

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.7905 OF 2023**

Sangli Zilla Parishad Employees,
Co-operative Credit Society, Limited, Sangli,
Office: Vyankatesh Ambasi, 1st Floor,
C.S.No.520, Opp. Zilla Parishad,
District-Sangli-416 416
through its Smt. S. S. Kulkarni.

..Petitioner

Versus

1. Ninaidevi Sahakari Sakhar Karkhana Limited, Kokarud,
At/Po. Karanguli-Aarala,
Tal. Shirala, District-Sangli.

2. Dalmia Bharat sugar and Industrect Limited
11/12 Hansalay Building-15,
Barakhamba Road, New Delhi,
Sakhar Unit Ninaidevi
Trhough S. Rangaprasad Unit Head
and Assistant Executive Director,
Factory Site, Karanguli Aarala,
Tal. Shirala, District-Sangli.

..Respondents

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Mr. Umesh Mankapure a/w Mr. Parth Pitambare a/w Mr. Pankajsinh
Deshmukh, Mr. Om Mangave and Adv. Siyal Magdum, Advocate for
Petitioner.

Mr. Suryajeet P. Chavan, Advocate for Respondent No.1.

Mr. Girish Godbole, Senior Advocate a/w Mr. Rahul Desai a/w Mr.
Prasad Nagargoje, Mrs. Vaishali Shelar i/by Mrs. Shruti Tulpule and Mr.
pradeep Salgar, Advocate for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 01st DECEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties,
matter is taken up for final hearing at admission stage.

2. The petitioner impugns order dated 09.08.2021 passed by Civil
Judge Senior Division, Islampur below Exhibit 64 in Special Darkhast
No.2/2012, whereby application of petitioner/decreed holder under

Order VI Rule 17 of Code of Civil Procedure seeking permission to add respondent no.2 as party to execution proceeding has been declined.

3. The petitioner is Co-operative Credit Society. The petitioner had advanced huge amount to respondent no.1. Since respondent no.1 defaulted in repayment, Dispute No.320/2009 was filed by petitioner before Co-operative Court against respondent no.1. On 30.09.2010, Co-operative Court passed award for Rs.11,71,648/- alongwith interest @ 16% per annum in favour of petitioner. Eventually, petitioner moved Execution Application No.2/2012 before Civil Judge Senior Division, Islampur for recovery of awarded amount from respondent no.1.

4. While execution filed by petitioner was pending before Court, Maharashtra State Co-operative Bank initiated recovery proceeding against respondent no.1 by issuing notice under Section 13(2) of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). Thereafter, possession of secured assets of respondent no.1 was taken. In auction proceeding of secured assets, respondent no.2 purchased secured assets. Eventually, sale certificate has been issued in favour of respondent no.2. The respondent no.2 received possession of movable and immovable properties under panchanama dated 08.09.2014. In this backdrop, petitioner moved an application under Exhibit-64 for impleading respondent no.2/auction purchaser as party in execution proceeding.

5. The respondent no.2 caused appearance in pursuance to notice of application seeking their impleadment and contested application on the ground that purchaser accepted liability in respect of dues in relation to property purchased in auction and not business of respondent no.1. Hence, they cannot be burdened with any dues recoverable from respondent no.1. The Executing Court after hearing respective parties passed elaborate order dated 09.08.2021 rejecting petitioner's prayer for impleadment of respondent no.2 as party to execution and virtually held that respondent no.2 owes no liability to discharge dues of respondent no.1 owing to purchase of their Society in auction process.

6. Mr. Umesh Mankapure, learned Advocate appearing for petitioner would submit that Co-operative Court has passed award dated 30.09.2010 in favour of petitioner for recovery of dues worth Rs.9,33,137/- alongwith interest @ 16% per annum. The award is put to execution in Regular Darkhast No.2/2012. The respondent no.2 purchased assets of respondent no.1 pursuance to auction initiated by Maharashtra State Co-operative Bank in year 2014 and took over possession of assets of respondent no.1. According to Mr. Mankapure, respondent no.2 is put to obligation towards all dues existing and future of respondent/Society. By inviting attention of this Court to wording of tender notice and sale certificate, he endeavours to impress upon this Court that purchaser has accepted all encumbrances

presently on property and which may arise in future and agreed to pay the same as per tender conditions. Mr. Mankapure would further submit that entire business of respondent no.1 is now run by respondent no.2. All the assets of Society are possessed by respondent no.2. Therefore, for purpose of execution of award, respondent no.2 ought to have been impleaded as party in execution proceeding. The Executing Court while deciding application seeking impleadment of respondent no.2, erroneously ventured in question as to entitlement of petitioner to recover awarded amount from respondent no.2 and rejected application on erroneous count.

