IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12164 OF 2021

Sant Muktai Sugar & Energy Ltd.
Ghodasgaon, Tq. Muktainagar,
Dist. Jalgaon
Through authorized Officer,
Amrut s/o. Motiram Devre
Age: 57 yrs, Occu: Service as Chief Accountant
Sant Muktai Sugar & Energy Ltd.
Ghodasgaon, Tq. Muktainagar,
Dist. Jalgaon …Petitioner

Versus

1. Shri. Sant Muktabai Sahakari Sakhar Karkhana Ltd. Pratibhanagar, Ghodasgaon, Tq. Muktainagar, Dist. Jalgaon Through Second Special Auditor (Class-I) Co-operative Society (Sugar), Jalgaon Plot No.16, Dhanshree Building, IInd Floor, Sindi Colony, Above Union Bank of India, Jalgaon, Tq. and Dist. Jalgaon.

2. Satguru Service Centre Through Sole Proprietor, Notandas s/o. Udriymal Panjabi Age: 71 yrs, Occu: Business, R/o. Jillha Peth, Jalgaon, Dist. Jalgaon, A/o. Pritam Snesh, Plot No.1, Ganpatinagar, Jalgaon, Tq. & Dist. Jalgaon. …Respondents

...

Advocate for Petitioner : Mr. Mahesh V. Ghatge
Advocate for Respondent No.2 : Mr. S. H. Jagyasi

...

CORAM : NITIN B. SURYAWANSHI, J.
DATE : 09th AUGUST, 2023

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. Challenge in this petition filed under Article 226 and 227 of the Constitution of India, is to the order dated 14/11/2019 passed below Exhibit-8 and order dated 30/09/2021, passed below Exhibit-34, by the learned Joint Civil Judge, Senior Division, Bhusawal, in Special Darkhast No.36/2014, thereby allowing the applications filed by respondent No.2/decree holder.

3. Facts in brief are that, the petitioner has purchased assets of respondent No.1 Sugar Factory pursuant to the auction initiated by Maharashtra State Cooperative Bank Ltd., under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Securitisation Act'). The Bank has taken possession of assets of respondent No.1 on 27/01/2006. Thereafter, public tender notice is issued on 15/06/2013. Petitioner's bid was accepted and the assets were sold to the petitioner. Possession of the assets was handed over to the petitioner on 12/08/2013. On the same date, sale certificate is issued in favour of petitioner.

4. Respondent No.2 filed Regular Civil Suit No.73/2003 against respondent No.1 Sugar Factory, on 20/03/2003, for recovery of amount of Rs.27,05,477.67/-, towards arrears of petrol and diesel sold to respondent No.1. The suit came to be decreed on 17/12/2008. Respondent No.2 then filed execution petition on

06/09/2013, which is numbered as Special Darkhast No.36/2014. In the said darkhast, application Exhibit-8 is filed by respondent No.2/decree holder seeking addition of petitioner as judgment debtor, as petitioner has purchased the assets of respondent No.1. The said application is allowed by the impugned order dated 14/11/2019. By filing application Exhibit-20, decree holder prayed that petitioner be directed to place on record all the relevant documents i.e. sale certificate, sale note, registered documents, agreements, bond, sale deed, all the relevant documents of purchasing from Sant Muktabai Sahakari Sakhar Karkhana in auction proceeding done by Maharashtra Rajya Sahakari Bank. The application was allowed and pursuant to the same, petitioner has filed on record all the relevant documents. Thereafter, respondent No.2 has filed application Exhibit-34 under Order 21 Rule 2 seeking direction to the Chairman, Managing Director and General Manager of petitioner to file affidavit disclosing their movable and immovable assets, bank account details, shares, fixed deposit receipts, cash credit (loan facility). This application was opposed by petitioner by filing detail say at Exhibit-39, wherein applicants have placed reliance on decision of the Division Bench of this Court in Writ Petition No.2220/2017. By the impugned order dated 30/09/2021, executing Court has allowed the said application and granted prayer of respondent No.2. Hence, the present petition.

5. Heard learned advocate for petitioner and learned advocate for respondent No.2. Perused the writ petition memo, annexures thereto, the impugned orders, affidavit-in-reply filed by respondent No.2 and citations relied on by the learned advocates for respective parties.

