IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.2464 OF 2021
IN
WRIT PETITION NO. 5690 OF 2004

1. Kamgar Bachav Kruti Samiti
Marathawada S.S.K. Ltd.
Tq. Kalamnuri, Dist. Hingoli
through its Vice-President
Sambhaji s/o Bhimrao Gacche,
Age: 62 years, Occu: Nil
R/o. at post Lahan, Tq. Ardhapur,
District Nanded. ... **APPLICANT**

VERSUS

1. The Maharashtra State Cooperative
Bank Ltd. having its Registered
Office at 9, Maharashtra Chamber
Commerce Lane, Mumbai – 23 through
its Chief Officer Shri Baburao Bapurao
Kadam Age : 49 years, Occu : Service as
Chief Officer, Maharashtra State Cooperative
Bank Ltd. Pay Office at Nanded, Vasant Nagar,
Near Sharada Nagar Bus Stop, Nanded,
Tq. & Dist. Nanded

2. The State of Maharashtra through
its Principal Secretary Cooperation Department,
Maharashtra State, Mantralaya Mumbai-32

3. The Commissioner of Sugar,
Shivaji Nagar, Pune – 5

4. The Collector, Hingoli,
Dist. Hingoli, Liquidator, Marathwada
Sahakari Sakhar Karkhana Ltd.
Shivaji Nagar, Post Dongarkhada,
Tq. Kalamnuri Dist. Hingoli ... **RESPONDENTS**

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Mr. G.N. Chincholkar, advocate for the applicant
Mrs. M.A. Deshpande, AGP for Respondent/State
Mr. R.N. Dhorde, Senior advocate for petitioner in WP

...

CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.

DATE : 11.01.2023

ORDER :

The genesis of the present application is that the Maharashtra State Cooperative Bank Limited (hereinafter the Bank) which is respondent No.1 in this application had filed the Writ Petition No.5690/2004 against the Sugar Factory and the Liquidator who was appointed aggrieved by the fact that in spite of its priority claim against the assets of the Sugar Factory and contrary to the provision of Section 13(3) and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the property of the Sugar Factory was put to auction ignoring. The Commissioner of Sugar and the Collector, Hingoli who was appointed as a liquidator were also party to the liquidation.

2. The parties had arrived at some consensus and the writ petition was disposed of in terms of the consent terms by the order dated 04.05.2006. A total amount of Rs.15.88 crores was realized by the liquidator by selling the assets of the Sugar Factory. According to the terms of the settlement, it was *inter alia* agreed and the liquidator was authorized to immediately sell all these assets and the amount was to be deposited in the joint account to be held by the authorized officer of the Bank and the Liquidator after paying workers' dues to be kept in a separate joint account. It was also agreed in clause No. (c) and clause No. (f) of paragraph No.3 of the terms of settlement as under :

> *"c. Sale proceeds so realized of the properties sold as per action contemplated in clause (b) above shall be kept in joint account opened specially for the purpose opened with the MSC Bank Ltd. security wise and will be operated under joint signatures. The sale proceeds of the stock of sugar however, shall be credited in the pledge cash credit account with the MSC Bank Ltd.*
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> *f. From the said amount of Rs.15.88 Crores which is sale proceed of the sale of the said liquidated Marathwada Sahakari Sakhar Karkhana the authorized officer of the Bank and the Liquidator shall decide the amount of expenditure incurred during the liquidation proceedings and shall recover the same and after that, the Authorised officer of the petitioner M.S.C Bank and the Liquidator will settle the legitimate dues of employees in consultation with the office bearers of the employees Union and pay the same from the joint account."*

3. Pursuant to such terms of settlement the applicant which is Kamgar Bachav Kruti Samiti Marathawada S.S.K. Ltd. Tq. Kalamnuri, Dist. Hingoli has submitted this application with a stand that the workers have already been paid an amount around Rs.4.27 Crores but still their arrears are to the tune of Rs.3,73,76,695/-. It is therefore claiming a direction to the Bank and the Liquidator to pay the remaining amount of the workers.

4. The learned AGP on written instructions from the Liquidator who is none other than the Collector, Hingoli submits that he has given consent for such disbursement of the amount. He has also given the details pursuant to the order of this Court on the last date demonstrating as to how much amount has been disbursed to the workers. All these details have been submitted in a report which is placed on record.

5. The learned senior advocate Mr. Dhorde would vehemently submit that the Liquidator has not been providing any information to the Bank. He is not inviting it. No meeting has been held and he has reached

subjective conclusion regarding payment of dues to the workers. He would submit that the workers could not be paid without ascertaining their entitlement. The petitioner is a secured creditor and should have a priority in the claim.

6. We have carefully gone through the papers. There cannot be any dispute that irrespective of the entitlement of the Bank as a secured creditor over the assets of the Sugar Factory, it has entered into a settlement which was filed before this Court. The writ petition was disposed of in terms of that settlement. Therefore, at the outset, it is necessary to note that the rival claims will have to be determined on the basis of these consent terms.

7. As can be seen from the consent terms and particularly the clauses reproduced herein above, the Bank had expressly agreed to settle the dues of the workers. It was expected that the Bank and the Liquidator would determine the money to be paid to the workers. The question of priority of its claim would no longer survive, when, admittedly, attempt was made to undertake a review of that judgment and order dated 04.05.2006 disposing of the writ petition in terms of the consent terms. The review was dismissed on 06.12.2019 and the challenge put up to that order in review was also turned down by the Supreme Court which dismissed the Special Leave Petition.

8. As far as the quantum of dues payable to the workers, even this issue was agitated before this Court in Writ Petition No.1756/2009 by which

the Bank put up a challenge to the notice issued by the Provident Fund Commissioner for recovery of the contribution. The submissions made by Mr. Dhorde before us were all put up before this Court even in that petition *inter alia* questioning the quantum of claim of the workers. Repelling the submissions it was specifically observed that the minutes recorded by the Labour Welfare Officer demonstrated that the claim of the workers was to the tune of Rs.8.77 Crores out of which Rs.4.27 Crores were disbursed to them. All these issues were once again even raised before this Court in the Review Application No.226/2011 as can be seen from the order dated 06.12.2019. If this be so, it cannot be said that the Bank can now raise a dispute as regards the total dues of the workers.

9. Admittedly, the workers have been paid an amount of Rs.4.27 Crores and the arrears to be paid to them would be Rs.3,73,76,695/-. The liquidator in his affidavit has also confirmed such entitlement of the workers.

10. There is no substance in the objection raised by the Bank. Faced with the situation, Mr. Dhorde would submit that now that the workers are claiming the remaining amount of Rs.3,73,76,695/-, even according to the consent terms no other claim is to be considered and the amount that is lying in the joint account of the authorized officer of the Bank and the Liquidator with accrued interest may be directed to be paid to it and the account can be closed.

11. In our considered view once the remaining dues are paid to the

workers, only the claim of the Bank remains to be satisfied. It would no longer be necessary to keep the joint account and it can be closed once for all by directing the remaining amount with accrued interest is paid to the Bank which would satisfy the consent terms.

12. We allow the application. We direct the respondents to pay to the workers the amount of Rs.3,73,76,695/- as has been assessed, individually in their account as has been done in respect of disbursement made earlier to the tune of Rs.4.27 Crorres.

13. The remaining amount lying in the joint account of the Bank and the Liquidator together with the accrued interest thereon shall be paid to the Bank.

14. The Civil Application is disposed of.

(S.G. CHAPALGAONKAR, J.) **(MANGESH S. PATIL, J.)**

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