

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9082 OF 2011

Purna Sahakari Sakhar Karkhana Ltd
Basmathnagar Tq. Basmathnagar
District- Hingoli
Through its Managing Director
Razzak s/o Sk. Gafoor

Petitioner

Versus

Marathwada Sahakari Sakhar Karkhana Ltd.
Shivajinagar Dongarkada, Kalamnuri,
District- Hingoli.
Through Liquidator

Respondent

Mr. S.R. Bagal, Advocate for the petitioner.
Mrs. Surekha Chincholkar, Advocate for respondent No. 1.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th JUNE, 2023

ORDER :

1. Order passed by learned Civil Judge, Senior Division, Hingoli, thereby directing the petitioner/decreed holder to submit the execution petition in appropriate Court i.e. Civil Judge, Nanded, is impugned in the present petition.

2. In Case No. CCP/56/1999, filed by the petitioner, learned Judge of Co-operative Court, Nanded, passed award on 26.05.2010, thereby directing the respondent to pay an amount of Rs. 48,10,879/- with 6% interest per annum from

27.01.1999, till realization of amount. The petitioner thereafter obtained certificate under section 98 of the Maharashtra Co-operative Societies Act, for recovery of said amount. After obtaining certificate, as the judgment debtor is situated within the jurisdiction of Hingoli Court, the petitioner filed execution petition in the Court of Civil Judge, Senior Division, Hingoli. Hingoli Court has refused to entertain the execution petition and has asked the petitioner to approach the jurisdictional court i.e. Civil Judge, Nanded. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the memo of writ petition, annexures thereto, impugned order and the citations relied on by the petitioner.

4. In Onkar Rajaram Wathodkar vs. Ramnarayan Khatod and Sons, 1984 Mh.L.J. 453, learned Single Judge of this Court has held:

"Thus it is obvious if we read section 98 and Rules 83 cited supra that the choice of forum is of the party and not of the Registrar. It is open for the party in whose favour the award has been passed to select a particular forum of execution. Whenever a certificate is issued by the Registrar, it merely enables the party to take out execution through an application to the Court of local jurisdiction wherein the judgment-debtor resides or carries on business

or personally works for gain.

However, as I have held in preceding para that on plain reading of section 98 and Rule 83, the choice of forum is of the party, in whose favour the award has been granted. After a certificate is obtained from the Registrar, it is open to a party to take out execution application in the civil Court of original jurisdiction, who has jurisdiction to pass a decree and to execute it against the judgment-debtor."

5. I am in respectful agreement with the above ratio.

Since in the present case the judgment debtor is within the jurisdiction of Hingoli Court, the petitioner is entitled to seek execution of decree in Hingoli Court. The Executing Court has misdirected itself in passing the impugned order, which is in ignorance of settled legal position. The impugned order therefore cannot be sustained.

6. In the result, writ petition is allowed in terms of prayer clause 'B'.

7. Impugned order dated 10.03.2011 passed by learned Civil Judge, Senior Division, Hingoli, below Exhibit- 1 in S.D. No. 36/2011, is hereby quashed and set aside.

[NITIN B. SURYAWANSHI, J.]