghule & Ors. .. Respondents.

WITH
WRIT PETITION NO.5907 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Gabru Jamela Pawar & Ors. .. Respondents.

WITH
WRIT PETITION NO.5908 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Sakharam Raosaheb Pawar & Ors. .. Respondents.

WITH
WRIT PETITION NO.5909 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Chandrakant Devrao Wakhre & Ors. .. Respondents.

WITH
WRIT PETITION NO.5910 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Kaisarmiya Abdul Karim & Ors. .. Respondents.

WITH
WRIT PETITION NO.5911 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Kashinath Hari Pawar & Ors. .. Respondents.

WITH
WRIT PETITION NO.5912 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Tukaram Sakharam Khandebharad & Ors. .. Respondents.

WITH
WRIT PETITION NO.5913 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Atmaram Shankarrao Dongre & Ors. .. Respondents.

WITH
WRIT PETITION NO.5914 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Vishnu Sitaram More & Ors. .. Respondents.

WITH
WRIT PETITION NO.5915 OF 2016
WITH
CIVIL APPLICATION NO. 4522 OF 2021
AND
CIVIL APPLICATION NO. 4543 OF 2021

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Ashok Gopala Waghmare .. Respondents.

WITH
WRIT PETITION NO.5916 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Baburao Dagduba Jumbad & Ors. .. Respondents.

WITH
WRIT PETITION NO.5917 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Dhanaji Mansing Nunsawant & Ors. .. Respondents.

WITH
WRIT PETITION NO.5918 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Sopan Bhimrao Jadhav & Ors. .. Respondents.

WITH
WRIT PETITION NO.5919 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Madhukar Harishchandra Ekhanade & Ors. .. Respondents.

WITH
WRIT PETITION NO.5920 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Bhagawan Shankarrao Dhere & Ors. .. Respondents.

WITH
WRIT PETITION NO.5921 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Bhaskar Devidas Kale & Ors. .. Respondents.

WITH
WRIT PETITION NO.5922 OF 2016
WITH
CIVIL APPLICATION NO. 4523 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus

Baburao Pandurang Kale & Ors. .. Respondents.

WITH
WRIT PETITION NO.5923 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Madhukar Raosaheb Wadekar & Ors. .. Respondents.

WITH
WRIT PETITION NO.5924 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Dnyaneshwar Jija Devde & Ors. .. Respondents.

WITH
WRIT PETITION NO.5925 OF 2016

The Maharashtra State Co-Operative Bank Ltd.,
Through Its Asst. Manager Sudhir
Mahadeo Mehetre .. Petitioner.
Versus
Ramprasad Natha Shejul & Ors. .. Respondents.

WITH
WRIT PETITION NO.278 OF 2017
WITH
CIVIL APPLICATION NO. 5346 OF 2021

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Ramprasad Karbhari Kingre & Ors. .. Respondents.

WITH
WRIT PETITION NO.279 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.

Versus
Bhausaheb Vishwanath Dhavle & Ors. .. Respondents.

WITH
WRIT PETITION NO.280 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Ramdas Bhikaji Sanap & Ors. .. Respondents.

WITH
WRIT PETITION NO.281 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Sandu Piraji Dabhade & Ors. .. Respondents.

WITH
WRIT PETITION NO.282 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Subhash Haribhau Kale & Ors. .. Respondents.

WITH
WRIT PETITION NO.283 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Babasaheb Prabhakarrao Deshmukh & Ors. .. Respondents.

WITH
WRIT PETITION NO.284 OF 2017

The Maharashtra State Co-Operative Bank Ltd.

Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Subhash Haribhau Kale & Ors. .. Respondents.

WITH
WRIT PETITION NO.285 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Sudarshan Vishwanath Dongre & Ors. .. Respondents.

WITH
WRIT PETITION NO.286 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Jagannath Shamrao Kale & Ors. .. Respondents.

WITH
WRIT PETITION NO.287 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Baban Asaram Khandebharad & Ors. .. Respondents.

WITH
WRIT PETITION NO.288 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Ankush Natha Dongre & Ors. .. Respondents.

WITH
WRIT PETITION NO.289 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus

Tukaram Rama Shrikhande & Ors. .. Respondents.

WITH
WRIT PETITION NO.290 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Ankush Keshavrao Nagve & Ors. .. Respondents.

WITH
WRIT PETITION NO.291 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Dnyandev Asaram Kalkumbe & Ors. .. Respondents.

WITH
WRIT PETITION NO.292 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Bhikardas Bhaduji Sonawane & Ors. .. Respondents.

WITH
WRIT PETITION NO.293 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Rameshwar Shrirangrao Dongre & Ors. .. Respondents.

WITH
WRIT PETITION NO.294 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Neminath Bhivsanrao Bagal & Ors. .. Respondents.

WITH
WRIT PETITION NO.295 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Ankush Janardhan Shejul & Ors. .. Respondents.

WITH
WRIT PETITION NO.296 OF 2017
WITH
CIVIL APPLICATION NO. 5347 OF 2021

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Parmeshwar Bhujangrao Dongre & Ors. .. Respondents.

WITH
WRIT PETITION NO.297 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Shankar Sahebrao Shinde & Ors. .. Respondents.

WITH
WRIT PETITION NO.298 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Shrirang Rambhau Pithore & Ors. .. Respondents.

WITH
WRIT PETITION NO.299 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Prakash Panditrao Bagal & Ors. .. Respondents.

WITH
WRIT PETITION NO.300 OF 2017

The Maharashtra State Co-Operative Bank Ltd.
Through Its Asst. Manager B. D. Deshmukh .. Petitioner.
Versus
Narhari Pralhadrao Katkade & Ors. .. Respondents.

WITH
WRIT PETITION NO.7181 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Sopan Bhimrao Jadhav & Ors. .. Respondents.

WITH
WRIT PETITION NO.7182 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Gabru Jemla Pawar & Ors. .. Respondents.

WITH
WRIT PETITION NO.7183 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Baburao Dagduba Jumbad & Ors. .. Respondents.

WITH
WRIT PETITION NO.7184 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Dnyandeo Kanhoji Veer & Ors. .. Respondents.

WITH

WRIT PETITION NO.7185 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Dnyaneshwar Jija Devde & Ors. .. Respondents.

WITH

WRIT PETITION NO.7186 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Bapurao Sitaram Sose & Ors. .. Respondents.

WITH

WRIT PETITION NO.7187 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Devidas Kondibhau Kawale & Ors. .. Respondents.

WITH

WRIT PETITION NO.7188 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Murlidhar Harlal Pawar & Ors. .. Respondents.

WITH

WRIT PETITION NO.7189 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,

Through Its Authorized Representative .. Petitioner.
Versus
Chandrakant Devrao Wakhre & Ors. .. Respondents.

WITH
WRIT PETITION NO.7190 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Bhaskar Devidas Kale & Ors. .. Respondents.

WITH
WRIT PETITION NO.7191 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Ashok Sakharam Deshmukh & Ors. .. Respondents.

WITH
WRIT PETITION NO.7192 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Madhukar Raosaheb Wadekar & Ors. .. Respondents.

WITH
WRIT PETITION NO.7193 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Ramprasad Natha Shejul & Ors. .. Respondents.

WITH

WRIT PETITION NO.7194 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Dhanaji Mansing Nunsawant & Ors. .. Respondents.

WITH
WRIT PETITION NO.7195 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Vishnu Jija Ghule & Ors. .. Respondents.

WITH
WRIT PETITION NO.7196 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Kaisarmiya Abdul Karim & Ors. .. Respondents.

WITH
WRIT PETITION NO.7197 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus
Madhukar Harishchandra Ekhande & Ors. .. Respondents.

WITH
WRIT PETITION NO.7198 OF 2016

Tapadiya Construction Ltd.,
Through Its Chairman J. C. Tapadiya,
Through Its Authorized Representative .. Petitioner.
Versus

Sakharam Raosaheb Pawar & Ors. .. Respondents.

WITH
WRIT PETITION NO.1513 OF 2020

Tapadiya Construction Ltd.
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Parmeshwar Bhujangrao Dongre & Ors. .. Respondents.

WITH
WRIT PETITION NO.1514 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Baban Aasaram Khandebharad & Ors. .. Respondents.

WITH
WRIT PETITION NO.1515 OF 2020

Tapadiya Construction Ltd.
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Narhari Pralhadrao Katkade & Ors. .. Respondents.

WITH
WRIT PETITION NO.1516 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Srirang Rambhau Pithore & Ors. .. Respondents.

WITH
WRIT PETITION NO.1517 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Ankush Keshavrao Nagave & Ors. .. Respondents.

WITH
WRIT PETITION NO.1518 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Ramdas B. Sanap & Ors. .. Respondents.

WITH
WRIT PETITION NO.1519 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Babasaheb Prabhakar Deshmukh & Ors. .. Respondents.

WITH
WRIT PETITION NO.1520 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Dnyadev Aasaram Kalkumbe & Ors. .. Respondents.

WITH
WRIT PETITION NO.1521 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Shankar Sahebrao Dongre & Ors. .. Respondents.

WITH
WRIT PETITION NO.1522 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Sudarshan Vishwanath Dongre & Ors. .. Respondents.

WITH
WRIT PETITION NO.1523 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Tukaram Rama Shrikhande & Ors. .. Respondents.

WITH
WRIT PETITION NO.1524 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Jagannath Shamrao Kale & Ors. .. Respondents.

WITH
WRIT PETITION NO.1525 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor

Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Rameshwar Shrirangrao Dongre & Ors. .. Respondents.

WITH
WRIT PETITION NO.1526 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Ankush Janardhan Shejul & Ors. .. Respondents.

WITH
WRIT PETITION NO.1527 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Subhash Haribhau Kale & Ors. .. Respondents.

WITH
WRIT PETITION NO.1528 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Ramprasad Karbhari Kingre & Ors. .. Respondents.

WITH
WRIT PETITION NO.1529 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.

Versus
Sandu Piraji Dabhade & Ors. .. Respondents.

WITH
WRIT PETITION NO.1530 OF 2020

Tapadiya Construction Ltd.,
Through Chairman Jugalkishor
Chaganlal Tapadiya,
Through Authorized Representative .. Petitioner.
Versus
Ankush Natha Dongre & Ors. .. Respondents.

WITH
WRIT PETITION NO.6081 OF 2020

M/s. Arjun Sugar Industries Pvt. Ltd.
Through its Authorized Representative,
M. T. Pathrikar .. Petitioner.
Versus
Rameshwar Shrirangrao Dongre & Ors. .. Respondents.

Advocates appearing in Writ Petition Nos. 5900 to 5925 of 2016 :

- Mr. R. N. Dhorde, Senior Advocate along with Mr. V. R. Dhorde for the petitioner - the Maharashtra State Co-operative Bank Limited.

- Mr. S. S. Dande, AGP for the respondent-State.

- Mr. Gajanan B. Kingre for the respondent No.1 in WP No. 5903 of 2016, 5911of 2016, 5915 of 2016 and 5922 of 2016.

- Mr. Yogesh P. Deshmukh for respondent No.1 in WP Nos.5900 to 5902 of 2016, 5904 to 5910 of 2016, 5912 to 5914 of 2016, 5916 to 5920 of 2016 and 5921 to 5925 of 2016.

- Mr. T. K. Prabhakaran i/b Mr. Pratik A. Bhosale for the respondent No. 4.

Advocates appearing in Writ Petition Nos. 278 to 300 of 2017 :

- Mr. R. N. Dhorde, Senior Advocate along with Mr. V. R. Dhorde for the petitioner - the Maharashtra State Co-operative Bank Limited.

- Mr. S. S. Dande, AGP for the respondent-State.

- Mr. Gajanan B. Kingre for respondent No.1 in WP No. 278 of 2017, 281 of 2017, 286 of 2017 and 296 of 2017.

- Mr. Yogesh P. Deshmukh for respondent No. 1 in WP No. 279 of 2017, 282 of 2017, 283 of 2017, 284 of 2017, 285 of 2017, 290 of 2017 and 292 of 2017.

- Mr. D. A. Bide h/f Mr. Layak S. Shaikh for the respondent No. 1 in WP No. 280 of 2017, 287 of 2017, 288 of 2017, 289 of 2017, 291 of 2017, 293 of 2017, 294 of 2017, 295 of 2017, 297 of 2017, 298 of 2017, 299 of 2017 and 300 of 2017.

Advocates appearing in Writ Petition Nos. 7181 to 7198 of 2016 and 1513 to 1530 of 2020 :

- Mr. T. K. Prabhakaran i/b Mr. Pratik A. Bhosale for the petitioner.

- Mr. R. N. Dhorde, Senior Advocate along with Mr. V. R. Dhorde for the respondent No. 4 in all petitions and the respondent No. 3 in WP Nos. 7189 of 2016 and 7192 of 2016.

- Mr. Yogesh P. Deshmukh for the respondent No. 1 in WP Nos.7181 of 2016, 7182 of 2016, 7183 of 2016, 7185 to 7190 of 2016, 7192 to 7195 of 2016 and 7197 of 2016.

