IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5322 OF 2023

1. Ramesh Shrirang Patil,
   Age: 71 years, Occu.: Nil

2. Jawed Habib Kohir,
   Age: 67 years, Occu.: Nil,

3. Ganesh Mahaling Sutar,
   Age: 40 years, Occu.: Service,

4. Rohidas Bhagwan Lokare,
   Age: 64 years, Occu.: Nil,

5. Shivaji Kisan Jagdale,
   Age: 68 years, Occu.: Nil

6. Sajjan Uttam Dhabekar,
   Age: 67 years, Occu.: Nil

7. Tukaram Bhanudas Lomate,
   Age: 67 years, Occu.: Nil,

8. Bhagwat Rukhmaji Pawar,
   Age: 45 years, Occu.: Nil,

9. Bhagwat Uttam Thodsare,
   Age: 63 years, Occu.: Nil,

10. Maroti Kashinath Bukan,
    Age: 50 years, Occu.: Nil,

11. Ahmed Abbas Shaikh,
    Age: 75 years, Occ.: Nil

12. Chintamani Fulchand Kawle,
    Age: 37 years, Occu.: Nil,

13. Jagganath Raghunath Jogi,
    Age: 65 years, Occu.: Nil,

14. Sardar Makbul Pathan,
Age: 55 years, Occu.: Nil,

15. Baban Pandhari Kawale,
Age:62 years, Occu.: Nil,

16. Burhanooding Jahirrodin Kazi,
Age: 62 years, Occu.: Nil,

17. Bibhishan Ganpati Ingale,
Age: 65 years, Occu.: Nil,

18. Shakir Bahsir Bandiwale,
Age: 35 years, Occu.: Nil,

19. Sajid Gani Kabir,
Age: 37 years, Occu.: Nil,

20. Nagnath Dattu Berad,
Age: 69 years, Occu.: Nil,

21. Chandrakt Mohan Wakure,
Since died through his legal heir
Smt. Suman Chandrakant Wakure,
Age: 75 years, Occu.: Nil,

22. Vilas Anna Shinde
Since died through his legal heir
Kausalyabai Vilas Shinde,
Age: 60 years, Occu.: Nil,

23. Bhimrao Umrao Chaugule,
Since died through his legal heir
Shantanu Bhimrao Chaugule,
Age: 32 years, Occu.: Nil,

24. Chandrakant Shankarrao Khochare
Since died through his legal heir
Vimalbai Chandrakant Khochare,
Age: 60 years, Occu.: Nil

Petitioners No.1 to 24 R/o Terananagar
Dhoki, Tq. and Dist. Osmanabad

.. Petitioners

(Orig Complainants)

Versus

1. The Authorized Officer,
Osmanabad District Central Co-operative
Bank Ltd. Osmanabad
Having office at Solapur road Osmanabad

2. Liquidator / Adminstrator,
Terana Shetakari Sahkari Sakhar
Karkhana Ltd.
Terana Nagar (Under Liquidation)
Dhoki, Tq. and Dist.: Osmanabad

.. Respondents
(Orig. Respondents)

…

Advocate for Petitioners:
Mr. Girish N. Kulkarni (Mardikar)
Advocate for Respondent No.1: Mr. V. R. Dhorde
Advocate for Respondent No.2: Mr. G. L. Kedar

…

CORAM	**:**	**ARUN R. PEDNEKER, J.**
Date	**:**	**31.10.2023**

ORDER:

1. Heard Mr. Girish N. Kulkarni (Mardikar), learned counsel for the petitioner, Mr. V. R. Dhorde, learned counsel for respondent no.1 and Mr. G. L. Kedar, learned counsel for respondent no.2.

2. By the present petition, the petitioners are challenging the validity of the order dated

24.04.2023, passed in Complaint ULP No.60 of 2023, thereby rejecting the application filed by the petitioners for grant of interim stay to the notices dated 17.03.2023, issued by respondent no.1 - The Authorized Officer, Osmanabad District Central Co-operative Bank Ltd., Osmanabad .

3. In brief the facts of the case are that the petitioners were the employees of respondent no.2 - Terna Shetkari Sahkari Sakhar Karkhana Ltd. *(the sugar factory)*, which is closed long back. The sugar factory was having it's account with respondent no.1 – The Osmanabad District Central Co-operative Bank Ltd., Osmanabad *(the Bank)*, which is a secured creditor and the said account was NPA and the notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 *(SARFAESI Act)* was issued to the factory. Since the factory did not return the amount notices under section 14 of the SARFAESI Act was issued and in pursuance thereto on 23.11.2012 the plant and machinery of the sugar factory has been

taken in possession and handed over to the authorized officer. The respondent Bank made an attempt to auction the property on 2 occasions but due to less price the auction could not take place and, on 04.02.2015, administrator was appointed by the Joint Director of Sugar. On 02.08.2017, interim liquidation order was passed under section 102 of the Maharashtra Co-operative Societies Act and, on 20.11.2017, final liquidation order is passed and the liquidator has been appointed and is continued.

