
(2009) 04 BOM CK 0121

In the Bombay High Court

Case No : Writ Petition No. 3882 of 2008

Jagdamba Sahakari Sakhar Karkhana Ltd.

APPELLANT

Vs

Tahsildar and Another

RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5
Payment of Gratuity Act, 1972 — Section 14, 15, 8

Citation : (2010) 124 FLR 958 : (2010) 1 LLJ 114

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : C.K. Shinde, for the Appellant; P.V. Barde, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Kingaonkar, J.—By this petition, the petitioner seeks quashing of order issued by the respondent No. 1 - Tahsildar, dated March 4, 2008, whereby attachment of immovable properties of the petitioner is directed in order to recover dues of gratuity amount payable to ex-worker of the petitioner.

2. The petitioner is a sugar factory of which the respondent No. 2 was a worker. The respondent No. 2 sought recovery of gratuity amount by filing an application (PGA) No. 49/2004. The learned Assistant Commissioner of Labour, Ahmednagar heard the parties and issued recovery certificate in favour of the respondent No. 2. The petitioner factory was under liquidation. The winding up process started in the midst of the proceedings of the recovery certificate. Ultimately, a liquidator has been appointed and is in-charge of the petitioner.

3. The challenge to recovery proceedings is on the ground that without leave of the Registrar, no such proceedings can be taken up in view of Section 107 of the Maharashtra, Co-operative Societies Act, 1960 (for short" MCS Act). Reliance is placed on Shrirampar Taluka Sahakari Kharedi Vikri Sangh Ltd., (In liquidation) by Liquidator Shri Ravikant Shantavan Pandit, Dist. Ahmednagar v. Vijay

Sampatrao Borade and Ors. (1990) C.T.J. 241. It is also argued that in view of Section 163 of the MCS Act, the respondent has no jurisdiction to issue the attachment warrant. It is contended by the learned Counsel for the petitioner that in view of Section 155 of the MCS Act, the scheme is provided for recovery of the sums due to the Governments and when the recovery certificate is issued by the Assistant Commissioner of Labour, then such recovery will be as contemplated u/s 155 inasmuch as it would be deemed as amount payable to the Government. It is in view of such objections that the recovery process is being impugned.

4. It is important to note that the recovery is in respect of amount of gratuity payable to the respondent No. 2. The order dated September 8, 2006 purports to show that the Assistant Commissioner of Labour, rendered the finding about amount due to the respondent No. 2. This order of the Assistant Commissioner is not subject-matter of challenge in the present Writ Petition. What is challenged is the consequent recovery proceedings initiated by the Tahsildar i.e. the respondent No. 1.

5. There is conflict of laws. The payment of gratuity is governed by the special enactment, namely, the Payment of Gratuity Act, 1972. It has overriding effect in view of Section 14. The non-obstante clause in Section 15 would make it amply clear that the provisions of the said Act will have overriding effect over the similar provision contained in any other Act. The P.G. Act is Central Legislation and will have overriding effect over the State Legislation if any conflict in two provisions would be noticed. In case of Shrirampw Taluka Sahakari Kharedi Vikri Sangh Ltd. (In Liquidation) by Liquidator Shri Ravikant Shantavan Pandit, Dist. Ahmednagar v. Vijay Sampatrao Borade and Ors. (supra) the order of the Civil Judge confirming attachment before judgment was passed ex parte under Order 38, Rule 5 of the CPC and, therefore, in view of specific bar under Sections 107, 102, 103 and 105 of the MCS Act, it was held that such order was without jurisdiction. In the present case, it is not a case of ordinary claim in respect of amount payable to the respondent No. 2. The amount is of gratuity due to him and, therefore, the recovery of the gratuity is governed by Section 8 of the Payment of Gratuity Act. The power to recover such amount is a special power under the said Act. The respondent No. 1 is only executing agency and, therefore, it cannot be said that the execution is in respect of the amount due to the Government. In such a case, the Governmental agency is only a middle agency for the purpose of recovery under duress when the amount is not paid. The contention that the Tahsildar has no jurisdiction to effect recovery is unacceptable inasmuch as the recovery of the gratuity amount is through the process provided under the law and is not inconsistent with Section 155 of the MCS Act. There appears no bar to such recovery proceedings u/s 163 of the MCS Act, since the jurisdiction of Civil or Revenue Court is barred only to the extent of the disputes which fall within relevant sub-clauses of Sub-clause (1) of Section 163 of the MCS Act. This is not a matter concerning winding up process and dissolution of the society. The appointment of liquidator is no doubt made in

order to settle claims by fixing priorities and for the purpose of organising the affairs of the society. In the instant case, the liquidator is required to give priority to the claim of the respondent No. 2 which has precedence over the other claims and, therefore, must satisfy the same. Under the circumstances, I find it difficult to interfere with the recovery proceedings. My attention is drawn to Bombay Gas Public Ltd. Co. Vs. Papa Akbar and another, , United India Insurance Co. Ltd. etc. Vs. H.K. Khatau and others, and A.S. Iyer Vs. Union of India (UOI) and Others, The provisions of Gratuity Act have been elaborately considered in these matters. It is not necessary to refer to these cases in detail. Mr. Shinde, invited my attention to order rendered in Jagdamba Sahakari Sakhar Karkhana Ltd. v. Dattatraya Dinanath Sali, W.P. No. 5529/2008 a single Bench of this Court held that bailable warrant issued by the Court without leave of the Registrar could not be executed and was therefore, quashed. The fact situation in the present case is altogether different. Considering the foregoing reasons, the petition is dismissed. Interim stay vacated.