- Mr. Gajanan B. Kingre for the respondent No. 1 in WP No. 7184 of 2016, 1513 of 2020, 1524 of 2020, 1528 of 2020 and 1529 of 2020.

- Mr. D. A. Bhide h/f Layak S. Shaikh for respondent No.1 for the respondent No. 1 in WP No. 1514 to 1516 of 2020, 1518 of 2020, 1520 and 1521 of 2020, 1523 of 2020, 1525 of 2020, 1526 of 2020 and 1530 of 2020.

Advocates appearing in Writ Petition No. 6081 of 2020 :

- Mr. T. K. Prabhakaran i/b Pratik A. Bhosale for the petitioner.

- Mr. R. N. Dhorde, Senior Advocate along with Mr. V. R. Dhorde for the respondent No.4.

Coram : **SHARMILA U. DESHMUKH, J.**
Reserved on : **March 2, 2023.**
Pronounced on : **May 4, 2023.**
[Through Video Conferencing]

Judgment :

1. These group of petitions challenge the judgment of the Industrial Court passed in individual complaints filed under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 [for short **"MRTU and PULP Act"**]. The complaints were instituted in the year 2009 by the employees of respondent Jalna Sahakari Sakhar Karkhana Ltd [for short **"Jalna SSK"**] seeking a declaration that the Respondents have engaged in unfair labour practice under Item Nos.9 and 10 of Schedule-IV of the MRTU and PULP Act and a direction to pay the outstanding salary and other applicable allowances of the complainants with effect from October, 1996. The Industrial Court has allowed the complaints.

2. Learned counsel for the parties submitted that the findings

rendered in the judgment passed in the individual complaints are identical and, as such, it is not necessary to deal with each judgment individually. These Petitions are preferred by the secured creditor, i.e. the **Maharashtra State Co-operative Bank Limited** [for short **"the Bank"**] and the purchaser of the secured assets in auction, i.e., **Tapadiya Construction Limited** [for short **"the auction purchaser"**] and the transferee of the auction purchaser i.e., Arjun Sugar Industries Pvt. Ltd.. Jalna SSK for obvious reasons has neither participated in the proceedings before the Industrial Court nor chosen to contest the impugned judgment of the Industrial Court before this Court.

3. Writ Petition Nos.5901 of 2016, 5900 of 2016, 5902 of 2016, 5903 of 2016, 5904 of 2016, 5905 of 2016, 5906 of 2016, 5907 of 2016, 5908 of 2016, 5909 of 2016, 5910 of 2016, 5911 of 2016, 5912 of 2016, 5913 of 2016, 5914 of 2016, 5915 of 2016, 5916 of 2016, 5917 of 2016, 5918 of 2016, 5919 of 2016, 5920 of 2016, 5921 of 2016, 5922 of 2016, 5923 of 2016, 5924 of 2016, 5925 of 2016, 278 of 2017, 279 of 2017, 280 of 2017, 281 of 2017, 282 of 2017, 283 of 2017, 284 of 2017, 285 of 2017, 286 of 2017, 287 of 2017, 288 of 2017, 289 of 2017, 290 of 2017, 291 of 2017, 292 of 2017, 293 of

2017, 294 of 2017, 295 of 2017, 296 of 2017, 297 of 2017, 298 of 2017, 299 of 2017 and 300 of 2017 are filed by the Bank.

4. Writ Petition Nos.7181 of 2016, 7182 of 2016, 7183 of 2016, 7184 of 2016, 7185 of 2016, 7186 of 2016, 7187 of 2016, 7188 of 2016, 7189 of 2016, 7190 of 2016, 7191 of 2016, 7192 of 2016, 7193 of 2016, 7194 of 2016, 7195 of 2016, 1513 of 2020, 1514 of 2020, 1515 of 2020, 1516 of 2020, 1517 of 2020, 1518 of 2020, 1519 of 2020, 1520 of 2020, 1521 of 2020, 1522 of 2020, 1523 of 2020, 1524 of 2020, 1525 of 2020, 1526 of 2020, 1527 of 2020, 1528 of 2020, 1529 of 2020 and 1530 of 2020 are filed by auction purchaser.

5. Writ Petition No.6081 of 2020 is filed by M/s. Arjun Sugar Industries Pvt. Ltd.- the transferee from the auction purchaser.

6. Learned counsel for the parties agree that it is not necessary to go into the facts of each individual case as common submissions are raised and, as such, it is not necessary that each petition be heard individually. Considering the common issue involved in these matters, by consent of the parties, all these petitions were taken up for hearing together and are disposed of by

this common judgment.

7. The sequence of events, as stated in the synopsis tendered by the Bank, which have not been disputed, are that Jalna SSK had obtained credit facilities from the Bank. On 31st March 2002, the loan account of Jalna SSK was declared as non-performing asset. On 23rd August 2005, the Bank issued the first notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short "**the SARFAESI Act**"] and the property came to be attached on 17th November 2005. In the year 2006-07, in view of a request made by the Jalna SSK to hand over the attached property for the purpose of crushing season and further request for the pre-seasonal loan, the attached property was given in possession and additional pre-seasonal loan was sanctioned along with working capital loan. Jalna SSK defaulted in the payment of loan and on 26th November 2008, the Bank issued a notice under section 13(2) of the SARFAESI Act for recovery of a sum of Rs.3349.18 lakh along with interest as on 30th September 2008 and further interest thereon from 1st October 2008 till the full and final settlement of claim. As the loan was not repaid by the Jalna SSK, on 3rd September 2009, the Bank issued a notice under section 13(4) of

the SARFAESI Act for taking possession of the secured assets of Jalna SSK. On 16th February 2009, the possession of the movable and immovable properties of Jalna Karkhana was taken by the Bank after drawing necessary panchnama. Notice was also published in the widely circulated newspaper by the Bank. On 14th February 2012, the Bank issued a tender notice for the sale of secured assets of Jalna SSK, pursuant to which one Tapadiya Construction Limited gave the highest bid of Rs.42.31 crore, which came to be accepted by the Bank. On 3rd December 2012, the sale certificate was issued in favour of the Tapadiya Construction Ltd.

8. It appears from the proceedings that during the pendency of present petitions, Jalna SSK went into liquidation and the petitions were amended to implead the Liquidator as party Respondent.

FACTS :

9. The facts of the complaint giving rise to the lead petition are narrated hereinafter. Complaint (ULP) No.80 of 2009 came to be filed against the Bank and Jalna SSK in the year 2009, precisely on 26th March 2009. At this point of time, i.e. in the month of March 2009, the stage of the proceedings under the SARFAESI Act was that

on 16th February, 2009 the possession of immovable and movable properties of Jalna SSK was taken by the Bank upon drawing necessary panchnama and by publishing notice in the newspaper. In the complaint, filed in the month of March, 2009, the Bank alongwith Jalna SSK were made party Respondents. The complaint sought a declaration that the Respondents had engaged in unfair labour practices as contemplated under items-9 and 10 of Schedule-IV of the MRTU & PULP Act by not paying the outstanding salary and applicable allowances with effect from 1996 and onwards till date and sought a direction for payment of outstanding salary and other applicable allowances. In the year 2011, the complaint came to be amended incorporating a pleading that in case the Bank sells the property of Jalna SSK for the satisfaction of its outstanding loan amount, then, in that event, the Bank is liable to satisfy the claim of complainant.

10. In short, the claim of the complainant as against the Bank was only to the extent of satisfying the claim in event the property of the Jalna SSK is sold. It appears that subsequently, the auction purchaser, i.e., Tapadiya Construction Limited, came to be impleaded in all the complaints either in the name of the managing director or in

the name of company.

11. The Bank filed its reply on 15th July 2009 raising an objection that the Bank is not a necessary party to the complaint. It was further pleaded that as a secured creditor, the demand notice as well as the notice for possession were issued under the provisions of the SARFAESI Act. It was further submitted that there is no employer-employee relationship between the complainant and the Bank and, as such, the complaint itself was not maintainable. Another objection was taken as regards the complaint being barred by law of limitation, inasmuch as the claim for arrears of salary and other applicable allowances was for the period from 1996 and the complaint was filed in the year 2009, i.e., after a period of more than 12 years. On 7th September 2015, a response came to be filed by the Bank to the amended complaint putting on record that the Bank had proceeded further under the SARFAESI Act and sold the entire mortgaged property to the auction purchaser, i.e., Tapadiya Construction Limited. It was further pleaded that the auction purchaser had accepted all the encumbrances on the said property and the same was agreed as per the tender condition and, therefore, the auction purchaser was wholly responsible for any dues, statutory or otherwise, of any

authority established by law.

ISSUES FRAMED BY THE INDUSTRIAL COURT:

12. The issues framed and answered by the Industrial Court read as under:

SR. NO.	ISSUES	FINDINGS
1	Whether the complainant proves that there exists employer-employee relationship between the complainant and respondent No.1 ?	Yes.
2	Whether the complaint is maintainable against all or any of the respondents ?	Yes, against all.
3	Whether the complaint is barred by limitation ?	No.
4	Does the complainant prove that the Respondents have engaged in and engaging in Unfair Labour Practice as contemplated under Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 ?	Yes.
5	Whether the complainant is entitled for the relief sought for ?	Yes.
6	What Order?	The Complaint is allowed with costs of Rs. 3,000/-

13. In support of the complaint, the complainant examined himself and produced appointment order, photocopy of judgment and order of this Court dated 22nd January 2010 passed in Writ

Petition No.4010 of 2009 and letter dated 20th July 2010 issued by the Bank to the Assistant Commissioner of Provident Fund Officer. The Bank led oral evidence of its Assistant Manager and produced seizure panchnama, tender notice of sale and the bid/offer submitted by Jugalkishor Tapadiya, the statement of amount recovered and still due and the computerized statement of account of Jalna SSK.

FINDINGS OF INDUSTRIAL COURT:

14. The Industrial Court observed that it is an undisputed fact that there is no direct employer- employee relationship between the complainant and the Bank. After having observed thus, the Industrial Court then proceeded to examine whether the complaint is maintainable against all or any of the Respondents and for the said purpose delved into the provisions of the SARFAESI Act. By considering the provisions of sub-section (7) of Section 13 of the SARFAESI Act, the Industrial Court held that the secured creditor holds the realized amount in trust and he is under duty to pay the same to the persons entitled in accordance with the rights and interests. After going through the sale certificates in respect of the sale of attached properties, the Industrial Court held that the Bank was not entitled to charge and collect interest and that some amount

remained as surplus with the Bank after adjusting their dues. The Industrial Court therefore held the Bank a representative or agent of Jalna SSK and in that capacity held the complaint to be maintainable against the Bank and to that restricted liability the Bank an employer. The Industrial Court thereafter examined the procedure of issuance of tender by the Bank and held that the sale was not according to law as provided by Section 13 of the SARFAESI Act.

15. The Industrial Court examined the evidence on record and held that there is no denial to the legal dues of wages, bonus, increments, etc. as claimed by the complainants.

16. The Industrial Court after holding that the Bank is an employer, having the excess sale proceeds in their hands, has thereafter proceeded to consider the case of auction purchaser on the basis of the terms and conditions of sale. The Industrial Court after examining Condition No.4 of the tender notice held that the said Condition No.4 of the tender notice nowhere specifically mentions that the liability to pay the arrears of wages, bonus, etc., of the workmen is accepted by Jugalkishor Tapadiya and all that the tender notice imposes is the liability of dues, statutory or otherwise,

of any authority established by law. Thereafter the Industrial Court assumed that under the said condition, if Jugalkishor Tapadiya has accepted the liability to pay the legal dues, in that circumstances Jugalkishor Tapadiya is also liable, because this term and condition impliedly assumes that this liability was affirmed by them and by the agreement they have shifted upon the auction purchaser and therefore they are jointly and severally liable.

OPERATIVE ORDER:

17. After considering the evidence on record, the Industrial Court, by the impugned judgment and order dated 31st December 2015, declared that the Respondents had engaged in and were engaging in unfair labour practice as per Item 9 of Schedule-IV of the MRTU & PULP Act and the Respondents were directed to cease and desist from such unfair labour practice. By the impugned judgment, Respondent Nos.1 to 4, i.e., the Bank, the managing director and the chairman of Jalna SSK and Mr. Jugalkishor Tapadiya of Tapadiya Construction Limited – the auction purchaser, were directed to pay, jointly and severally, an amount of Rs.10,24,006/- to the complainant therein within two months from the date of order along with interest @ 6% per annum from the date of presentation.

18. Heard Mr. R. N. Dhorde, senior advocate for the Bank, Mr. T. K. Prabhakaran, learned counsel for auction purchaser and the transferee from the auction purchaser and Mr. Gajanan Kingre, Mr. D. A. Bide and Yogesh P. Deshmukh for the Respondent -Original Complainants.

