

IN THE INDUSTRIAL COURT OF MAHARASHTRA AT
THANE
COMPLAINT (ULP) NO. 78 OF 2023

Mr. Suresh Gupta & 12 Ors. ... Complainants

V/s.

M/s. Shri Ganesh Vyapar Udyog
and Ors. ... Respondents

Coram: **SHRI. M. S. GANORKAR, MEMBER.**

Appearances: Shri S. K. Shinde, Union Representative
for the Complainant
Exparte against Respondents no. 1 to 4
Shri Jitendra Bakliwal, Ld. Advocate for
the Respondent no. 5

:- INTERIM ORDER BELOW EXH.U-2 :-
(Passed on 07.07.2023)

The complainants no. 1 to 12 filed this complaint under section 28 read with items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU & PULP Act, 1971").

Brief facts of the complainants are as under :-

2. The complainant no. 1 filed this complaint in individual capacity as workman and for other relevant

workmen. As per the complainants, respondents no. 1 to 3 are engaged in unfair labour practices from 16.04.2023 and every day. Thereafter, the respondent no. 1 company M/s. Shri Ganesh Vyapar Udyog situated at Plot no. 33-35, Achhad Industrial Estate, Village - Achhad, Taluka Talasari, Dist. Thane and the respondent no. 2 Sun Acrylics Pvt. Ltd. is a company incorporated under the provisions of the Companies Act, 1956 and also it is situated on the same plot. Moreover, both the companies are running under the same roof by the respondent no. 3, who is the director of both companies. The workers whose names are in Annexure-A are the employees of these companies. The company has been functioning with the help of 11 employees. Both the respondents no. 2 and 3 had been engaged in manufacturing of acrylic sheets and also preparing liquid which was required for manufacturing of sheets. In the company premises different kind of machines are lying for manufacturing of acrylic sheet for which different machines are required like as grinder, molding, furnace blow machines, etc. Total 20 numbers of machines are lying in the company. The workers named in Annexure-A were working in different categories such as helper, machine operator and skilled workers. The respondents no. 1 and 2 were transferring their names from one company to another as per their wish to show break in service as both companies were functioning under one roof. The concerned persons had worked for many years and has completed 240 days each and every year, but no one is made permanent. The respondent no. 3 was

keeping muster roll cum wages register. Some workers had been receiving salary on vouchers which are in custody of the respondents no. 1 and 2. Some of them receiving salary by transferring money directly in their bank account.

3. The respondent no. 3 on 11.04.2023 suddenly called Ratan Verma on mobile phone and told him that the company is required to do modernization in respect of machines and hence new machines are required to be installed in the company and some machines are required to be repaired. Hence, the company is required to be closed for some days for installation of new machineries. The respondent no. 3 assured that before removing machines, all the balance earned wages, gratuity and closure compensation will be paid by availing loan from the bank. After company will be reopened then immediately all the concerned complainants will be informed by letter and will be given fresh appointments. The complainants came to know that the respondent no. 3 has removed machines but has not installed new machines and not paid their dues stated above. The complainants realized that the respondent no. 3 under the guise of modernization, has closed its business activities, illegally. The respondent no. 3 has not given 60 days prior notice of closure to the concerned workmen. For closure 60 days prior notice is mandatory under section 25-FFA of Industrial Disputes Act. The respondent no. 2 has not paid closure compensation as per the provisions of section 25-FF of

Industrial Disputes Act. The action of the respondents clearly amounts to unfair labour practices under items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971.

4. The respondents suddenly closed business activities under the pretext of modernization and repairing of the machines. Some machines have been sold out and some furnace and molding machines are lying in the plant. On 16.04.2023, the respondent no. 3 called Ratan Verma on phone and asked him to help the person who were called by the respondent no. 3 and came at gate of the company to remove machines. Hence, Ratan Verma called other workers, whose dues have not been paid by the respondent no. 3. All the workers reached at the gate of the company and security guard which were present in the company as the respondent no. 3 has allowed them to stay in company premises for security purpose. While removing the machines the concerned security guards and other workers opposed the removal of the machines. It is learnt that the respondent is going to sell his plant and machines laying in the plant. If all machines are sold with plant, then the concerned workmen would be deprived their legal dues such as gratuity, earned wages, closure compensation. Hence, the complainants filed this complaint to direct the respondents to pay closure compensation and legal dues and since then not to remove the plant and machineries and not to transfer the premises of the company.

5. The complainants also claimed interim relief stating that the plant and if machinery is removed, the workers will not get their legal dues and closure compensation and prayed that the respondents no. 1 to 3 be restrained from transferring the machineries or the premises of the company till final disposal of the complaint.

6. The respondents no. 1 to 3 failed to appear in this matter. Hence, matter was proceeded ex parte against them. But the respondent no. 4 Union Bank of India approached the Court and applied to implead them as a party to the proceedings as they will be affected by the order of this Court. Hence, they were allowed to join as a party to the proceedings.

7. The respondent no. 4 in their say submitted that the complaint is not maintainable. The complainants have no locus standi to file the complaint. The complainants have not approached this Court with clean hands and have suppressed the material facts about the recovery proceedings initiated by the Union Bank of India against the respondents no. 1 and 2 before the NCLT and DRT. The present complaint filed by the complainants with collusion with the respondents no. 1 to 3 with malafide intention to delay the recovery proceedings initiated by the respondent no. 4 bank. The respondent no. 1 is a partnership firm. The complaint does not falls under items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 & PULP Act. The allegations

made in the complaint are contrary to this provision. The respondent no. 2 is the company and proceedings against it has been admitted before the NCLT and resolution professional has been appointed, who has taken charge of the assets of the respondent no. 2 company. The respondent no. 2 company went into liquidation by an order of NCLT dated 30.03.2022.

8. The complainants did not furnish about the particulars of their employment. The documents filed with the complaint do not confirm any right title interest of the complainants in the respondents no. 1 and 2 company. The complainants failed to produce documentary evidence in support of their claim. The respondents no. 1 and 2 are independent identity having their own business. The complainants failed to establish the employer-employee relationship between any of the respondents. By order dated 30.03.2022 passed by the NCLT, Mumbai Bench in the Interim Application No. 516/2021 has approved the Liquidation application of Sun Acrylics Pvt. Ltd. (Corporate Debtor) and Mrs. Megha Agrawal has been appointed as Liquidator as per the provisions of the Insolvency and Bankruptcy Code, 2016. Pursuant to the Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the liquidator has made Public Announcement in Form B of Schedule II on 10.05.2022 inviting stakeholders to submit their claims as on the liquidation commencement date. In response to the public announcement representative of the workmen and

employees Advocate Subhash Shinde submitted 17 claims.

9. The respondent no. 4 is a public sector bank incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and is a scheduled bank within the meaning of Banking Regulation Act, 1949. One of the branch of the bank is at Pratiksha Apartment, Opp. Filmistan Studio, S. V. Road, Goregaon (West). The respondents no. 2 and 3 are the borrowers of the respondents and the respondent no.1 is the guarantor. The plot admeasuring area is 619 sq.mtrs. situated at Industrial Estate, Taluka Talasari, Dist. Palghar and the factory building of ground and part of first floor, lean to roof shed, Boiler house with platform, etc. with total land area of 3939 sq.mtrs. has been mortgaged to the respondent no. 4 bank. Hypothecation of stock-in-trade in the name of the company valued approximately at Rs.163,33,000/- as per stock statement of January-2019 and other assets as per account and plot no. 33, 34, 35, of Village Achhad, Achhad Industrial Estate, Taluka - Talasari, Dist. Palghar owned by M/s. Sun Acrylics Pvt. Ltd. has been hypotheticated to the bank.

10. The respondents no. 2 and 3 are the borrowers who have availed grant of credit facilities aggregating to Ten Crores from the respondent no. 4 bank and the respondent no. 1 is one of the guarantors of the said loan facilities. To secure the repayment of the

money, the respondents no. 1 to 3 executed documents on 06.09.2011 and created security interest in favour of the respondent no. 4 bank by way of mortgage of immovable property owned by M/s. Shri Ganesh Vyapar Udyog.

11. After availing loan facilities, the respondents no. 2 and 3 were not at all regular in repayment of the loan account and failed to regularize the account and the account was classified as Non-Performing Asset as on 30.06.2019. The respondent no.4 vide letter dated 04.07.2019 issued notice under section 13(2) of SARFAESI Act and called the respondents no. 1 to 3 to pay the outstanding liability with interest, failing which the respondents would be at liberty to exercise its rights under SARFAESI Act to recover the dues. The respondents failed to repay the outstanding dues. Hence, the respondent no. 4 published the possession notice on 30.11.2019 in English newspaper "The Free Press Journal" and in Marathi newspaper "Nav Shakti". The respondents no. 1 to 3 failed to make the payment as deemed in the notice dated 04.07.2019. Hence, the respondent no. 4 bank was forced to enforce the security interest in the properties. To recover the outstanding dues from the respondents no. 1 to 3 account, the respondent no. 4 under SARFAESI Act had put the mortgaged properties under auction. Sales certificate was issued by the respondent no. 4 on 11.04.2023 and successful bidder in consideration declaring M/s. H. M. Steel was given the property in the payment of

Rs.35,15,000/- and sale certificate was issued in the name of the bidder. Hon'ble Supreme Court in Central Bank of India Vs. State of Kerala (2009) 4 SCC 94, held that only expressly created statutory first charges under Central and State laws can take precedence over the claims of secured creditors under the SARFAESI Act. As per section 50 of the MRTU & PULP Act, 1971 & PULP Act, it is not enough to merely provide for recovery of dues as arrears of land revenue. It cannot be said that such dues have priority over the claims of the secured creditors. The respondent no. 4 submitted that the property is sold to bidder against the secured loan. The employer-employee relationship between the complainants and the respondent no. 1 is also doubtful. Hence, no stay can be granted for transfer of machineries by the respondent no. 4. The respondent no. 4 submitted that there is no prima facie case made out. The balance of convenience is not also in favour of the complainants. If the stay is granted, the respondent no. 4 bank will suffer irreparable loss and prayed for rejection of the application.

12. Following Points arise for my determination. My answers with reasoning to them are as under :-

<u>NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether prima facie case is made out by the complainant for granting interim relief?	In the negative

- 2 Whether balance of convenience lies in favour of the complainant ? In the negative
- 3 Whether the complainant shows that he will be put to great hardship if interim relief is rejected ? In the negative
- 4 What order ? As per final order.

:- REASONS :-

As to Points No.1 to 3 :

13. It is the case of the complainants that they are the employees of the respondents no. 1 and 2. The respondent no. 3 is the Managing Director of the respondents no. 1 and 2. The respondent no. 1 is a partnership firm and the respondent no. 2 is a private limited company. The respondent no. 3 assured them to pay all their dues, but the respondent no. 3 is selling out the plant and machineries of the respondents no. 1 and 2 and if the plant and machineries are shifted, then legal dues of the employees will not be paid.

14. It is the case of the respondent no. 4 that the respondent no. 2 was its borrower and the respondent no. 1 firm was the guarantor and the respondent no. 2 company went in NCLT, but due to some technical reasons, resolution plan was not accepted and it went in liquidation. All the 11 persons who claimed to be

employees of the respondent no. 2 company appeared before the NCLT, but they could not prove their claim. Hence, the NCLT rejected their claim. The respondent no. 1 being guarantor of the respondent no. 2 company for the loan disbursed by the respondent no. 4 bank and it was secured loan. Hence, the respondent no. 4 bank invoked the provisions of SARFAESI Act issued notice under section 13(4) and auctioned the property. The purchaser of the property shifted the machineries, which was also hypothecated to the bank and purchased by the purchaser. But the respondent no. 3 in collusion with the employees filed this false complaint.

15. Learned counsel for the complainants submitted that both the companies were belonging to same family. They were running under the same roof and managed by the respondent no. 3. The respondent no. 3 on the pretext that old machineries will be shifted and new machineries will be installed terminated the services of all employees. The employees were paid their wages in cash and no record was created by the respondent no.3 about the employment. When the machinery was shifted, the watchmen who were on duty told the employees on telephone that machinery was going to be shifted and hence all the employees obstructed the shifting of machineries till their legal dues are paid. The legal dues of the employees are having priority over the other dues. The machinery is the only source from which the legal dues of the employees can be recovered. If the machinery is shifted,

then the employees will lose their legal dues as there is no other property available for recovery of the legal dues. He relied on authority of **The Maharashtra State Co-operative Bank Ltd. Vs. Babulal Lade & Ors. in Civil Appeal No. 232/2016** passed by Hon'ble Supreme Court. He submitted that in this authority it is held that the legal dues of the employees are having priority directly over the other secured creditors. Hence, till amount of the legal dues is paid by the respondents no. 1 to 3 or any other persons claiming interest in the property should be restrained from shifting the plant and machinery of the respondent no. 1 company.

16. Learned counsel appearing for the respondent no. 4 submitted that these employees appeared before the NCLT and they failed to produce any document showing that they are the employees of the respondents no. 1 and 2. All 11 persons claimed to be the employees of the respondent no. 2 before the NCLT. Now they are claiming to be the employees of the respondent no. 1 Shri Ganesh Vyapar Udyog. If the documents of provident fund filed by the complainants on record is seen, there were only four employees of Shri Ganesh Vyapar Udyog and here 13 persons are claiming to be the employees of the respondent no. 1. He further submitted that in the authority of **The Maharashtra State Co-operative Bank Ltd. Vs. Babulal Lade & Ors.**, Hon'ble Supreme Court has discussed the provisions of SARFAESI Act, the section 169 of Maharashtra Land Revenue Court and section 529(A) of

the Companies Act. Shri Ganesh Vyapar Udyog is not a company and it is not under liquidation. Hence, section 529(A) of the Companies Act is not applicable to this case. In the case before Hon'ble Supreme Court, Bank has taken the liabilities of the dues of the employees in a transfer agreement with the purchaser and hence the bank was made to pay the legal dues of the employees by Hon'ble Supreme Court. There was order of Industrial Court under section 50 of the MRTU & PULP Act and the legal dues were determined by the Court. Here in this case, the employer-employee relationship of the complainants is not established. Hence, they cannot claim any relief under the provisions of the MRTU & PULP Act.

17. The property of the respondent no. 2 company was liquidated as per the order of the NCLT. Both the companies were working on same plot. Both Shri Ganesh Vyapar Udyog and the respondent no. 3 were the guarantors of the respondent no. 2 company. Hence, the respondent no. 4 bank issued notice under section 13(4) of the SARFAESI Act, the whole of the amount of the loan alongwith interest was not recovered from the respondent no. 2 company. Hence, the bank initiated the recovery proceedings under SARFAESI Act. These employees approached DRT, but for want of documents they were not entertained. Now, these persons are approaching this Court. It is settled position of law that the secured creditors is having priority over the unsecured creditors. If the proceedings under section

529(A) of the Companies Act, then principle of pari passu will be applicable. But it is not applicable under the provisions of SARFAESI Act. For that he relied on authority of Hon'ble Supreme Court in **Civil Appeal No. 7045/2005 - Bank of Maharashtra Vs. Pandurang Keshav Gorwardekar & Ors.** He submitted that the respondent no. 3 filed this proceeding with the help of employees to create hurdle in the recovery of the loan amount by the respondent no. 4. Hence, the respondent no. 3 remained exparte. He submitted that there is no prima facie case in favour of the complainants. The balance of convenience is in favour of the bank and if stay is granted, the bank will suffer irreparable loss. He prayed for the rejection of the application.

18. I perused the authority of **The Maharashtra State Co-operative Bank Ltd. Vs. Babulal Lade & Ors.** In the said authority, Hon'ble Supreme Court held that as per section 13(7) of the SARFAESI Act, the distribution of money received by the appellant-bank should be done as per the sale contract with the purchaser and in the said contract, the bank has given undertaking to pay dues of the employees. Hence, the bank was made to pay the legal dues determined by the Industrial Court and as per the share certificate issued under section 50 of the MRTU & PULP Act. But otherwise secured creditor is having priority over the unsecured creditors. The section 13(4) of the SARFAESI Act allows a secured creditor to take possession of the secured assets of a borrower-in-default.

19. Here in our case the documents filed by the complainants itself shows that in the month of August-2019, there were four employees working with Shri Ganesh Vyapar Udyog, which is reflected in the challan of the EPF. In the month of October-2018, only four persons were working with Shri Ganesh Vyapar Udyog as per EPF challan. Here 13 persons are claiming to be the employees of the respondent no. 1.

20. The respondent no. 4 filed documents showing that the notice under section 13(4) of the SARFAESI Act was published by the corporation bank in Free Press Journal on 30.11.2019. This corporation bank later on merged in Union Bank of India i.e. the respondent no. 4. Prima facie there was no employer-employee relationship between the 13 persons named in the array of the complaint with respondent no. 1. When the complainants came to know that the respondent no. 3 is not starting working of company and he was intended to close down the company, they should have approached the Court claiming legal dues. These persons also made claim before the NCLT, but for want of documents their claim was rejected. The respondent no. 4 bank has taken the possession of the plant and machinery as per the mortgage and hypothecation agreement and machinery is also sold. The purchaser tried to shift the machinery and then the complainants filed this complaint. The respondent bank is scheduled bank and is doing the business of banking having its branches in many places in India. Even if it is found on

merits that the respondent bank is responsible to pay the legal dues of the employees of the respondent no. 1 Shri Ganesh Vyapar Udyog, then same can be recovered from the bank. If the plant and machinery remains there in the premises of the company, then it will rust and its value will diminish. So if restraining order is passed, then machinery will remain idle and its value will diminish. So in such circumstances in my view, there is no case made out to grant injunction to the bank from shifting the plant and machinery till final disposal of the complaint. Hence, no prima facie case is made out in favour of the complainants. The balance of convenience is not in favour of the complainants. Hence, I answer points no. 1 to 3 in the negative.

As to Issue no. 4 :-

21. As the complainants failed to prove that there is prima facie case in favour of the employees and balance of convenience lies in favour of the employees and if the stay is granted, the complainants will suffer irreparable loss. Hence, application for interim relief deserves to be rejected. Hence, I proceed to pass following order.

ORDER

Application for interim relief stands rejected.

(M. S. GANORKAR)

Member,

Industrial Court, Thane

Place : Thane.

Date : 07/07/2023

Rsr/-13072023.....