6. It is well settled position that, if assets are purchased in the proceedings under Securitisation Act, then the purchaser is not liable to pay the dues of erstwhile owner of the said assets, as he is not successor in the interest of business of defaulter, but he has only made defunct business functional under his own license. This legal position was brought to the notice of the executing Court by placing reliance on ***Bhaurao Chavan Sahakari Sakhar Karkhana Limited Vs. State of Maharashtra and Others, 2017 (5) Bom.C.R. 404***, wherein the learned Division Bench of this Court has held;

> *"17. It is stated by the petitioner that the Sales Tax Officer had informed respondent No.3 vide letter dated 6th March, 2012 that there were dues to the tune of Rs.7,04,10,624/- payable from respondent No.4 towards sugarcane purchase tax, Bombay sales tax and Central sales tax and asking respondent No.3 to recover the same on priority basis treating them as a first charge over the sale-proceeds of the property of respondent No.4. It is the specific case of the petitioner that respondent No.3 did not inform about the said dues to the petitioner and further respondent No.3 deliberately replied the letter dated 6th March, 2012 belatedly on 1st/2nd February, 2013. As stated above, the last date for submission of bids was 14th February, 2012 and the date of opening thereof was 16th February, 2012. It is, thus, clear that when the auction*

notice was published and the bids were opened, there was no communication by the Sales Tax Authorities made with even respondent NO.3 about the dues pending against respondent No.4. Therefore, the communication dated 6th March, 2012 made by the Sales Tax Officer to respondent NO.3 would not be of any help to respondent No.2 to show that the petitioner was made aware about the dues standing against respondent No.4 prior to placing of the bid for purchase of the secured assets of respondent No.4. Had the said dues been brought to the notice of the petitioner, the petitioner certainly would have thought twice to place the bid for purchasing the secured assets of respondent No.4 for Rs.48.51 crores. The petitioner certainly would have considered the bare value of the secured assets to be purchased and the other known charges/ encumbrances attached to it. Perhaps, the petitioner would not have placed the bid for Rs.48.51 crores and reduced it to the extent of the dues of respondent No. 2 payable from respondent No.4. In the circumstances, it would be clear that the petitioner bonafide proposed to purchase the secured assets of respondent No.4 for valuable consideration without knowledge or notice, either actual or constructive, about the charge of the Sales Tax Authorities. Consequently, in view of the judgment in the case of Sherwood Resorts Pvt. Ltd. and another Vs. State of Maharashtra and Others; 2016 (7) Bom.C.R. 91, respondent No.2 cannot enforce the charge for Rs.7,04,10,624/- as claimed in the impugned communications dated 29th November, 2016 and 23rd January, 2017, against the secured assets purchased by the petitioner from respondent No.3."

"20. The case of (M/s. Sonoma Management Partners Pvt. Ltd. And Others Vs. Bank of Maharashtra and others) 7, 2016 S.C.C. OnLine Bom 9649, cited on behalf of the petitioner, also is on the same lines as that of the above referred judgments."

7. The executing Court has failed to even refer the said decision in the impugned order passed below Exhibit-34. It is pertinent to note that there is no attachment order passed in favour

of respondent No.2, thereby attaching the assets of respondent No.1 in execution proceedings. On 30/10/2013, name of respondent No.2 on notice of lis pendens, is recorded by way of Mutation Entry No.8770 in the revenue record of landed property of respondent No.1. It is, therefore, clear that the same is long after the property was taken into possession by the Bank in the year 2006. The property was purchased in public auction by the petitioner under Securitisation Act, on 15/06/2013 and sale certificate is issued in favour of the petitioner.

8. In the light of above settled legal position and the facts of the present case, this Court is of the view that the impugned orders cannot be sustained. Since the petitioner has only purchased assets of respondent No.1 in auction conducted under Securitisation Act, petitioner is not liable to pay dues of the defaulter respondent No.1, against whom decree is passed by the competent Civil Court.

9. Writ petition is, therefore, allowed. Impugned order dated 14/11/2019 passed below Exhibit-8 and order dated 30/09/2021, passed below Exhibit-34, in Special Darkhast No.36/2014, are quashed and set aside. Rule is made absolute. Respondent No.2 is entitled to execute decree in accordance with law.

(NITIN B. SURYAWANSHI, J.)