19. Mr. R.N. Dhorde, learned Senior Advocate appearing for the Bank has taken Writ Petition No.5901 of 2016 as the lead petition and Mr. T .K. Prabhakaran, learned counsel for Tapadiya Construction Limited and Arjun Sugar Industries Pvt. Ltd. has taken Writ Petition No. 7816 of 2016 as the lead petition for advancing their submissions.

SUBMISSIONS OF THE BANK:

20. Mr. Dhorde, learned senior advocate has placed the following issues for consideration of this Court :

(1) Whether the complaint is within limitation?

(2) Whether the Industrial Court has jurisdiction to decide any issue relating to the action taken by the Bank as secured under the SARFAESI Act in view of the provisions of Section 13 and more particularly Sections 2, 4, 7 and 10 read with Sections 30, 26(e), 34 and 35 read with Rules 3, 5, 6, 7, 8 and 9 of the

Rules ?

(3) Whether in the absence of any relationship of employer and employee, the complaint was maintainable against the Bank ?

(4) Whether the complainant has sufficient record to show that he was in the employment and that there are certain dues payable to him without producing any documentary evidence on record when Respondent Nos.2 and 3 have remained absent and the complainant has not taken any steps to give the record produced before the Court ?

(5) Whether the Industrial Court without jurisdiction has decided issue whether the sale is proper, whether advertisement is proper, etc therefore all these findings are without jurisdiction ?

21. Mr. Dhorde submits that there is no employer-employee relationship between the Bank and the complainants and no such averment is made in the complaint, and, as such, the complaints are not maintainable. He has taken this Court to the findings of the Industrial Court in the impugned judgment and would submit that the Industrial Court has examined the procedure of the issuance of tender, the consequent sale, the sale price received and has rendered

findings thereon exceeding its jurisdiction by venturing into issues which fall squarely within the purview of the SARFAESI Act.

22. He would further submit that the Bank is held liable as a representative or agent of the employer by erroneously considering that there is excess of sale proceeds in the hands of the Bank out of which the dues of employees could be recovered. He has taken this Court through the evidence of the Bank and would submit that the extract which has been produced at page No.77 of the petition evidences that the dues of the Bank amounted to about Rs. 51 crores and there is still deficit as the property has been sold at Rs.32 crores. He has invited the attention of this Court to the order dated 20th March, 2012 of the Debts Recovery Tribunal, which is annexed at page 194 of the petition, and would submit that one Dyanenshwar Sahakari Sakhar Karkhana Ltd- decree holder had challenged the sale notice of the Bank and the Debt Recovery Tribunal had dismissed the application with direction to the Bank to deposit the balance amount of sale proceeds in the Tribunal after adjustment of its liability for disbursement to those who shall be declared by the appropriate forum as entitled to get their proportionate share as per the order of preference and priority. He would submit that as there was no

balance amount in the hands of the Bank, none was deposited. He would further submit that the appropriate forum is the Debt Recovery Tribunal.

23. He has also taken this Court through the evidence of the auction purchaser, i.e., Tapadiya Construction Limited and the sale deed executed by Tapadiya Construction Limited and the subsequent transferee, i.e., Arjun Sugar Industries Pvt. Ltd. and would submit that the documents show that the liability, if any, as regards workmen's dues is of the auction purchaser as the auction sale was on "as is where is basis".

24. He relies upon the following decisions :

(a) ***Cipla Limited v. Maharashtra General Kamgar Union [(2001) 3 SCC 101];***

(b) ***Vividh Kamgar Sabha v. Kalyani Steels Ltd., [2001(2) SCC 381];***

(c) ***Asia Foundation & Construction Ltd v. Engineering Kamgar Sanghatana [2017(1) All MR 428];***

(d) ***Chhedi Lal Yadav v. Hari Kishore Yadav [(2018) 12 SCC 527];***

(e) ***Maharashtra State Road Transport Corp. v. Tulshiram Dhondiram Pawar [2017(2) All MR 412];***

(f) ***CCE v. Associates Cement Companies Limited [(2011) 11 SCC 420];***

(g) The Authorised Officer, Stressed Assets Stabilisation Fund v. Dnayndeo Laxman Patil [2015(2) ALL MR 586];

(h) Maharashtra State Coop. Bank Ltd v. Babulal Lade [(2020) 2 SCC 310];

(i) Agarwal Tracom Pvt. Limited v. Punjab National Bank [(2018) 1 SCC 626] and;

(j) Girish Chandra Tiwari v. UCO Bank Lucknow Circle [2014 SCC OnLine All 9134.

SUBMISSIONS OF THE AUCTION PURCHASER:

25. Learned counsel appearing for Tapadiya Construction Limited and Arjun Sugar Industries Pvt. Ltd. submits that proper parties are not impleaded in the complaints. In some of the complaints, the Bank and Company are made parties and in some of the complaints the Managing Director of auction purchaser is made party and in others, the company is not made a party. In some of complaints, the subsequent transferee, i.e., Arjun Sugar Industries Pvt. Ltd. is added and thereafter deleted and only in one complaint, i.e., Complaint No.86 of 2009, Arjun Sugar Industries Pvt Ltd is a party. He would submit that there is no assertion that the complainants are the employees under the Bombay Industrial Relation Act, 1946 and that the respondents are "industry" within the meaning of the Industrial Disputes Act, 1947. He would further submit that claims

are not proved by the complainants.

26. He would submit that the complaint filed beyond 90 days is maintainable only if the delay is condoned and there is provision for filing of separate application under Regulation 101 of Industrial Court Regulations, 1975. He would further submit that the complaints are hopelessly barred by limitation as the complaints are instituted in the year 2009 seeking dues for the period from October 1996. He would further submit that since the year 2008 there is no factory as the production came to a grinding halt and, as such, no industry. He would submit that Jalna SSK ceased to be an employer and workmen ceased to be workmen. He would further submit that after transfer of undertaking, the relationship of employer and employee snapped.

27. He would further submit that the auction purchaser has purchased the secured assets and there is no transfer of undertaking. He would further submit that there is a dispute as to the existence of employer-employee relationship and complaint under the MRTU and PULP Act does not lie. He would further submit that even if it is held that Jalna SSK has indulged in an unfair labour practice, a specific case of unfair labour practice being committed by the auction

purchaser has to be pleaded and proved. He would further contend that even if no written statement is filed, the scheme of Section 28 of the MRTU and PULP Act does not contemplate filing of written statement as the proceedings are summary in nature. He would contend that an unfair labour practice by the auction purchaser is alien to the provisions of the MRTU and PULP Act. He would further submit that by virtue of notional extension the complaint of unfair labour practice cannot be dealt as against the auction purchaser, although in an appropriate case the dues may be recovered from the subsequent employer. He would further submit that the sale of secured assets were of two lots and the auction purchaser is purchaser of one of the lots. In support of his submissions, he relied upon following decisions :

(a) ***Shankar Chakravarti v. Britannia Biscuit Co., Ltd. [(1979) 3 SCC 371];***

(b) ***Srikant Gawas v. Tulsiani Chambers Premises Coop Society Ltd. [2007 SCC Online Bom 1356];***

(c) ***State of Gujarat v. Pratamsingh Narsingh Parmar. [2001(9) SCC 173];***

(d) ***Jaihind Sahakari Pani Puravatha Mandali Ltd v. Rajendra Bandu Khot. [2020(2) Bom.C.R. 98];***

(e) ***Vasudeo Dharanidhar Joshi v. Bombay Textile Research Association [(2005) 1 Bom C.R. 261];***

(f) *General Labour Union (Red Flat) Bombay v. Ahmedabad Manucturing and Calico Printing [1995 (suppl.) (1) SCC 175];*

(g) *Janprabha Offset Works v. Savra Shramik Sangh [2007(3) Bom.C.R. 91];*

(h) *Sarva Shramik Sangh v. Janprabha Offset Works [2007 SCCOnline Bom. 1501];*

(i) *M/s. Premium Transmission Pvt. Ltd v. Aurangabad Mazdoor Union [dtd. 18th March 2021 in Writ Petition (Aurangabad Bench) No. 8080 of 2020];*

(j) *Indian Seamless Metal Tubes Ltd v. Sunil Rambhau Iwale [(2002) 4 Mah. L.J. 151];*

(k) *State of Karnataka v. Shreyas Papers Pvt Ltd [AIR 2006 SC 865];*

(l) *Ai Champday Industries Ltd v. Official Liquidator [(2009) 4 SCC 486];*

(m) *New Horizon Sugar Mills Ltd v. Aryur Sugar Mills Staff Welfare Union [(2009) 17 SCC 487];*

(n) *Rana Girders Ltd v Union of India [(2013) 10 SCC 746];*

(o) *Nagar Taluka Sakhar Kamgar Union v. State of Maharashtra [dtd 10th January 2017 in WP (Aurangabad Bench) No.9359 of 2015];*

(p) *Pegasus Assets Reconstructions pvt. Ltd v. M/s. Haryana Concast Ltd [(2016) 4 SCC 47];*

(q) *Dalal Engineering Pvt Ltd v. Ramrao Bhaurao Sawant [1991 (4) Bom.C.R. 571];*

(r) *Bajaj Auto Ltd v. R. P. Sawant [(2004) 9 SCC 486];*

(s) *R. P. Sawant v. S. Bajaj Auto Ltd [2002(4) Bom. C.R. 376];*

(t) *Bhaurao Chavan Sahakari Sakhar Karkhana Ltd v. The*

Commissioner of Sugar [in WP No. 10399 of 2014 (Aurangabad Bench) dtd 1st November 2017];

(u) Nagpur Municipal Corporation v. Nagpur Mahanagar Palika Samanvaya Chikitsak Sangh,[(1995) 70 F.L.R. 546];

(v) Voltas Ltd. v. Umed Singh Bajetha, [2009 Lab IC (NOC) 80 (Bom)];

(w) Bhaurao Chavan Sahakari Sakhar Karkhana Ltd. v. Uttam Dattaram Jagdambe, [(2017) 2 All M.R. 619 (Bom)];

(x) Sarva Shramik Sangh v. Indian Smelting & Refining Co. Ltd. [AIR 2004 SC 269];

(y) M/s. Oswal Petrochemicals v. Govt. of Maharashtra, [2005 (12) SCC 433];

(z) JK Education Society v. Sunil Uaike, [(2016) 3 Mh.L.J. 26] and;

(aa) Anakapalle Co-operative Agricultural & Industrial Society Ltd. v. Workmen, [AIR 1963 SC 1489].

SUBMISSIONS OF THE RESPONDENT COMPLAINANT:

28. Mr. Gajanan Kingre, learned counsel appearing for the employees submits that the complaints were instituted before the Industrial Court in the month of March 2009 and the Bank had taken possession of the entire assets on 16th February, 2009. After a lapse of almost three years, i.e., on 9th January, 2012, the tender notice for sale had been issued and the possession was handed over to the auction purchaser in the month of December, 2012. He would further

submit that it is evident from the seizure panchnama that excluding the documents pertaining to the record of workmen, the entire assets, i.e., plant, machinery, movables, etc. were taken into custody by the Bank. He would further submit that a systematic fraud has been played by the Bank as the encumbrance of workmen dues has not been mentioned in the tender notice, which is not the case in other matters, where the sugar factories were sold. He would further submit that there is no difference as far as taking over of the management or taking over the custody of assets is concerned, inasmuch as everything had been sold as a going concern to the auction purchaser and nothing remained in the hands of Jalna SSK. In respect of the maintainability of complaints as against the Bank and auction purchaser is concerned, he seeks to rely upon the proviso to Section 13(4) of the SARFAESI Act and would submit that there is an employer-employee relationship with the auction purchaser via the Bank.

29. He would further submit that the Bank is liable to pay the dues as the Bank has sold the sugar bags and after deposit with the provident fund authorities, a balance of Rs.10,74,47,858/- remained with the Bank out of the sale of sugar bags and coupled with the sale

of immovable properties, about Rs.34 crores, after the adjustment of dues of Rs.32,53,96,000/-, there is still sufficient amount left with the Bank, which has been misappropriated by the Bank. He would further submit that after the account has been classified as a non-performing asset, the Bank is not entitled to charge any interest. He would further submit that due to the delay of three years on the part of the Bank in initiating sale proceedings, from the date of taking over possession till the tender notice, the Bank is not entitled to any interest. He would further submit that at the time of issuance of tender notice the complaint was pending and, as such, it was incumbent on the part of the Bank to bring to the notice of the auction purchaser the encumbrances as regards workmen's dues, which is mandated by Rule 8(7) and Rule 9(10) of the Security Interest (Enforcement), Rule, 2002.