7. Per contra, Mr. Girish Godbole, learned Senior Advocate appearing for respondent no.2 would submit that respondent no.2 being auction purchaser of assets in auction under Section 13 of SARFAESI Act, cannot be held liable for any liabilities or dues of business of respondent no.1. The liabilities of respondent no.2 are limited towards attachable to secured assets/sale proceeds. It does not contemplate liability arising out of business of respondent no.1. He would point out that respondent no.1 is still in existence having certain assets. The efforts of respondent no.1 to put responsibility of their dues on shoulder of auction purchaser is objectionable. In support of his contentions he relies upon exposition of law by Supreme Court in cases of *State of Karnataka and Another Vs. Shreyas Papers (P) Ltd.*

*and Others*¹, *Rana Girders Limited Vs. Union of India and Others*² and Division Bench judgment of this Court in case of *National Steel and Agro Industries and Another Vs. State of Maharashtra and Others*³.

8. Having considered submissions advanced by learned Advocates appearing for respective parties, contentious issue that arises for consideration in this Writ Petition is as to whether petitioner has made out case to permit impleadment of respondent no.2 as party in execution proceeding initiated by him for recovery of awarded amount against respondent no.1 being auction purchaser of assets of respondent no.1/Judgment Debtor.

9. Undisputedly, petitioner has put to execution award passed against respondent no.1 for recovery of dues under award. The dues are pertaining to advances made by petitioner to respondent no.1. While execution of award was in progress against respondent no.1, Maharashtra State Co-operative Bank i.e. Secured Creditor possessed assets of respondent no.1 and auctioned the same under provisions of SARFAESI Act. The tender notice for sale shows that bids were invited for sell of properties of respondent no.1 as per description mentioned therein. The note in auction notice reads thus:

“The Bank intends to sale the assets detailed above as “AS IS WHERE IS, AS IS WHAT IS AND WHATEVER THERE IS WHICH IS WITHOUT ANY WARRANTY, GUARANTEE, WITHOUT ANY RECOURSE ASSURANCE AND UNDERTAKING OR REPRESENTATION OF ANY KIND WHATSOEVER, The AD

¹ (2006) 1 SCC 615.

² (2013) 10 SCC 746.

³ (2015) 2 AIR Bom R 805.

does not take or assume any responsibility for any shortfall of the movable/immovable asset for procuring any permissions in or to any dues, statutory or otherwise Viz Provident Fund Sales Tax Central Excise Worker's Dues Property Electricity Charges Water Charges etc., of any authority established by law. Such dues any both existing & future.....to the property will have to be borne paid by the purchaser. The encumbrances marked in 7x12 Extracts so need to be borne paid by the Purchaser whatever is application as per law."

10. The respondent no.2 being successful bidder, received possession of assets. The sale certificate depicts that purchaser has accepted all encumbrances presently on property, which may arise in future and agreed to pay the same as per tender condition accepted by him. The sale certificate incorporates list of encumbrances/dues, which includes Electricity, Sales Tax, Professional Tax, Provident Fund, workers' salary, sugarcane purchase tax and other liability not quantified as on date of valuation of assets. Undisputedly, operation of sugarcane factory was closed much prior to date of auction and what was auctioned was assets of respondent no.1. Pertinently, registration of respondent no.1 is still in existence.

