Suresh Nimbaji Borkar Complainant

Versus

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

ORDER BELOW EXHIBIT C-10

(Dated 25/01/2024)

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:

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.*

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."*

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.

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-10 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 25/01/2024

Bharati Kale
Member
Industrial Court, Jalna