30. As regards the submissions of delay in filing the complaints under the MRTU and PULP Act, he would submit that the dues of wages and other benefits were sought for the period from 1996 till 2009 and as no dues were paid, the same amounted to continuous cause of action and was not barred by limitation. Learned counsel appearing for the respondent-Complainants relied upon the following

decisions :

- ***(a) Bank of Mah. v. Pandurang Keshav Gorwadkar [AIR 2013 SC 2036];***

- ***(b) Ahmednagar Municipal Corp. v. Madhukar Chandrabhan Galpande [dated 18th March 2009 in Writ Petition (Aurangabad) No.938 of 2008];***

- ***(c) Udgir Municipal Council v. State of Maharashtra [dated 03rd March 2015 in Writ Petition (Aurangabad) No.5507 of 2014];***

- ***(d) Syed Kalim Mannan v. State of Maharashtra [dated 11th July 2008 in Writ Petition (Aurangabad) No.38 of 2008];***

- ***(e) State of Maharashtra v. Sanjay J. Viste [dated 10th August 2016 in Writ Petition (Aurangabad) No.8460 of 2016];***

- ***(f) Chief Officer, Shirdi Municipal Council v. Directorate of Municipal Adm. Mumbai [2016(3) Mh.L.J. 340] and;***

- ***(g) Chhatrapati Sahkari Sakhar Karkhan Ltd. v. Mohan Ambadas Mule [2006(1) All MR. 235].***

31. Learned counsel Mr. Yogesh Deshmukh and Mr. D. A. Bide, appearing for some of the employees adopted the submissions of Mr. Gajanan Kingre and in addition submitted that the subsequent transferee of auction purchaser, i.e., Arjun Sugar Industries Pvt Ltd was also made party to the complaints, but has chosen not to participate in the proceedings and, as such, cannot now raise any objection to the findings of the Industrial Court. He would further

submit that in the proceedings before the Industrial Court, neither the issue of limitation was raised nor there is denial of employer-employee relationship.

32. Considered the rival submissions of the parties and perused the papers and proceedings with the assistance of learned counsel for the parties.

33. Although the Bank as well as the auction purchaser have assailed the impugned judgment, amongst other grounds on the issue of maintainability of complaint, the limitation and the proof of claim, the Bank stands on a different footing from the auction purchaser and hence the submissions *qua* the Bank and the auction purchaser are considered and dealt with separately.

34. As Writ Petition No.5901 of 2016 is taken up as a lead petition, the facts of the said case are being referred to. At the cost of repetition, it may be stated that it is agreed by all the parties that it is not necessary to go into the facts of each individual case and common propositions are being advanced by the learned counsel for the Bank and the learned counsel for the auction purchaser –

Tapadiya Construction Ltd. The reference to the complaint is only for the purpose of considering the pleadings made in the individual complaints about which there is no dispute.

ANALYSIS AND CONCLUSION:

35. The foremost question arising for consideration is whether the Industrial Court in adjudicating a complaint of unfair labour practice instituted under Section 28 of the MRTU and PULP Act is empowered to examine the issue of existence of employer-employee relationship. The law is well settled by catena of decisions of the Apex Court as well as by this Court. The Apex Court in the case of **Cipla** (supra), which was subsequently followed in number of cases, was dealing with a complaint of unfair labour practice filed by the contract workmen. In that case, the employer had denied that the complainants were their employees. The Apex Court held that if the case put forth by workmen is that they have been directly employed but the contract itself is a camouflage or bogus and upon such decision it can be held that the workman in question is an employee of the establishment, such exercise cannot fall within the scope of either Section 28 or Section 7 of the Act. The Apex Court held that in cases of this nature where the provisions of the Act are summary in

nature and give drastic remedies to the parties concerned elaborate consideration of the question as to relationship of employer-employee cannot be gone into. If at any time the employee concerned was indisputably an employee of the establishment and subsequently it is so disputed, such a question is an incidental question arising under Section 32 of the Act.

36. This Court in the case of ***Asia Foundation & Construction Ltd v. Engineering Kamgar Sanghatana [2017(1) All MR 428],*** after considering various judicial pronouncements, including the decisions of the Apex Court in ***Cipla Ltd.*** (supra) and ***Vividh Kamgar Sabha***, (supra) has held that the enquiry as to whether the employees were in fact the employees of appellants or not, was not permissible in a complaint under Section 30 of the MRTU & PULP Act.

37. In the present case, the complainants seek satisfaction of their claim out of the sale of secured assets by the Bank. It is not their case that there is an employer-employee relationship between the complainants and the Bank. The existence of an employer-employee relationship is a jurisdictional fact upon which the question of maintainability of complaint under Section 28 of MRTU and PULP

Act would depend. The Apex Court in the case of ***Vividh Kamgar Sabha (supra)*** has held that the provisions of MRTU and PULP Act can only be enforced by persons who are admittedly the workmen and if there is a dispute as to whether the employees are employees of the company, then that dispute must first be got resolved by raising a dispute before the appropriate forum and only after the status as a workmen is established that a complaint could be made under the provisions of MRTU and PULP Act. Although in the aforesaid decisions, the Apex Court was considering the issue of regularization of the employment by eliminating the labour contractor, in my view, the proposition of law is applicable to the facts of the present case.

38. On considering the pleadings in the complaint, as the claim against the Bank was satisfaction of their claim, the issue was required to be adjudicated in the appropriate forum constituted under the provisions of SARFAESI Act. In complaint of unfair labour practice, the Industrial Court could not have examined the issue of existence of employer-employee relationship *qua* the Bank and rendered a finding as regards the status of the relationship. Such a course is not available in the proceedings under the MRTU and PULP Act. It is only in cases where it is undisputed or indisputable that

there is employer-employee relationship between the parties, the issue of unfair labour practice can be gone into. Resultantly, on the basis of the admitted fact of non-existence of employer-employee relationship between the Bank and the complainants, the jurisdiction of the Industrial Court *qua* the Bank was clearly ousted.

39. Although in view of the settled position of law on the jurisdictional issue as enunciated by the Apex Court, the petitions of the Bank could have been decided, I deem it appropriate to examine the reasoning of the Industrial Court supporting the finding that the complaint *qua* the Bank was maintainable.

40. After considering the provisions of Section 13(7) of the SARFASEI Act, the Industrial Court has held that the secured creditor holds the realized amount in trust and he is under a duty to pay the same to the persons entitled in accordance with the rights and interest. The Industrial Court then goes on to observe that the subsequent sale by the Bank was without permission of the Industrial Court and although the provisions of the Act do not contemplate any such condition, considering the sale was during the pendency of the complaint, the Industrial Court is empowered to pass necessary

orders of restitution.

41. At this stage before venturing further into the findings of the Industrial Court, it will be apposite to reproduce the relevant sub-sections of Section 13 of the SARFEASI Act i.e. sub sections(1), (4) and (7) , which reads thus:

> **"Section 13 of the SARFAESI Act :**
>
> *(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.*
>
> *(2) ……….*
> *(3) ………*
> *(3A) ……..*
>
> *(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--*
>
> *(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;*
>
> *(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:*
>
> *Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:*

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) ………

(5A) …….

(5B) ……..

(5C) ………

(6) ………..

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) ……

(9) ………

(10) ....

(11) ....

(12) ....

(13) ....”

42. A plain reading of the provisions of Section 13 of the SARFAESI Act reveals that upon failure of the borrower to discharge his liability in full, two courses are available to the secured creditor, firstly, to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured assets and secondly to take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset. Considering the material produced on record the Bank had not taken over the management of the business of the borrower. There is a seizure panchnama dated 16th February, 2009 annexed at page-207 of the petition which records that except the administrative records, files, and documents, possession of the entire movable and immovable assets has been taken by the Bank and sealed. Considering that the Bank has exercised the first option, the Bank as a financial creditor, had taken possession of the secured asset for enforcement of its security interest. No doubt, the provisions of

Section 13 (7) of the SARFAESI Act, indicate that the Bank holds the sale proceeds in trust. However, the manner of appropriation of the sale proceeds is an issue which falls within the purview of the SARFAESI Act. As to whether the workmen's dues are required to be satisfied out of the sale proceeds is an issue which is required to be adjudicated in an appropriate forum.

43. In arriving at a finding that there is excess of sale proceeds in the hands of the Bank, the Industrial Court has considered the sale certificates produced by the Bank and has held that the Bank received an amount of Rs.28,83,43,349/- and from the sale of movable property received Rs.13,47,67,909/- and as such the total amount received was Rs.42,31,11,258/- and the actual dues under the sale certificates is Rs.32,53,96,000/-. The Industrial Court therefore held that Rs.9,77,15,258/- was the excess amount with the Bank. The Industrial Court has thereafter held that once the borrower's account is classified as a non-performing asset, the interest cannot be charged by the Bank by making entry in the account. Although not pleaded, the Industrial Court has considered that the Bank has seized sugar bags which is not mentioned in the tender notice for sale dated 9th January 2012. The Industrial Court has held that as the Bank has sold

the property during the pendency of complaint, the principle of restitution is applicable and under this ground and on the ground that the Bank holds the sale proceeds and even the excess sale proceeds in trust on behalf of owner, i.e., Jalna SSK, the Bank can be treated as representative or agent of Jalna SSK.

44. The complainant has approached the Industrial Court under Section 28 read with Item Nos 9 and 10 of Schedule IV of the MRTU and PULP Act. Item Nos 9 and 10 of Schedule IV of the MRTU and PULP Act reads thus:

"SCHEDULE IV
General Unfair Labour Practices on the part of employers

1. …..
2. …..

…..
…..

9. Failure to implement award, settlement or agreement.
10. To indulge in act of force or violence."

It will be relevant to consider sub-section (1) (a) and (b) Section 30 of the MRTU and PULP Act, which reads thus:

"30. Powers of Industrial and Labour Courts:-

(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order—

(a) declare that an unfair labour practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

> *(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;*
>
> *……."*

45. The Industrial Court while exercising powers under Section 30 of the MRTU and PULP Act is empowered to adjudicate the issue of unfair labour practice on the part of employer and render a finding thereon and also is empowered to take such affirmative action as may be necessary and, as such, a direction to pay the outstanding salaries, if any. As regards Jalna SSK, the Industrial Court was competent to adjudicate the dispute and arrive at a finding of unfair labour practice and direct an affirmative action. Thereafter in the event of non compliance of the direction for payment, if any, the proceedings under Section 50 of the MRTU and PULP Act come into play which reads as under:

> *"**50. Recovery of money due from employer :-** Where any money is due to an employee from an employer under an order passed by the Court under Chapter VI, the employee himself or any other person authorised by him in writing in this behalf, or in the case of death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Court for the recovery of money due to him, and if the*

> *Court is satisfied that any money is so due, its shall issue a certificate for that amount to the Collector, who shall, proceed to recover the same in the same manner as an arrears of land revenue:"*

46. The issue as to whether the workmen's dues are liable to be satisfied out of the proceeds from auction of secured assets was required to be adjudicated in an appropriate forum upon the recovery certificate being issued to the Collector for the recovery of unpaid amount. The Bank as financial creditor has enforced its security interest under the provisions of Section 13 of SARFEASI Act. The stated object of the SARFEASI Act is to regulate securitization and reconstruction of financial assets and enforcement of security interest and to provide for a central database of security interests created on property rights and for matters connected or incidental thereto. Section 34 of the SARFEASI Act bars the jurisdiction of the civil court in respect of the matters which Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Further Section 35 of the SARFEASI Act gives an overriding effect to the Act.

47. On a reading of the aforesaid provisions of the SARFEASI Act, it is evident that the Industrial Court does not have the jurisdiction to venture into the issues which fall squarely within the purview of the SARFEASI Act. The Industrial Court has held that the

Bank is a representative of Jalna SSK as the Bank was holding the proceeds received from the sale of assets of Jalna SSK. The provisions of Section 13(7) of the SARFAESI Act set out the manner in which the secured creditor has to apply the sale proceeds and in the event of any claim as regards the proceeds arising out the sale conducted under the provisions of SARFEASI Act, the same is required to be adjudicated in an appropriate forum having jurisdiction under the SARFEASI Act. Even assuming that the Bank was holding excess of the sale proceeds in their hands, the same cannot render the Bank a representative or agent of the borrower- Jalna SSK and merely makes the Bank liable to satisfy the workmen's dues out of the sale proceeds, if so adjudicated.

48. Based on the provisions of Section 30(1)(a) of the MRTU and PULP Act, the Industrial Court has held that the Court has the jurisdiction to specify any other person who has engaged in or is engaging in unfair labour practice and as the Bank failed to give the particulars of the excess amount received by them and further they sold out the property during the pendency of complaint and as they hold all the sale proceeds in trust, the Bank can be said to be any other person. The Industrial Court has, therefore, held the complaint

maintainable. It is further held that to that restricted liability and being a trustee and representative of the employer, the Bank can be said to be an employer. In my opinion, the reasoning adopted by the Industrial Court in support of its finding that the complaint is maintainable cannot be accepted. Assuming that there is excess of sale proceeds in the hands of the Bank, the Bank cannot be held to be a trustee of Jalna SSK. The Bank is a secured creditor and has realized its dues by auctioning the assets of Jalna SSK. If there is any claim towards the residue of sale proceeds, the claim will be required to be adjudicated in an appropriate forum under the SARFEASI Act. It needs to be noted that that the provisions of SARFEASI Act having an overriding effect, there was no embargo on the Bank to realise its security interest and the statutory provisions did not mandate seeking any permission from the Industrial Court.

49. Pertinently, the Bank has disputed the position that there are excess of sale proceeds by pointing out that even after the sale of assets of Jalna SSK, there is still a sum, of approximately Rs.9 crores, which is recoverable. The sale certificate for sale of immovable properties issued under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 mentions that the property has been sold

towards the financial liability of the Bank of Rs.32,53,96,000/- only and interest and the sale price was Rs.28,83,43,349/-. To the same effect is the sale certificate for the movable property which records the sale amount as well as the interest component. The Industrial Court has considered the evidence of the bank officer that once the bank account of a borrower is classified as a non-performing asset, the interest cannot be charged by making entry in that account. Although not required to be considered, the finding that the Bank is not entitled to charge interest after the account being classified as Non performing asset is clearly unsustainable. The Allahabad High Court in the case of ***Girish Chandra Tiwari v. UCO Bank Lucknow [2014 SCC Online ALL 9134]*** has held that the charging of interest on an asset declared as NPA does not cease rather, for the convenience of the bank and particularly for the accounting purposes the amount of interest due in the loan account declared NPA, is not shown in the loan account and details thereof are to be maintained in a separate account. Since the interest accrued to the bank is treated as income for the bank, therefore, after the loan is declared as NPA, the recovery of interest is not likely to take place, as such the amount of interest due is not reflected in the loan account. The interest in the loan account nevertheless remains payable under the loan agreement and the circulars of the Reserve Bank of India, and the bank would be clearly entitled to realise the interest from the borrower once the loan account is regularised.

50. The issues as regards the dues of the Bank, the amounts realized from the sale of assets and the excess or deficit of the sale proceeds are all questions which could not have been adjudicated in a complaint seeking declaration of unfair labour practice and particularly when the admitted position is that there is no employer-employee relationship between the Bank and the complainants.

51. The Industrial Court has thereafter gone into the issue of tender and auction and has observed that the sale is not according to the procedure as prescribed under Section 13 of the SARFAESI Act. The Industrial Court assumed the jurisdiction which it did not have and has gone into the issue of the tender and the reserve price and has held that the Bank and the auction purchaser in collusion, have dealt with the property, to avoid the payment of employees. The Industrial Court ought to have considered that the SARFAESI Act is a special enactment and the jurisdiction of the Civil Court is barred in respect of the matters which are to be dealt with under the

provisions of SARFAESI Act.

52. In my opinion, the finding of the Industrial Court that the Bank is an employer being a trustee and representative of the employer is clearly unsustainable. In view of the admitted position of no employer-employee relationship between the Bank and the complainants, the complaint under the MRTU and PULP Act *qua* the Bank was not maintainable. The Industrial Court has ventured into issues falling within the purview of SARFAESI Act and has rendered a finding on the status of the Bank as an employer. Considering the settled position in law, such an examination is not contemplated in a proceeding instituted under Section 28 of the MRTU and PULP Act.

53. For the reasons discussed above, in my view, the complaint *qua* the Bank was not maintainable. The declaration of unfair labour practice and the direction to jointly and severally pay the outstanding wages and applicable allowances of the employee qua the Bank was clearly unsustainable.

54. Now, we come to the submissions of the learned counsel for the auction purchaser, i.e., Tapadiya Construction Limited. Writ Petition No.7186 of 2016 is taken as a lead petition for advancing

arguments. This petition arises from Complaint ULP No.67 of 2009 filed by one of the employees of Jalna SSK seeking the same reliefs as sought in other complaints, namely, the payment of outstanding salary and applicable allowances with effect from October 1996. A perusal of the complaint shows that an amendment was carried out and thereafter Jugalkishor Tapadiya and Tapadiya Construction Limited were added as party respondents to the complaint. Learned counsel for the petitioner has submitted that irrespective of the discrepancy in the impleadment of the auction purchaser, the submissions are raised on the broader issues, i.e., the maintainability of complaints, the complaints being barred by limitation and the auction purchaser not being liable inasmuch as there is no transfer of undertaking and what has been purchased was only the assets of the company and the tender notice and the sale certificate do not impose liability of the workmen's dues on the auction purchaser.

55. Learned Counsel for the auction purchaser would contend that there is no employer-employee relationship between the complainant and the auction purchaser and, as such, the complaint is not maintainable. The complaint sets out that the plant and

machinery and the open field of Jalna SSK is sold to one Jugalkishor Tapadiya and the whole claim is required to be satisfied by Jugalkishor Tapadiya. In the prayer clause of complaint, the relief sought is that Jugalkishor Tapadiya may be directed to satisfy the whole claim of the complainant.

56. The question to be considered is whether by purchase of the factory, there has been transfer of the undertaking and the auction purchaser steps into the shoes of the erstwhile owner. There is no material produced on record to indicate that there was closure of the factory in the manner contemplated by the provisions of Industrial Disputes Act, 1947 or that there was termination of services of the complainants.

57. Let us take a look at the secured assets which came to be purchased by the auction purchaser. As per the seizure panchnama, the tender documents and the sale certificate, the seized assets of Jalna SSK were factory land and building, plant and machinery admeasuring 87-Hector 65-Are. The building included the main factory building, godowns, store building, staff quarters, administrative building, office, mangal karyalay, furniture fixtures

including molasses tanks, weigh bridge cabins, security cabins, Effluent Treatment Plant, spray pond, reservoir, diesel pump, cabin, karkhana well and pumps, compound wall, gates etc. The movable assets included cane milling plant, clarification plant, evaporation and boiling plant, cooling curing and grading plant, molasses handling plant, steam generating plant, power generating plant, plant and machinery, workshop machinery, stores and spares, vehicles, bullock carts, agri equipments, cane processors, weigh bridge etc.

58. I have set out the details of the secured assets to indicate that the entire immovable and movable assets of the borrower was subject matter of auction by the financial creditor. It is evident from the details of the properties that the purchase was of the going concern. The movable assets are peculiar to the business of sakhar kharkhana and unless the entire unit is purchased as going concern, there is no explanation for purchase of the movable assets. This finding is buttressed by the fact that on 29th December 2012, Arjun Sugar Industries Pvt. Ltd. made an application to the Industries, Energy and Labour Department seeking to status of "Mega Project" i.e the project for manufacture of Sugarcane crushing power generation unit and distillery unit at the same location- i.e factory of

Jalna SSK. The communication in that regard is annexed at Page 135 of the lead Petition of the Bank.

59. Another contention which has been raised by the learned counsel for the petitioner is that there is no transfer of undertaking and only the assets were purchased. It will be beneficial to refer to the decision of the Apex Court in the case of ***Anakapalle Co-operative Agricultural & Industrial Society Ltd. v. Workmen (supra)*** the Apex Court was considering the scope and effect of Section 25FFF of the Industrial Disputes Act, 1947. The Apex Court held that the question as to whether the purchaser of industrial concern can be held to be a successor of the vendor will have to be decided on the consideration of several relevant facts as to whether the purchaser purchased the whole of business, was the business purchased was a going concern at the time of sale transaction, is the business purchased carried on at the same place as before, is the business carried on without a substantial break, is the business carried on by the purchaser the same or similar to the business in the hands of the vendor etc. In that case the workmen claimed that they were re-entitled for employment in the said concern which had been purchased by the appellant and their demand for employment was

not accepted. In that context, the Apex Court was considering the scope of Section 25FFF and considered the nature of appellant's liability to the employees of company. Pertinently, the Apex Court has held that the decision of the question must ultimately depend on the evaluation of relevant factors and cannot be reached by treating any one of them as of over-riding or conclusive significance.

60. As discussed hereinabove, the entire unit of Jalna SSK was purchased by the auction purchaser. The sale certificate was issued on 3rd December, 2012 and immediately on 29th December, 2012, Arjun Sugar Industries Pvt Ltd had addressed a communication to the Industries Energy and Labour Department seeking benefits of Mega Project for the manufacture of Sugar Cane Crushing, power generation unit and distillery unit. It needs to be noted that the Sale Deed dated 16th September, 2013 executed between the auction purchaser and Arjun Sugar Industries Pvt Ltd recites that there was an agreement to sale dated 23rd November, 2012 executed between them. As such it is evident that the entire unit was purchased as a going concern and benefits were sought for running the sugar cane crushing business. The auction purchaser was a successor in interest of Jalna SSK and the entire unit was purchased as a going concern.

There was nothing left with Jalna SSK.

61. Learned Counsel for the auction purchaser has relied upon the decision of the Apex Court in the case of ***State of Karnataka v. Shreyas Papers Pvt Ltd (supra)***. In that case, the Apex Court was dealing with the issue as to whether the purchaser of assets of a concern sold by the State Financial Corporation would be liable under the Karnataka Sales Tax Act, 1957 for the arrears of sales tax of the concern, whose assets have been transferred. The Apex Court while considering the provisions of Karnataka Sales Tax Act, 1957 had held that mere transfer of one or more species of assets does not necessarily bring about a transfer of ownership of the business, for ownership of a business is a much wider than mere ownership of discrete or individual assets. In the present case, as discussed hereinabove the entire unit has been purchased by the auction purchaser as a going concern and I have already held that by reason of purchase, there has been change in the ownership and management of Jalna SSK as a going concern.

62. To wriggle out of the issue of transfer of undertaking by reason of transfer of the entire unit, it is sought to be contended

before this Court that the properties were sold in two lots and one lot was purchased by the auction purchaser. I find that this contention was not raised before the Industrial Court and there is no evidence to substantiate this contention. On the contrary, there is material on record to indicate the contrary. The case of the Bank is that Tapadiya Construction Ltd has purchased the auctioned properties and the same was not disputed in the proceedings before the Industrial Court. The auction purchaser has led evidence in Complaint (ULP) No.126 of 2009 annexed at page-95 of the lead petition of the Bank, wherein it is deposed that the movable and immovable property of Jalna SSK is purchased by them and is sold thereafter to Arjun Sugar factory. From the details of secured assets sold in auction, I am of the view that the entire unit of Jalna SSK was purchased by the auction purchaser as going concern and there was nothing left with Jalna SSK. By such purchase, a change has been effected in the ownership and management and a notional extension of the relationship has occurred. The sale of the properties was not mere transfer of assets but transfer as a going concern The provisions of Section 25FF of the Industrial Disputes Act, 1947 govern the position as regards the compensation payable to workmen in case of transfer of undertakings, which reads thus:

> *"**25FF. Compensation to workmen in case of transfer of undertakings.--** Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:*
>
> *Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if--*
>
> > *(a) the service of the workman has not been interrupted by such transfer;*
> >
> > *(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and*
> >
> > *(c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer."*

63. A reading of Section 25FF of the Industrial Disputes Act, 1947 indicates that upon transfer of an undertaking whether by agreement or by operation of law, the purchaser steps into the shoes of the earlier employer. There has been a denial of employer-employee relationship by the auction purchaser. The provisions of Section 32 of MRTU and PULP Act empower the Industrial Court to

decide the incidental and ancillary issues. The complainants were admittedly the employees of Jalna SSK, there is no closure of Jalna SSK and subsequently there has been transfer of undertaking. The issue of status of the relationship between the auction purchaser and the complainants was an ancillary issue which could be determined under Section 32 of the MRTU and PULP. Considering the aforesaid, in my view, *qua* the auction purchaser, the Industrial Court was empowered to decide the issue of existence of employer employee relationship and the complaint against the auction purchaser was thus maintainable.

64. In this context, it will be profitable to refer to the decision of this Court in the case of ***Ratnagiri Gas and Power Private Limited v. Dabhol Power Employees' Association [2006 SCC OnLine Bom 1572]***. The relevant observations are contained in paragraph Nos. 10 to 15, which read thus :

> "10. As rightly observed by the Industrial Court in the impugned order, the petitioners have not been able to place on record any order to show that the services of the employees involved in the complaints were terminated by following the procedure under Chapter V-B and Section 25FF of the I.D. observed that Section 25FF of the I.D. Act by itself does not put an end to the contract of employment on transfer of the ownership or management of the undertaking to a new

employer, as there is nothing provided in the said Section which could indicate such consequence on transfer of an undertaking. It was also ruled that whether the transfer results in the termination of the contract of employment or not, will depend upon either on the terms of the agreement of transfer or on the provisions of the law which effects the transfer. It was further held that :

> *"The section in terms states that if the terms of the agreement or the provisions of the law have the effect of terminating the contract of employment, every workman in employment in the transferor undertaking would be entitled to notice and compensation in accordance with the provisions of Section 25F as if the workmen had been retrenched."*

11. Being so, it cannot be said that merely on account of transfer of the assets and properties, it would result in putting an end to the contract of employment of the workmen which they had with the respondent No. 2 in relation to the undertaking in question and which is under the control and management of the petitioners.

12. Attention was sought to be drawn to the decision of the Apex Court in Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen, reported in AIR 1963 SC 1489, and in particular to para 17 thereof which reads thus :

"(17) The scheme of the proviso to S. 25-FF emphasises the same policy. If the three conditions specified in the proviso are satisfied, there is no termination of service either in fact or in law, and so, there is no scope for the payment of any compensation. That is the effect of the proviso. Therefore, reading S. 25-FF as a whole, it does appear that unless the transfer falls under proviso, the employees of the transferred concern are entitled to claim compensation against the transferor and they cannot make any claim for re-employment against the transferee of the undertaking. Thus, the effect of the enactment of S. 25-FF is to restore the position which the Legislature had apparently in mind when S. 25-FF was originally enacted on September 4, 1956. By amending S. 25-FF, the Legislature has made it clear that if industrial undertakings are transferred, the employees of such transferred undertakings should be entitled to compensation, unless, of course, the continuity in their

service or employment is not disturbed and that can happen if the transfer satisfies the three requirement of the proviso."

13. The above decision does not help the petitioners in seeking interference in the impugned order. In fact, the same justifies the requirement of the presence of the petitioners in both the complaints. Needless to say that as to the liability, if any, of the petitioners which is to be decided in the matter would depend upon the evidence to be led by the parties in the matter. However, that itself would not justify interference in the impugned order and to delete the petitioners from the proceedings when, undisputedly, the entire assets and management of the undertaking is presently in the hands of the petitioners.

14. As rightly submitted by the learned Advocate for the respondents, the Apex Court while dealing with an application for joinder of the parties to such proceedings has clearly held that it is necessary for the Industrial Court to take into consideration all the relevant facts and it cannot be decided merely on the basis of the claim of the party proposed to be joined as the party-respondent that in terms of some agreement between the management of the undertaking and such party, the entire responsibility to meet with the claim of the employees is taken over by the erstwhile management. All the issues in that regard are required to be decided not only on the basis of any agreement between such parties but also taking into consideration the provisions of law applicable to the parties and the surrounding circumstances. In order to adjudicate upon such issues, therefore, the presence of even such party is not only proper but necessary. Even though the provisions of Order 1, Rule 10 of the C.P.C. are not directly applicable to the proceedings before the Industrial Court while dealing with the complaint under the MRTU & PULP Act, the principle behind the said provision would apply. Since the complaints relate to grievance of the employees about unfair labour practice being adopted by the management and that the management of the undertaking being presently with the petitioners, the need of their presence before the adjudicating authority for final and effective adjudication of the grievance

of the respondent No. 1 can hardly be disputed.

15. To what extent the petitioners would be liable in relation to the claim of the complainants in the matters in hand will obviously depend upon the evidence to be led by the parties and the adjudication in that regard by the Industrial Court. However, in order to have proper adjudication of such issues, the presence of the petitioners is absolutely necessary. To what extent there exist the relationship of employer employee between the respondent No. 2 and the complainants stood transferred and in that regard to what extent the petitioners herein could be held responsible for the grievance made by the complainants, will have to be decided by the Industrial Court after hearing the parties and for that purpose the presence of the petitioners would be necessary. For the reasons stated above, I do not find any jurisdictional error committed by the Industrial Court in allowing the applications filed by the respondents for joinder of the petitioners as party respondents."

65. One of the submissions of the learned counsel for auction purchaser to deny the existence of employer-employee relationship is that upon transfer of undertaking, the relationship of employer-employee snaps. There is no material produced on record to indicate that the workmen in question did not satisfy the ingredients of the proviso to Section 25FF of the Industrial Disputes Act, 1947. It will be relevant to refer to the decision of the Apex Court in the case of ***NTC (South Maharashtra) v. Rashtriya Mill Mazdoor Sangh [(1993) 1 SCC 217]***, where it is held in paragraph 15 as under :

"As regards the second contention which is based on the provisions of Section 25-FF of the ID Act, we are afraid that the same proceeds on a wrong presumption of the law. As is clear from the provisions of the said section which are reproduced above, the section by itself does not put an end to the contract of employment on the transfer of the ownership or management of the undertaking to the new employer. There is nothing in the said provisions to indicate such a consequence on the transfer of the undertaking. The section only provides for compensation to the workmen if such transfer aliunde results in the termination of the contract of employment. Whether the transfer results in the termination of the contract of employment or not, will depend upon either the terms of the agreement of transfer or on the provisions of the law which effects the transfer. The section in terms states that if the terms of the agreement or the provisions of the law have the effect of terminating the contract of employment, every workman in employment in the transferor undertaking would be entitled to notice and compensation in accordance with the provisions of Section 25-F as if the workmen had been retrenched. However, the proviso to the section makes clear as to when the transfer will have no effect on the contract of employment and the workmen would not be entitled to the notice and retrenchment compensation under Section 25-F. Those cases are where [a] the service of a workman has not been interrupted by such transfer; [b] the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to him than those applicable immediately before the transfer; and [c] the new employer is, under the terms of the transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service had been continuous and had not been interrupted by the transfer. The three conditions under which the workman becomes ineligible to the notice and retrenchment compensation under Section 25-F, further make it abundantly clear that by itself neither Section 25-FF nor the transfer of the undertaking as such, puts an end to the contract of employment. In fact, the section envisages the continuation of employment, and makes provision for the compensation, only if the transfer results in the termination of the contract of employment. These provisions show that where the employment continues in spite of the transfer of the undertaking, the workmen would not be entitled to notice and retrenchment compensation under Section 25-F from the transferor-employer. It is only if there is a transfer of the undertaking and the said three conditions are

> *not satisfied that a workman would be entitled to such notice and retrenchment compensation from the transferor employer."*

66. The Apex Court has held that Section 25FF by itself does not effect termination of contract of employment of workmen of the undertaking. Whether the transfer results in termination of contract of employment or not will depend on either terms of the agreement of transfer or on provisions of law which effects the transfer. The contention that immediately upon the transfer of undertaking the relationship of employer employee snaps is thus unsustainable.

67. Learned Counsel for the auction purchaser has pressed into service the decisions in ***Labour Union (Red Flat) Bombay v. Ahmedabad Manufacturing and Calico Printing (supra), Janprabha Offset Works v. Savra Shramik Sangh (supra), Sarva Shramik Sangh v. Janprabha Offset Works (supra), M/s. Premium Transmission Pvt. Ltd v. Aurangabad Mazdoor Union (supra), Indian Seamless Metal Tubes Ltd v. Sunil Rambhau Iwale (supra), Sarva Shramik Sangh v. Indian Smelting & Refining Co. Ltd. (supra), M/s. Oswal Petrochemicals v. Govt. of Maharashtra (supra)*** and ***JK Education Society v. Sunil Uaike (supra)*** to support the proposition that there

has to be existence of employer-employee relationship before a complaint under the provisions of MRTU & PULP Act can be enforced. In the aforesaid decisions, the issue of existence of employer employee relationship was the main issue in as much the employees therein were admittedly not the workmen of the concerned entity. The question is whether the issue is the main issue or an ancillary issue. In the present case, undisputedly the complainants were the workmen of Jalna SSK and in my opinion, the issue as to whether the employer employee relationship continued with the auction purchaser was an ancillary issue competent of being determined by the Industrial Court. As indicated hereinabove, as the auction purchaser has stepped into the shoes of employer, the said decision are not applicable *qua* the auction purchaser.

68. As regards the decision in ***Dalal Engineering Pvt Ltd v. Ramrao Bhaurao Sawant (supra)***, this Court has held that the jurisdiction to issue an order comes into existence only upon a finding that there is an unfair labour practice. There is no quarrel with the proposition. In the present case, as discussed above the auction purchaser has stepped into the shoes of Jalna SSK and as such there has been a declaration of unfair labour practice qua the auction

purchaser.

69. Next issue for consideration is whether auction is accompanied with the encumbrance of workmen's dues. Before adverting to the factual position as regards the terms of auction, it will be beneficial to refer to the decision of the Apex Court in the case of ***Maharashtra State Coop. Bank Ltd v. Babulal Lade [(2020) 2 SCC 310]*** . The facts of that case will be required to be stated in detail for the reason that the facts of that case bear similarity to the facts of the present case. In that case, Appellant Bank had auctioned the secured assets of the borrower Sakhar Karkhana. The employees having been directed to proceed on leave filed complaint under Section 28 of read with Items 9 and 10 of the MRTU and PULP Act, which came to be allowed with direction to the Karkhana to pay the unpaid salaries. As the dues remained unpaid, recovery certificate was sought against the Appellant Bank and the Sakhar Karkhana under Section 50 of the MRTU and PULP Act, which came to be refused by the Industrial Court. In challenge to the refusal, this Court directed recovery only against the Karkhana and not the Bank as there was no employer-employee relationship with the Bank and, as such, the Industrial Court issued recovery certificate against the Karkhana. One of the attached properties came to be sold in the

meantime, the sale proceeds whereof were appropriated by the Bank. The non issuance of recovery certificate against the Bank was challenged and during the pendency of petition, the Karkhana went into liquidation. This Court observed that under Section 50 of the MRTU and PULP Act, the recovery certificate should have been issued to the Collector who would then proceed to recover the sum. This Court held that after the auction sale, bank held the proceeds in trust as per Section 13(7) of the SARFAESI Act and did not have first charge over them. The Apex Court was considering the issue whether the employees' dues can take precedence over the claim of the secured creditor in respect of the proceeds from sale of secured assets of Karkhana under the SARFAESI Act. The Apex Court after considering the provisions of Section 167 of Companies Act held that Section 529-A of the Companies Act is inapplicable to the Karkhana as it was a co-operative society. The other issue considered by the Apex Court was whether the employees dues take priority over other claims by virtue of being recoverable as arrears of land revenue and held that under the scheme of Land Revenue Code and MRTU and PULP Act the employees dues cannot claim priority over the claim of the Appellant Bank. The Apex Court then proceeded to analysis the scheme of the SARFAESI Act and held in paragraph 13, 15, 16.3, 16.5 as under :

"13. However, this does not mean that the Appellant-Bank automatically holds a paramount charge over the proceeds from the sale of the secured assets. Under the scheme of the SARFAESI Act, there is nothing to show that a priority is created in favour of banks, financial institutions, and other secured creditors as against a first charge specifically created under any other statute. This has been captured succinctly by this Court in *Central Bank [(2009) 4 SCC 94]* as follows :

> "126. While enacting the DRT Act and the Securitisation Act, Parliament was aware of the law laid down by this Court wherein priority of the State dues was recognized. If Parliament intended to create first charge in favour of banks, financial institutions, or other secured creditors on the property of the borrower, then it would have incorporated a provision like Section 529-A of the Companies Act or Section 11(2) of the EPF Act and ensured that notwithstanding series of judicial pronouncements, dues of banks, financial institutions and other secured creditors should have priority over the State's statutory first charge in the matter of recovery of the dues of sales tax, etc. However, the fact of the matter is that no such provision has been incorporated in either of these enactments despite conferment of extraordinary power upon the secured creditors to take possession and dispose of the secured assets without the intervention of the court or Tribunal. The reason for this omission appears to be that the new legal regime envisages transfer of secured assets to private companies."

Thus, in the absence of a paramount charge created in favour of the employees' dues under the MRTU & PULP Act, it cannot be said that the Appellant-Bank automatically gets a first charge under the SARFAESI Act.

15. Section 13(4) of the SARFAESI Act allows a secured creditor to take possession of the secured assets of a borrower-in-default, including the right to transfer them by way of sale. What may be done with the proceeds from such sale is provided under Section 13(7). In the absence of a contract to the contrary, such proceeds are held by the secured creditor in trust and are to be applied first towards payments of costs, charges, and expenses incurred with respect to the sale; second, towards dues of the secured

creditor; and lastly, towards any person entitled to the residue money.

16.3 This brings us to the scheme of distribution of sale proceeds under Section 13(7) of the SARFAESI Act. As mentioned supra, this provision prescribes the manner in which money received by the secured creditor pursuant to its action under Section 13(4) should be distributed. However, such manner of distribution is only applicable in the absence of a contract to the contrary. In this case, the sale certificate and sale letter form a contract, the cumulative effect of which is an agreement that only the employees' dues would be settled by the Appellant-Bank, and all other liabilities would be settled by the subsequent purchaser. Thus, it can be said that the contract between the parties diverges from the order of distribution stipulated under Section 13(7) and constitutes a contract to the contrary, which must necessarily be given effect.

16.5 Thus, on facts, we find that in terms of Section 13(7) of the SARFAESI Act, the distribution of money received by the Appellant-Bank should be done as per the sale contract with Respondent No.5. In other words, the Appellant-Bank is liable to satisfy the employees' dues as per its undertaking in the sale letter dated 08.03.2010. However, in view of the fact that all other liabilities, including statutory liabilities were agreed to be borne by the subsequent purchaser, statutory liabilities in respect of employees, such as provident fund, gratuity, bonus etc., would have to be borne by Respondent No.5 herein. We reiterate here that a subsequent attempt by the Appellant-Bank to interpret the sale contract in a manner that reduces the scope of its liability to provident fund dues cannot be given effect."

. The Apex Court summarized its finding in paragraph 17 as under :

"17.1. Section 529-A of the Companies Act, which gives workers' dues a priority over all other debts, cannot be applied to the instant case in view of Section 167 of the

Societies Act.

17.2 Merely by virtue of being recoverable as arrears of land revenue, the employees' dues, in respect of which a recovery certificate had been issued by the Industrial Court, cannot be treated as a paramount charge in terms of Section 169(1) of the Land Revenue Code. Instead, under 169(2) of the Land Revenue Code, they would take precedence only over unsecured claims.

17.3. At the same time, the Appellant-Bank does not enjoy any paramount charge over the sale proceeds either. Instead, as per Section 13(7) of the SARFAESI Act, the sale letter dated 8.3.2010 and the sale certificate dated 14.9.2010 constitute a contract which displaces the order of distribution stipulated under the said provision.

17.4. The cumulative effect of these documents is that the Appellant-Bank must pay the employees' dues out of the sale proceeds from the auctioned property. To this extent, the recovery certificate issued by the Industrial Court on 8.8.2011 may be executed against the Appellant herein. Further, given the significant delay in payment of the salaries to the employees, such recovery shall be made by the Collector within a period of six months from the date of this order.

17.5. All other dues in respect of the secured property, including any unpaid statutory dues in relation to employees (provident fund, gratuity, bonus, etc.) shall be paid by Respondent No.5 within a period of six months from the date of this order."

70. The Apex Court in the aforesaid decision, in the context of Section 50 of the MRTU and PULP Act has also held that the Bank does not enjoy the paramount charge over the sale proceeds and considering the documents executed between the auction purchaser and the Bank therein held that the documents constitute a contract which displaces the order of distribution stipulated under the

provisions of sub section (7) of Section 13 of the SARFAESI Act.

71. In the present case, the Bank and the auction purchaser seek to foist the liability of the workmen's dues upon each other. According to the learned counsel for the Bank, as per the tender notice and sale certificate the liability as regards the workmen's dues is that of the Bank, whereas as per the learned counsel for the auction purchaser, it is the Bank and Arjun Sugar Industries Pvt Ltd who are liable.

72. Applying the law laid down by the Apex Court in the case of ***Maharashtra State Coop. Bank Ltd v. Babulal Lade*** *(supra)*, the documents executed between the Bank and the auction purchaser will have to be considered. The tender notice for sale is annexed at page-75 of the lead petition of the Bank. Clause 3 thereof is relevant, which reads thus :

> *"The Bank intends to sell the assets detailed above as "AS IS WHERE, AS IS WHAT IS AND WHATEVER THERE IS BASIS WHICH IS WITHOUT ANY WARRANTY, GUARANTEE, ASSURANCE AND UNDERTAKING OR REPRESENTATION OF ANY KIND WHATSOEVER. The AO does not take or assume any responsibility for any shortfall of the movable/ immovable assets, for procuring any permissions, etc or for any dues, statutory or otherwise, of any authority established by law, Such dues, if any, will have to be borne/ paid by the purchaser."*

73. The sale certificate dated 3rd December, 2012 of the immovable property reads thus :

"(RULE 9(6)
SALE CERTIFICATE
(For Immovable Property)

Whereas the undersigned being the Authorized Officer of The Jalna Sahakari Sakhar Karkhana Ltd. Ramnagar. Post Sawargaon (Hadap) Tal. Jalna. Dist Jalna under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance. 2002 (Ord. 3 of 2002) and in exercise of the powers conferred under Section 13 read with rule 12 of the Security Interest (Enforcement) Rules 2002 sold on behalf of The Maharashtra State Cooperative Bank Ltd. Mumbai Regional Office. Aurangabad in favour of Tapadia Construction Ltd. Aurangabad the immovable property shown in the Schedule below secured in favour of The Maharashtra State Cooperative Bank Ltd. Mumbai by the Jalna Sahakari Sakhar Karkhana Ltd. Ramnagar. Post Sawargaon (Hadap) Tal. Jalna Dist Jalna towards the financial facility given by The Maharashtra State Cooperative Bank Ltd. of Rs.1130.55 lac NPA Int. Rs.241.28 lac- Noted Int. Rs.1882.13 lac Rs.3253.96 lac (Rupees Thirty two crores fifty three lac ninety six thousand only + interest thereon.

Offered by The Maharashtra State Co-operative Bank Ltd. Mumbai Regional Office. Aurangabad. The undersigned acknowledge the receipt of the sale price of Rs.2883.43.349 in full & handed over the delivery and possession of the schedule property. The purchaser has accepted all the encumbrances presented thereon the property & may arise in future and agreed to pay the same as per the tender conditions accepted by the purchaser Schedule-

74. The sale certificate of movable property reads thus :

"(RULE 7(2)

SALE CERTIFICATE
(For Movable Property)

Whereas the undersigned being the Authorized Officer of The Jalna Sahakari Sakhar Karkhana Ltd. Ramnagar. Post Sawargaon (Hadap) Tal. Jalna. Dist Jalna under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance. 2002 (Ord. 3 of 2002) and in exercise of the powers conferred under Sub Section (12) of Section 13 read with rule 08 of the Security Interest (Enforcement) Rules 2002 has in consideration of the payment Rs.13,47,67,909/- (Rupees thirteen crore forty seven lac sixty seven thousand nine hundred nine only) sold on behalf of The Maharashtra State Cooperative Bank Ltd. Mumbai Regional Office. Aurangabad in favour of Tapadia Construction Ltd. Aurangabad the following movable property secured in favour of The Maharashtra State Cooperative Bank Ltd. Mumbai by the Jalna Sahakari Sakhar Karkhana Ltd. Ramnagar. Post Sawargaon (Hadap) Tal. Jalna Dist Jalna towards the financial facility given by The Maharashtra State Cooperative Bank Ltd. of Rs.1130.55 lac NPA Int. Rs.241.28 lac- Noted Int. Rs.1882.13 lac Rs.3253.96 lac (Rupees Thirty two crores fifty three lac ninety six thousand only) interest thereon.

Offered by The Maharashtra State Co-operative Bank Ltd. Mumbai Regional Office. Aurangabad. The undersigned acknowledge the receipt of the sale price of Rs.13,47,67,909 in full & handed over the delivery and possession of the item listed below as per term & condition of Tender Description of the Movable Property in Schedule – II"

75. Condition no.3 of the tender document states that the Bank intends to sell the assets detailed above on "as is where, as is what is and whatever there is basis" which is without any warranty, guarantee, assurance and undertaking or representation of any kind

whatsoever. The authorised officer does not take or assume any responsibility for any shortfall of the movable/immovable assets, for procuring any permissions, etc or for any dues, statutory or otherwise, of any authority established by law. Such dues, if any, will have to be borne/paid by the purchaser. Clause 3 of the tender document makes it clear that the dues, statutory or otherwise is the liability of the purchaser.

76. The sale certificate which has been issued subsequent to the acceptance of the bid states that the purchaser has accepted all the encumbrances presented on the property and which may arise in future and agreed to pay as per the tender conditions accepted by the auction purchaser.

77. At this juncture, it will be necessary to refer to the Rules framed under the SARFAESI Act, namely, the Security Interest (Enforcement) Rules, 2002, and in particular Rule 8 which deals with the sale of immovable secured assets. Sub-Rule (7) of Rule-8 provides that the notice of sale shall include amongst other things, the description of the immovable property to be sold including the details of the encumbrances known to the secured creditor and any

other terms and conditions, which the authorized officer considers necessary for a purchaser to know the nature and value of the property. In the present case, the tender notice was issued on 4th February 2012 and the sale certificate was issued on 3rd December, 2012. At this point of time, the complaints filed by the employees were pending and had yet not crystallized into a quantified amount so as to qualify an encumbrance to form part of the tender notice and notice of sale. Viewed in this light, if we look at the tender notice, it is stated that "any dues, statutory or ***otherwise,*** of any authority established by law. Such dues, if any, will have to be paid/borne by the purchaser", in my opinion, the liabilities agreed to be discharged by the auction purchaser included dues statutory or otherwise and included the workmen's dues.

78. It appears that in some complaints, the evidence affidavit has been filed by the auction purchaser which is annexed to the lead petition of the Bank. In the said petition, an affidavit of evidence filed on behalf Tapadiya Construction Limited in Complaint (ULP) No.126 of 2009 has been annexed. In the Affidavit of evidence filed by the auction purchaser, it is deposed that the movable and immovable assets of the Jalna SSK were auctioned and purchased and thereafter sold to Arjun Sugar Industries Pvt Ltd *vide* sale-deed dated

3rd May 2014. Clause 4 of the sale deed executed by the auction purchaser with Arjun Sugar Industries Pvt Ltd reads thus :

> **"That, the Vendor has transferred and sold the same to the Vendee on AS IS WHERE, AS IS WHAT IS AND WHATEVER THERE IS BASIS WHICH IS WITHOUT ANY WARRANTY, GUARANTEE, ASSURANCE AND UNDERTAKING OR REPRESENTATION OF ANY KIND WHATSOEVER. And with all risk, liability and responsibilities including VAT or Provident Fund of old labours, liabilities of any other person or financial institutions, etc."**

79. What is important to note in the deposition filed in Complaint (ULP) No. 126 of 2009 is that the auction purchaser has deposed that all the responsibilities re-entered from the tender, are now shifted to Arjun Sugar Industries Pvt Ltd, therefore, this respondent no.4 is not liable at all for the claim of the complainant. A perusal of the affidavit of evidence indicates that it is deposed that the property is sold to Arjun Sugar Industries, who has thereafter taken all the responsibilities of the old labourers, the liabilities of persons or financial institutions, etc., as such, all responsibilities are now shifted on Arjun Sugar Industries Pvt Ltd. In my view, this is an admission on the part of auction purchaser that indeed there was a responsibility by virtue of the tender notice and the sale certificate in respect of the liabilities of the workmen, which is now shifted to Arjun Sugar Industries Pvt Ltd.

80. In the cross-examination, the auction purchaser has admitted that they have accepted the liabilities which were mentioned in the sale certificate and the tender document. It is further admitted that as per the condition mentioned in the tender notice they have accepted the liability to pay the legal dues. The witness has further admitted the said terms and conditions and recitals mentioned in the sale-deed and that as per the recitals of the sale deed, Arjun Sugar Industries Pvt Ltd has accepted the liabilities and dues of employees/old labours of Jalna SSK. Such being the case, if it is the consistent stand of the auction purchaser that it is not liable to pay the workmen's dues as the liability was not accepted, there was no necessity for the sale-deed with Arjun Sugar Industries Pvt Ltd to contain a covenant as regards the acceptance of liabilities and dues of workmen of Jalna SSK.

81. In my opinion, the cumulative reading of the tender document, the sale certificate, the admission by the witness and the auction purchaser read with sale-deed executed by the auction purchaser with Arjun Sugar Industries Pvt Ltd, there is no infirmity in the order of the Industrial Court holding the auction purchaser liable

to pay the dues of workmen.

82. As regards the decision in ***New Horizon Sugar Mills Ltd v. Aryur Sugar Mills Staff Welfare Union (supra)***, the Apex Court was dealing with the case where the assets of New Horizon Sugar Mills were seized and sold in an auction under the provisions of SARFAESI Act and EID Pary India Limited was the auction purchaser. In that case, the borrower, i.e., New Horizon Sugar Mills conceded the liability to pay the workers will be on New Horizon.

83. As regards the decision in ***Rana Girders Ltd v Union of India (supra)*** the issues which arose in the said case for consideration were on the interpretation of the stipulation contained in the sale-deeds where the appellant had agreed to discharge the dues payable by the borrower and whether such a liability arose in law having regard to the legal provisions in the Excise Act and the State Financial Corporation Act. In that case, the Apex Court considered the issue of first charge vis-a-vis the crown debt owed to sales/tax arrears. No such issue arose for consideration in the present case.

84. The decision in the case of ***Bhaurao Chavan Sahakari***

Sakhar Karkhana Ltd v. The Commissioner of Sugar (supra) was rendered in the facts of the that case where the sale certificate did not lay down that the petitioner will be liable to pay the dues of workmen.

85. As regards the sale of properties thereafter to Arjun Sugar Industries Pvt Ltd is concerned, it appears that in only one complaint Arjun Sugar Industries Pvt Ltd has been made a party. Perusal of the impugned judgment in the petitions referred to by the learned counsel indicates that only in some complaints, the auction purchaser had filed its say and adduced evidence and, as such, the impugned judgment makes no reference to the sale of secured assets further to Arjun Industries Pvt Ltd. Before this Court, there were no submissions raised as regards Arjun Sugar Industries Pvt Ltd. Considering the aforesaid, in my view, Jalna SSK and the auction purchaser are jointly and severally liable to pay the workmen's dues as assessed by the Industrial Court.

86. Learned counsel for the auction purchaser has further submitted that there is no assertion by the complainants that the establishment was and industry an that considering the definition of

"factory" under the provisions of section 2(k) and 2(m) of the Factories Act, 1948 if the manufacturing process is not happening, the factory ceases to be an industry. In other words, what the learned counsel for the petitioner seeks to contend is that there was no industry and as such the provisions of the MRTU & PULP Act which apply to an employee in relation to an industry, will not apply.

87. The reliance by the learned counsel for the auction purchaser on the decision in the case of ***State of Gujarat v. Pratamsingh Narsingh Parmar (supra)*** is misplaced. In the said decision the Apex Court has held that there has been to be an assertion of fact by the petitioner that the establishment to which he was appointed was an industry. The said decision is not applicable to the facts of the present case inasmuch in that case, the respondent employee therein was employed with the Forest Department in the State of Gujarat and the dispute was raised whether the Forest Department can be held to be an industry. In the present case, there is no dispute that Jalna SSK was an industry. Learned counsel for the petitioner has contended that since the year 2008, there was no factory as the production has come to the grinding halt and as such there is no industry. No such submission was made before the

Industrial Court and the issue as to whether there was no factory by reason of no production and as such no industry is a mixed question of fact and law and required evidence to be led. This contention is being raised before this Court for the first time and as such I am not inclined to examine the said issue particularly when the issue is a mixed question of law and fact requiring evidence to be led.

88. As regards the submission that there cannot be any declaration of an unfair labour practice *vis-a-vis* the auction purchaser, the auction purchaser had purchased the entire unit as a going concern and, as such, has stepped into the shoes of the employer.

89. As regards the amount crystallized as arrears of wages in the individual complaint, it is contended that the complainants have failed to prove their claim. Learned Counsel for the complainants have relied upon the documents annexed to Writ Petition No 4546 of 2018 filed by the complainants seeking enhancement of the amounts granted by the impugned judgment. In the said Petition, the evidence adduced by the complainant has been annexed. The complainants have produced their appointment order to prove their monthly wages. The complainants have filed their affidavit in lieu of evidence

and has deposed as to their outstanding wages and applicable allowances. The cross examination by the auction purchaser and the Bank in that complaint indicates that there is no denial to the outstanding dues of the complainant. The complainant has deposed that his monthly wages, increments, bonus are not paid by Jalna SSK since October, 1996. This deposition remained unchallenged. The Bank during the cross-examination has not denied the actual due amount deposed to by the complainant. The evidence has not been produced on record and no submissions were made as regards the evidence to demonstrate that the claim of the complainant was not proved. The impugned judgment records that the oral evidence of the complainant as regards his legal dues remained uncontroverted. Considering the evidence on record, I am not inclined to accept the contention that the complainant has not proved its claim.

90. The decisions in ***Shankar Chakravarti v. Britannia Biscuit Co., Ltd. (supra), Nagpur Municipal Corporation v. Nagpur Mahanagar Palika Samanvaya Chikitsak Sangh (supra)*** and ***Voltas Ltd. v. Umed singh Bajetha (supra)*** are relied upon by the auction purchaser for the proposition that the claim has not been proved by the complainant and that in the absence of necessary pleadings, the

evidence cannot be examined. As discussed hereinabove, the complainants have come with the case that there is unfair labour practice inasmuch as the monthly wages of and other allowances of the workmen have not been paid by Jalna SSK. Oral evidence was led by the complainant and there is no material which has been produced on record to show that the evidence of the complainant was controverted by the parties. Admittedly, Jalna SSK did not contest the facts and, as such, the evidence went unchallenged. It is not disputed that the proposition which has been laid down in ***Shankar Chakrawarti (supra)*** that the Labour Court or Industrial Tribunal has to decide the *lis* on the basis of evidence adduced before it. Learned counsel for the auction purchaser has not placed any material to show that the evidence of the complainant was controverted and, as such, in my opinion, the decision in ***Shankar Chakrawarti(supra)*** is not applicable to the facts of the present case. In the case of ***Nagpur Municipal Corporation*** (supra), the dispute pertained to the issue of equal work equal pay and it was claimed that the medical officers engaged with the corporation were workmen. In that context the evidence on record was considered to examine whether the evidence had been properly led. No such issue arises in the present case. The decision in case of ***Voltas Ltd*** (supra) holds that the obligation to lead evidence applies to industrial adjudication. There is no quarrel with this proposition. As discussed hereinabove, the evidence of the complainants regarding their unpaid dues stood uncontroverted.

91. Upon perusal of the impugned judgment, I do not find any argument being raised before the Industrial Court that there was no pleading and no evidence and, as such, the claim of the complainant was not conclusively proved.

92. Now, I shall consider the issue of limitation raised by the learned counsel for the Bank as well as the auction purchaser. The complainant seeks recovery of dues for the period from October 1996 and had approached the Court of law in the year 2009 by way of present complaint. It is the case of Respondent–complainant that the employer was engaging in unfair labour practice and, as such, there was continuing cause of action. In that context, it will be necessary to consider the distinction between “the recurring cause of action and “the continuing cause of action”. The Apex Court in ***Union of India v. Tarsem Singh [2008(8) SCC 648]*** has explained the distinction between the continuing wrong and the recurring wrong and has held that a continuing wrong refers to a single wrongful act which causes a

continuing injury and recurring/successive wrongs are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. In the case of ***M.R. Gupta v. Union of India [(1995) 5 SCC 628],*** the Apex Court held in paragraph 5 as under:

> *"Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."*

93. In the present case, the complaint is that the Respondents are engaging in an unfair labour practice inasmuch as the monthly wages are not being paid by the employer. The continuance of unfair labour practice of non-payment of monthly wages constituted a

continuing wrong giving rise to the recurring cause of action every month upon the non payment of monthly wages and other applicable allowance. Considering the distinction between the continuing wrong and recurring wrong, the non payment of salary which is required to be paid each month, gives rise to the separate cause of action upon its non payment each month and, as such, it is 'the recurring cause of action' and not a continuing cause of action. Each successive act of non payment constitutes a separate cause of action. As held by the Apex Court in the case of ***Union of India v Tarsem Singh (supra)***, as regards the consequential relief of recovery of arrears for past period is concerned, the principles relating to recurring/successive wrongs will apply. The Apex Court in the facts of that case restricted the grant of arrears to a period of three years.

94. As regards the submission on the ground of delay and the limitation prescribed of three months prescribed in Section 28 of the MRTU and PULP, it will be beneficial to refer to the decision of this Court in the case of ***M/S. Warden And Company (India) vs Akhil Maharashtra Kamgar Union [2001(3) Bom CR 375].*** The Division Bench of this Court observed that the complaint was of an unfair labour practice under Item 9 of Schedule IV and that every time

wages were not paid when due, it could be averred that the employer was engaging in unfair labour practice under Item No 9 of Schedule IV. The Division Bench did not find merit in the submission of the employer based on limitation of three month. The decision of the Division Bench squarely applies to the facts of the present case and answers the submission of delay raised by the learned counsel for the auction purchaser. Considering the aforesaid exposition of law, in my opinion, the non payment of salary constituted 'a recurring cause of action' and normal rule of limitation of three years applicable to money claim will apply. Resultantly, the payment of arrears and other applicable allowances is restricted to a period of three years preceding the filing of the complaint.

95. As regards the decision in ***Jaihind Sahakari Pani Puravatha Mandal Ltd v. Rajendra Bandu Khot (supra)***, this Court has held that non payment of wages from month to month as a recurring and not a continuous cause of action and ordinarily, therefore, the salary and other emoluments payable for three months prior to the complaint can alone be considered for relief as a normal rule. I have already considered the decision of the apex Court in ***Union of India v. Tarsem Singh [2008(8) SCC 648]*** which applied the normal rule of limitation

for recovery of the money dues, i.e., limitation of three years. I am respectfully bound by the said decision of the apex Court.

96. As regards the decision in ***Vasudeo Dharanidhar Joshi v. Bombay Textile Research Association (supra)***, this Court has held that the complaint itself is barred by limitation inasmuch as the complaints were filed after the retirement of employees. In that case, this Court was considering the issue of age of retirement of the workmen and in that context this Court held that it was not a continuing cause of action and that when the infringement of right occurred at a particular time, the whole cause of action would be said to have arisen then and there. In that case, the Court came to a decision that there was no continuing cause of action and on that ground held that the complaints were barred by limitation. The facts of the said case are clearly distinguishable and are not applicable to the present case.

97. As regards the decision in ***Bhaurao Chavan Sahakari Sakhar Karkhana Ltd v. Uttam Dattaram Jagdambe*** **(supra)** is concerned, in that case the dispute was about the termination and the Court was considering the issue of limitation of 90 days in

preferring the complaint. In that case there was no issue of continuing/recurring cause of action.

98. As regards the decisions relied upon by the learned counsels for complainants, the decisions in the case of ***Ahmednagar Municipal Corp. v. Madhukar Chandrabhan Galpande (supra), State of Maharashtra v. Sanjay J. Viste, Chief Officer, Shirdi Municipal Council v. Directorate of Municipal Adm. Mumbai (supra)*** and ***Udgir Municipal Council v. State of Maharashtra (supra)*** were in the context of compassionate appointment and, therefore, are clearly inapplicable to the facts of the present case. The decision in the case of *Bank of Maharashtra v. Pandurang Keshav Gorwadkar (supra)*, the Apex Court was considering the issue of *pari passu* charge in favour of the workmen in the context of Section 529-A of the Companies Act. The provisions of Companies Act are inapplicable to Jalna SSK as it is a co-operative society.

99. For the reasons indicated above, the findings are summarized as under :

(a) The complaint of unfair labour practice *qua* the Bank was not maintainable as the admitted position is that there is no employer-employee relationship between the Bank and the complainants.

(b) The claim in the complaint *qua* the Bank was to the extent of satisfaction of its dues out of the sale proceeds of Jalna SSK. Such a claim cannot be entertained in a complaint of unfair labour practice.

(c) The Industrial Court did not have the jurisdiction to venture into the issues of dues of the Bank, the tender for the auction, the amount realized from the sale of the secured assets, the excess or deficit of the sale proceeds which are required to be adjudicated in appropriate proceedings under the SARFAESI Act.

(d) The Bank, being a secured creditor, had enforced its security interest and cannot be termed as representative or agent of the borrower. As there cannot be a finding of unfair labour practice *qua* the Bank, the direction to take the consequent affirmative action of payment of the outstanding dues is unsustainable.

(e) The auction purchaser had purchased the entire unit of Jalna SSK as a going concern and was successor in interest of Jalna SSK.

(e) The auction purchaser having purchased the entire unit as a going concern stepped into the shoes the employer. By such purchase there has been a change in the ownership and management of the undertaking and by notional extention of relationship, there was an employer employee relationship between the complainants and the auction purchaser. The complaint of unfair labour practice was thus maintainable *qua* the auction purchaser.

(f) By notional extension of the relationship coupled with the terms of the auction sale, the outstanding dues of the complainants were required to be satisfied by the auction purchaser. Having failed to do so, by reason of Section 30(1)(a) of the MRTU and PULP Act, the Industrial Court was empowered to declare that Jalna SSK and the auction purchaser had engaged in unfair labour practice and to direct Jalna SSK and auction purchaser to take affirmative action of payment.

(g) The outstanding wages and the applicable allowances are restricted to a period of three years immediately preceding the filing of the complaints before the Industrial Court.

100. In view of the discussion and findings rendered above, the following order is passed:

A) Writ Petitions preferred by the Bank (detailed in paragraph 3 above) are allowed. The impugned judgments and orders *qua* the Bank are quashed and set aside.

B) Writ Petitions preferred by the Auction purchaser (detailed in paragraph 4 above) are partly allowed. The impugned judgments and orders *qua* the auction purchaser are partly modified only to the extent of restricting the outstanding wages and applicable allowances to a period of three years immediately preceding the filing of the complaints. The rest of the impugned judgments and orders stands as it is.

C) Jalna SSK and Tapadiya Construction Ltd are jointly and severally liable to pay the outstanding wages and other applicable allowances(for the period stated above) within a period of three months from the date of this order alongwith interest @ 6% per annum from date of instituting the complaints till payment or realization.

D) Writ Petition preferred by Arjun Sugar Industries Pvt Ltd – the transferee from the auction purchaser stands dismissed.

101. Rule is allowed in the Writ Petitions filed by the Bank. Rule is partly allowed, as indicated above, in the Writ Petitions filed by the auction purchaser. Rule stands discharged in the Writ Petition filed by Arjun Sugar Industries Pvt Ltd.

102. In view of the disposal of the above writ petitions, civil applications taken out in these petitions do not survive and the same are accordingly disposed of.

[Sharmila U. Deshmukh, J.]

103. At this stage, a request has been made by the learned counsel for auction purchaser for extending the stay which had been granted by this Court vide order dated 2nd September 2016, for a period of 8 weeks from today. As there has been an interim relief which has been operating since the year 2016, I deem it appropriate

to extend the interim relief for a further period of eight weeks from date of uploading of this order.

[Sharmila U. Deshmukh, J.]