4. Various proceedings were also initiated by the Provident Fund Authority and compromise has been reached before the Debts Recovery Tribunal and the proceedings are disposed of. Attempt was also made by the Provident Fund Authorities to sell out the property. Thereafter, the respondent Bank took possession of the premises on 13.08.2021 and the factory has been granted on lease for a period of 25 years. Four (04) years of rent has been taken in advance and the amount is deposited towards the provident

fund amount, MSEB overdues and State Excise overdues has been paid by the respondent Bank. As per the tender condition and agreement, the possession of the sugar factory is given to Bhairavnath Private Work Limited and in the said process the said sugar factory is to start afresh and the management thus requires the permission for locating their officers and staff and, therefore, it is necessary to vacate the premises. It thus issued notice to the petitioners to vacate the premises. The petitioners filed the Complaint ULP before the Industrial Court and also prayed for an interim injunction restraining the respondent Bank from removing the petitioners from the premises. The complaint is filed under section 28(1) read with Schedule IV, Items 9 and 10 of the MRTU & PULP Act alleging the unfair labour practices by directing to vacate the staff quarters without clearing their dues towards salary and without following the due process. During the pendency of the complaint, the application is filed under section 30(2) of the

MRTU & PULP Act to restrain the respondents from vacating staff quarters during the pendency of the complaint. The case of the complainants is as under:

> *"02) Complaints were working at Terna Sugar Mill on different posts. They imparted continuous, long and unblemished services. Staff quarters were provided to them since 01.10.2010 and since then, they are residing in staff quarters. Terna Sugar Mill recovered rent of the quarters upto 2014. Meanwhile, the sugar mill stopped its activities without clearing salary and other consequential benefits of the employees. Complainant came to know that, Terna Sugar Mill has been leased out to Bhairavnath Sugar by Osmanabad District Central Co-operative Bank for 25 years and appointment procedure of new employees is going on. According to the complainants, they are not taken into confidence before appointment of new employees. Earlier employees are not given any appointment. In January, notices are served to vacate the staff quarters."*

5. The Industrial Court in the interim relief application raised following points for consideration and the final order as under:

Sr. No.	**POINTS**	**FINDINGS**
01)	Do the complainants make out prima-facie case ?	In the negative
02)	Do the complainants show	In the negative

	that, balance of convenience tilt in their favour?	
03)	Do the complainants prove that, they would suffer irreparable loss, if the interim relief as prayed is not granted?	In the negative
04)	What Order?	Application is rejected

" ***ORDER***

1) Application stands rejected with costs.

2) Dictated & pronounced in open court."

6. The court, after hearing the parties, dismissed the application against which the present petition is filed.

7. It is the contention of Mr. Girish N. Kulkarni (Mardikar), learned counsel for the petitioners that the petitioners have not raised any money from the Bank or that they are not it's employees and the liquidator steps into the shoes of employer and that unless the liquidator gives them some money they are unable to hand over possession and to move out of the present quarters in which they are residing. The original sugar factory owes dues to the petitioners. The

grievance made during the course of the hearing was that some dues may be cleared so as to enable the petitioners to move from the present premises.

8. Per contra, Mr. V. R. Dhorde, learned counsel appearing for the respondent Bank submits that no proceedings under the MRTU & PULP Act can be initiated to challenge the proceedings under the SARFAESI Act. In the instant case, the action initiated is under the SARFAESI Act and that there is no employer employee relationship between the Bank and the workers of the erstwhile factory and, thus, no action is maintainable against the Bank under the MRTU & PULP Act.

9. Having considered the rival submissions, it is to be noted that the sugar factory was a defaulter of respondent no.1 Bank and it has mortgaged it's factory and the property to the Bank. The Bank took possession of the sugar factory and it's property under the provisions of the SARFAESI Act. The liquidator was appointed. The sugar factory failed to pay the provident fund

and, therefore, it was sold by the Commissioner, Provident Fund, Solapur. The respondent Bank paid 12 Crores to the provident fund office. Thereafter, the factory is given on lease for 25 years by the Bank as the Bank was not in a position to sell out the sugar factory, as all attempts to sell the factory had turned futile. The complainants are using the staff quarters and, as such, in order to run the factory it is necessary to vacate the staff quarters.

10. In the instant case, the ex-employees of the sugar factory are not the employees of the Bank and the proceedings to vacate the employees are initiated under the SARFAESI Act. This court in the case of **The Maharashtra State Co-operative Bank Ltd. Vs. Ramprasad Natha Shejul and others, Writ Petition No.5901 of 2016 with connected writ petitions, dated 04.05.2023**, has dealt with the similar question as under:

> *"(1) …*
>
> *(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) ...
(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 ?"

and the court has answered the questions as under:

"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 Jalan 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."

11. Applying the law laid down in above case of **Ramprasad Shejul** (supra), the Industrial Court cannot venture into the issue of dues of the Bank, which are adjudicated in proceedings under the SARFAESI Act. The Bank having taken possession of the sugar factory under the SARFAESI Act, the Industrial Court has rightly refused to pass interim order in the action initiated under the SARFAESI Act.

12. The Writ Petition stands dismissed.

[ARUN R. PEDNEKER, J.]

13. After passing of the order, the learned counsel for the petitioners, seeks continuation of

the interim relief. However, for the reasons recorded in the order, the same is refused.

[ARUN R. PEDNEKER, J.]

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