11. Undisputedly petitioner is not Secured Creditor or there was no charge of dues of petitioner on assets of respondent no.1. The Supreme Court in case of ***Shreyas Papers (P) Ltd. and Others*** (supra) while dealing with provision under Section 15(1) of Karnataka Sales Tax Act, 1957 observed in paragraph No.15 as under:

"A careful reading of Section 15(1) of the KST Act shows that the consequences contemplated therein, namely, foisting of the liabilities of the defaulting transferor onto the transferee,

would come into effect only if the "ownership of the business" is transferred. Although, Mr. Hegde strenuously urged that "business" could not be separated from the assets of the business, we are unable to accept this contention. Business is an activity, directed with a certain purpose, more often towards producing income or profit. Ownership of assets is merely an incident rather than a characteristic of business. Hence, the mere transfer of one or more species of assets does not necessarily bring about the transfer of the "ownership of the business" for "ownership of a business" is much wider than mere ownership of discrete or individual assets. In fact, "ownership of business" is wider than the sum of the ownership of a business' constituent assets. Above all, transfer of "ownership of business" requires that the business be sold as a going concern. In our view, therefore, Section 15(1) is intended to operate only when there is complete transfer of "ownership of business" so as to render the transferee as a successor-in-interest of the transferor. Only in such an eventuality does Section 15(1) make the transferee liable for the transferor's sales tax liabilities."

12. Similar view is reiterated by Supreme Court in case of ***Rana Girders Limited*** (supra) while dealing with liability of auction purchaser to pay outstanding dues of Central Excise of erstwhile owners and observed in paragraph no.21 as under:

"A harmonious reading of the judgments in Macson and SICOM would tend us to conclude that it is only in those cases where the buyer had purchased the entire unit i.e. the entire business itself, that he would be responsible to discharge the liability of Central Excise as well. Otherwise, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the Statute, claiming "first charge for the purchaser". As far as Central Excise Act is concerned, there was no such specific provision as noticed in SICOM as well. Proviso to Section 11 is now added by way of amendment in the Act only w.e.f. 10.9.2004. Therefore, we are eschewing our discussion regarding this proviso as that is not applicable in so far as present case is concerned. Accordingly, we thus, hold that in so far as legal position is concerned, UPFC being a secured creditor had priority over the excise dues. We further hold that since the appellant had

not purchased the entire unit as a business, as per the statutory framework he was not liable for discharging the dues of the Excise Department.”

13. The aforesaid exposition of law would make it clear that if auction purchaser has purchased entire business as ongoing concern, it would be responsible to discharge liability of erstwhile owner. However, purchase in case of assets of dormant business, auction purchaser is not liable to discharge liability arising out of business of erstwhile owner. In present case, careful reading of stipulation in tender notice and sale certificate would show that auction purchaser has agreed to discharge all liabilities, dues of authorities and departments in respect of secured assets and if payable in law, attachable to secured assets, sale proceeds. It is, therefore, important to find out whether dues claimed by petitioner were attachable to secured assets.

14. Admittedly, petitioner Credit Society had advanced amount to respondent no.1, which has been defaulted. Therefore, petitioner approached Co-operative Court seeking award for recovery of amount. In absence of charge of aforesaid dues on assets of respondent no.1, respondent no.2 auction purchaser cannot assume such liability. The Executing Court has rightly observed that petitioner was not diligent while process of auction was undertaken by Maharashtra State Co-operative Bank under provisions of SARFAESI Act and now trying to shift liability on auction purchaser. The dues of petitioner can never be

classified as dues to property. Essentially, such dues are pertaining to business of respondent no.1. In result, there is no reason to entertain application for impleadment of respondent no.2 in execution of award initiated by petitioner against respondent no.1 for recovery of dues. In result, this Court finds no substance in contention of petitioner.

15. Although Mr. Mankapure, learned Advocate appearing for petitioner raises procedural objection that Executing Court while dealing with prayer for amendment/impleadment of respondent no.2 in execution proceeding could not have delve into aspects of liability, such objection cannot be countenanced for reason that respondent no.2 is not party to transaction between petitioner and respondent no.1. He is sought to be impleaded being auction purchaser of assets of respondent no.1. If petitioner wants to implead him as party in execution of award passed against respondent no.1, it was necessary to examine if petitioner can make out any case for impleading him as party. While doing so, question of liability of respondent no.2 arising out of auction purchase of assets is also required to be examined.

16. In result, no fault or jurisdictional error can be found in approach of Executing Court. Hence, Writ Petition stands rejected.

17. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE