Vasant Haribhau Nirve Complainant

Versus

The Maharashtra State Co-Operative Bank Ltd. and Ors Respondents

ORDER BELOW EXHIBIT C-9

(Dated 11/10/2023)

1. The respondent No. 1 bank filed this application for deletion of its name from the complaint.

2. The respondent bank stated that it is not a necessary party to the present complaint and hence, the complainant be directed to delete its name from the array of the respondents. The respondent bank has taken possession of the factory and premises of respondent No. 1, on 16/02/2009, as per the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Act [SARFAESI Act]. Therefore, the complaint cannot be entertained against the respondent bank. As per the terms and conditions of the sale agreement, the respondent No. 3 had accepted the liabilities of the workers. As there is no employer-employee relationship between the complainant and the bank, the present complaint for recovery of unpaid salary dues, is not tenable against it. It is neither appointing nor terminating authority of the complainant. It has been submitted that this Court delivered judgment in favour of the employees and against the respondent No. 1 and respondent No. 3. The said judgment and order was challenged before the Hon'ble High Court and vide order dated 04/05/2003, the Hon'ble High Court has quashed and set aside the judgment passed by this Court, to the extent of respondent bank. In the circumstances, it is submitted that the name of the respondent bank needs to be deleted.

3. The complainant has opposed the application submitting that the respondent bank is a necessary party as it is custodian of the respondent No. 2 Sugar Factory. The respondent bank sold property of sugar factory to respondent No. 2 and the claim of the complainant is to be paid by giving preference and hence, the respondent bank cannot be deleted. It is further submitted that the respondent No. 1 has received sale proceeds in excess of dues.

4. The respondent No. 3 filed say opposing the application. It has been stated that the order is challenged before the Hon'ble Supreme Court and has been stayed. Further the bank is liable to pay the amount. Hence, it is necessary party.

5. Heard advocate for the respective parties. Perused the papers of the case.

6. The advocate for the respondent No. 1 vehemently submitted that it has been stand of the respondent bank since beginning that there is no employer-employee relationship between the complainant and the bank. Moreover, in view of the provisions of the SARFEASI Act, the complainant is not entitled for recovery from it. Also, the respondent No. 3 has already taken over the liabilities of the workers as per the terms and conditions of the agreement. All these aspects were considered by the Hon'ble High Court vide deciding the writ petition and the claim of the complainant against the respondent bank was dismissed. The stay granted by the Hon'ble Supreme Court will not affect the case of the respondent No. 1. The respondent No. 1 has submitted that if the order of the Hon’ble Supreme Court is perused then the only question considered was about the liability of auction purchasers and subject to that, the judgment of the Hon’ble High Court has been stayed. Hence, the application is liable to be rejected.

7. The advocate for the complainant has submitted that the complainant, who was working in the respondent No. 2 factory, is praying for his dues which were denied to him for years together. The respondent bank received the money in excess of its dues against the respondent No. 2 and hence, the respondent bank is liable to pay the dues of the complainant. The complainant being workmen, need to be given preference. If the respondent bank is deleted, then great prejudice would be caused to the complainant.

8. The advocate for the respondent No. 3 has submitted that the order of the Hon’ble High Court has been stayed by Hon'ble Supreme Court. The respondent bank is necessary party for the effective adjudication of the case. The bank is necessary party as the matter is sub-judice before the Hon’ble Supreme Court and the bank may be held liable. The application was premature. The application filed by the respondent No. 3 for deleting its name was rejected for considering the matter on merits. Hence, the same principle will be applicable to case of the respondent No. 1.

9. Perused the papers of the case and the common order passed by the Hon'ble High Court in Writ Petition No. 5901/2016 styled as The Maharashtra State Co Operative Bank Ltd V/s Ramprasad Natha Shejual and Others and connected writ petitions and the order passed by the Apex Court. If the written statement filed by the respondent bank is perused, then it has taken a plea that there is no employer-employee relationship between the complainant and the respondent bank, as it is neither appointing nor terminating authority. It has been further submitted that the respondent bank has exercised its power under SARFEASI Act, against the respondent No. 2 for recovery of outstanding loan amount. Now, it needs to be verified that whether the facts of the present complaint and other complaints, which were decided earlier and the judgments therein were challenged in the writ petitions, are identical. Therefore, it would be apt to reproduce the relevant paras of the judgment passed by the Hon'ble High Court and the same are reproduced as below:

37. *“In the present case, the complainants seek satisfaction of their claim out of the sale of secured assets by the Bank. It is not their case that there is an employer-employee relationship between the complainants and the Bank. The existence of an employer employee relationship is a jurisdictional fact upon which the question of maintainability of complaint under Section 28 of MRTU and PULP Act would depend. The Apex Court in the case of Vividh Kamgar Sabha (supra) has held that the provisions of MRTU and PULP Act can only be enforced by persons who are admittedly* *the workmen and if there is a dispute as to whether the employees are employees of the company, then that dispute must first be got resolved by raising a dispute before the appropriate forum and only after the status as a workmen is established that a complaint could be made under the provisions of MRTU and PULP Act. Although in the aforesaid decisions, the Apex Court was considering the issue of regularization of the employment by eliminating the labour contractor, in my view, the proposition of law is applicable to the facts of the present case.*

38. *On considering the pleadings in the complaint, as the claim against the Bank was satisfaction of their claim, the issue was required to be adjudicated in the appropriate forum constituted under the provisions of SARFAESI Act. In complaint of unfair labour practice, the Industrial Court could not have examined the issue of existence of employer-employee relationship qua the Bank and rendered a finding as regards the status of the relationship. Such a course is not available in the proceedings under the MRTU and PULP Act. It is only in cases where it is undisputed or indisputable that there is employer-employee relationship between the parties, the issue of unfair labour practice can be gone into. Resultantly, on the basis of the admitted fact of non-existence of employer-employee relationship between the Bank and the complainants, the jurisdiction of the Industrial Court qua the Bank was clearly ousted.*

46. *The issue as to whether the workmen's dues are liable to be satisfied out of the proceeds from auction of secured assets was required to be adjudicated in an appropriate forum upon the recovery certificate being issued to the Collector for the recovery of unpaid amount. The Bank as financial creditor has enforced its security interest under the provisions of Section 13 of SARFEASI Act. The stated object of the SARFEASI Act is to regulate securitization and reconstruction of financial assets and enforcement of security interest and to provide for a central database of security interests created on property rights and for matters connected or incidental thereto. Section 34 of the SARFEASI Act bars the jurisdiction of the civil court in respect of the matters which Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Further Section 35 of the SARFEASI Act gives an overriding effect to the Act.*

47. *On a reading of the aforesaid provisions of the SARFEASI Act, it is evident that the Industrial Court does not have the jurisdiction to venture into the issues which fall squarely within the purview of the SARFEASI Act. The Industrial Court has held that the Bank is a representative of Jalna SSK as the Bank was holding the proceeds received from the sale of assets of Jalna SSK. The provisions of Section 13(7) of the SARFAESI Act set out the manner in which the secured creditor has to apply the sale proceeds and in the event of any claim as regards the proceeds arising out the sale conducted under the provisions of SARFEASI Act, the same is required to be adjudicated in an appropriate forum having jurisdiction under the SARFEASI Act. Even assuming that the Bank was holding excess of the sale proceeds in their hands, the same cannot render the Bank a representative or agent of the borrower- Jalna SSK and merely makes the Bank liable to satisfy the workmen's dues out of the sale proceeds, if so adjudicated.*

48. *Based on the provisions of Section 30(1)(a) of the MRTU and PULP Act, the Industrial Court has held that the Court has the jurisdiction to specify any other person who has engaged in or is engaging in unfair labour practice and as the Bank failed to give the particulars of the excess amount received by them and further they sold out the* *property during the pendency of complaint and as they hold all the sale proceeds in trust, the Bank can be said to be any other person. The Industrial Court has, therefore, held the complaint maintainable. It is further held that to that restricted liability and being a trustee and representative of the employer, the Bank can be said to be an employer. In my opinion, the reasoning adopted by the Industrial Court in support of its finding that the complaint is maintainable cannot be accepted. Assuming that there is excess of sale proceeds in the hands of the Bank, the Bank cannot be held to be a trustee of Jalna SSK. The Bank is a secured creditor and has realized its dues by auctioning the assets of Jalna SSK. If there is any claim towards the residue of sale proceeds, the claim will be required to be adjudicated in an appropriate forum under the SARFEASI Act. It needs to be noted that that the provisions of SARFEASI Act having an overriding effect, there was no embargo on the Bank to release its security interest and the statutory provisions did not mandate seeking any permission from the Industrial Court.*

50. *The issues as regards the dues of the Bank, the amounts realized from the sale of assets and the excess or deficit of the sale proceeds are all questions which could not have been adjudicated in a complaint seeking declaration of unfair labour practice and particularly when the admitted position is that there is no employer employee relationship between the Bank and the complainants.*

52. *In my opinion, the finding of the Industrial Court that the Bank is an employer being a trustee and representative of the employer is clearly unsustainable. In view of the admitted position of no employer-employee relationship between the Bank and the complainants, the complaint under the MRTU and PULP Act qua the Bank was not maintainable. The Industrial Court has ventured into issues falling within the purview of SARFAESI Act and has rendered a finding on the status of the Bank as an employer. Considering the settled position in law, such an examination is not contemplated in a proceeding instituted under Section 28 of the MRTU and PULP Act.*

53. *For the reasons discussed above, in my view, the complaint qua the Bank was not maintainable. The declaration of unfair labour practice and the direction to jointly and severally pay the outstanding wages and applicable allowances of the employee qua the Bank was clearly unsustainable."*

10. After considering the judgment and order passed by the Hon'ble High Court, I find that the facts of the present complaint are similar and hence the complaint will not be maintainable against the respondent No. 1 Bank, as it has been held that this Court has no jurisdiction to try the complaint in the absence of employer-employee relationship between the complainant and the respondent bank.

11. The Hon'ble Supreme Court has stayed the order of the Hon'ble High Court. Now, at this stage there is nothing on record to show that the workmen have challenged the order passed by the Hon’ble High Court for not granting any relief in their favour against the respondent No. 1 bank. The auction purchaser i. e. respondent No. 3 has approached the Hon’ble Supreme Court. The advocate for the respondent No. 3 has taken me through the order passed by the Hon’ble Supreme Court to submit that the order is restricted only to the auction purchasers. In the circumstances, it would be apt to produce the relevant paras of the order of the Hon’ble Supreme Court :-

“The key issue here is on the liability of the auction purchaser or their transferee, towards the unpaid wages of the workmen of the Jalna Sahakari Sakhar Karkhana, in terms of Section 13 (7) of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Mr. C.U. Singh, learned senior Counsel would submit that the auction purchaser had no notice about the liability towards the unpaid wages of the workers when it purchased the secured assets in the Bank's auction and therefore it is argued that they cannot be saddled with the liability for the unpaid wages, on the basis the complaints of the workmen of the Jalna Sahakari Sakhar Karkhana. It is also submitted that such complaints of the workmen are not maintainable against the auction purchaser under the Maharashtra Recognition of Trade Union And Prevention of unfair Labour Practice Act, 1971.

On the other hand, Mr. Marlapalle, learned senior counsel would refer to sale Agreement and the sale certificate along with the written undertaking given by the auction purchaser to point out that they bound themselves to discharge all liabilities pertaining to the secured assets, purchased by them.

In the interim, auction purchaser or their transferee shall not create any third party rights over the secured assets of the Jalna Sahakari Sakhar Karkhana which was sold by the Bank in auction to the petitioner. Subject to this, the impugned judgment dated 04/05/2023 is stayed.”

12. The advocate for the respondent No. 3 submitted that the Court, at this stage cannot interpret the order passed by the Hon’ble Supreme Court as the SLP is sub-judice. As stated earlier, the workmen have not approached the Hon’ble Supreme Court. The Hon’ble Supreme Court has considered the issue and subject to the extent of the auction purchaser for not creating third party rights over the secured assets of the Jalna Sahakari Sakhar Karkhana and has stayed the impugned judgment. Therefore, there are merits in the arguments of the advocate for the respondent No. 1 bank. The following findings of the

Hon’ble High Court in which it has been specifically held will be relevant :-

“The issue as to whether the workmen’s dues are liable to be satisfied out of the proceeds from auction of secured assets was required to be adjudicated in an appropriate forum upon the recovery certificate being issued to the Collector for the recovery of unpaid amount.

Even assuming that the Bank was holding excess of the sale proceeds in their hands, the same cannot render the Bank a representative or agent of the borrower-Jalna SSK and merely makes the Bank liable to satisfy the workmen’s dues out of the sale proceeds, if so adjudicated.

13. Now, there is no challenge raised to these findings and therefore, the contention of the respondent No. 3, that the bank is a necessary party for the purpose of determining the real question in controversy and the bank is sufficient to settle all the crystallized claims of the employees, cannot be considered. Earlier the application filed by the respondent No. 3 for deleting its name was rejected considering factual aspect. The respondent No. 1 bank has not moved any application for deletion of its name at the earlier stage and moved the application only after the decision of the Hon’ble High Court. Hence, I do not find any merits in the arguments of the respondent No. 3, that as his application was rejected holding that the adjudication of rights is necessary, the same principle need to be applied to the case of the respondent bank.

14. In view of my aforesaid discussion, the application filed by the respondent No. 1 for name of respondent No. 1 need to be deleted. In the circumstances, I pass the following order.

ORDER

1) The application at exhibit C-9 is allowed.

2) The complainant is directed to delete the name of the respondent No. 1 bank from the array of respondents on or before the next date.

Jalna
Date 11/10/2023

Bharati Kale
Member
Industrial Court, Jalna