(2011) 01 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No''s. 7447 and 8896 of 2010 and Civil Application No''s. 2782 and 2785 of 2010

Kolhapur District Central Co-operative Bank Ltd. — APPELLANT

Vs

State of Maharashtra and Others
 Doulat Shetkari Sahakari Sakhar Karkhana Ltd. Vs Kolhapur District Central Co-operative Bank Ltd. and Others
 Garden Court Distilleries Pvt. Ltd. Vs State of Maharashtra and Others — RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Companies Act, 1956 — Section 529, 529A
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 172, 173, 174, 175, 176
Essential Commodities Act, 1955 — Section 3

Citation : (2011) 2 ALLMR 881 : (2011) 4 BomCR 834 : (2011) 113 BOMLR 569 : (2012) 134 FLR 149 : (2011) 3 MhLj 634

Hon'ble Judges : V.C. Daga, J;R.G. Ketkar, J

Bench : Division Bench

Advocate : S.S. Patwardhan, in Writ Petition No. 7447 of 2010 and Civil application No. 2785 of 2010, A.Y. Sakhare, Chetan Patil, in Civil application No. 2782 of 2010, P.K. Dhakephalkar and S.R. Ganbavale, in Writ Petition No. 8896 of 2010 and Civil application No. 2785 of 2010, for the Appellant; M.P. Thakur, AGP for Respondent Nos. 1 to 4 M.P. Thakur, AGP for Respondent Nos. 1 to 5, A.Y. Sakhare Chetan Patil and S.S. Patwardhan, for the Respondent

Final Decision : Dismissed

Judgement

R.G. Ketkar, J.—Writ Petition No. 7447 of 2010 is preferred by the Kolhapur District Central Co-operative Bank Limited (for short "Bank), a federal Society under the provisions of of the Maharashtra Co-operative Societies Act, 1960 praying 5 for directions against the Respondent Nos. 1 to 4, (Respondent No. 1-the State of Maharashtra, Respondent No. 2-the Commissioner of Sugar and Special Registrar, Co-operative societies, Respondent No. 3-Collector of Kolhapur and Respondent No. 4-Tahasildar of Chandgad) to withdraw the attachment/

sealing of the sugar stock in the Godown Nos. 3 and 6 of the Respondent No. 5-Daulat Shetkari Sahakari Sakhar Karkhana Limited (for short the ''sugar factory'') pledged to the Bank. The Bank has further prayed for issuance of the direction against the Respondent Nos. 1 to 4 to deliver the possession of the sugar stock to the Bank which is stored in the Godown Nos. 3 and 6 of the sugar factory and which is lawfully pledged to the Bank.

2. Writ Petition No. 8896 of 2010 is preferred by the Garden Court Distilleries Pvt. Limited (for short ''Distilleries''), praying for directions against the Respondent No. 3-Collector of Kolhapur to release 35050 quintals of M-30 Grade Sugar in accordance with the order dated 22.10.2010 issued by Respondent No. 2-the Commissioner of Sugar and Special Registrar, Cooperative Societies, Maharashtra State, Pune and/or in the alternative to direct the Respondent No. 5-sugar factory to repay the price of the 35050 quintals of M-30 Grade Sugar at the rate of Rs. 2373/- per quintal alongwith the interest of 24% p.a.to be calculated from 27.9.2010.

3. We issue Rule in both the petitions as also in C.A. No. 2782/2010 and C.A. No. 2785/2010 filed in Writ Petition No. 7447/2010. The learned Counsel appearing for respective Respondents waive service. By consent of the parties, Rule is made returnable forthwith and is heard finally.

THE FACTS:

4. The Bank has filed Writ Petition No. 7447 of 2010 contending inter-alia that during the crushing season of 2009-10 the sugar factory has applied for financial assistance in the nature of working capital for Rs. 54 crores. The Bank sanctioned the said loan. The sugar factory pledged the entire stock of sugar as security for the said loan. The Bank has enclosed copy of the pledge deed at annexure ''A'' to the petition. The sugar factory applied for further assistance of Rs. 11 crores by way of enhancement of working capital limit which was also sanctioned by the Bank for crushing season of 2009-10. The sugar factory executed necessary loan documents in that regard.

5. It is the case of the Bank that the sugar factory has extended the pledge of the sugar stock with it as a security for enhanced working capital limit also. The Bank has annexed copy of the pledge deed for the additional sum of Rs. 11 crores executed by the sugar factory in its favour at annexure ''B''. It is the case of the Bank that the sugar factory has in all seven godowns stored sugar. The entire stock of sugar is in the physical custody of the Bank. The keys of all the godowns are also with the Bank. The Bank has appointed its employee at the site of the godowns, who is having custody of all the godowns and the sugar stock kept therein.

6. The Bank has further averred that the Respondent No. 2 (Commissioner of Sugar and the Special Registrar, Co-operative Societies, Maharashtra State, Pune) passed an order on 21.6.2010 under Clause 3(8) of the Sugarcane (Control) Order, 1966 (for short the ''Order'') . The Respondent No. 2 has 7

directed the sugar factory to release the sum of Rs. 11.09 crores with interest as accrued to be paid over to the members of the sugar factory who had supplied their sugarcane post 15.5.2010. The Respondent No. 2 nominated Respondent No. 3-Collector of Kolhapur to be an authorised officer for disbursement of the said money to the members of the sugar factory. It was further directed that on the failure on the part of the sugar factory to make the payment, a sum of Rs. 11.09 crores be recovered as arrears of land revenue. Pursuant to this, the Respondent No. 3-Collector of Kolhapur issued an order dated 21.8.2010 directing the Respondent No. 4-Tahasildar of Chandgad to recover amount of Rs. 11.09 crores as arrears of land revenue from the sugar factory under the provisions of the Maharashtra Land Revenue Code, 1966 read with the Maharashtra Land Revenue (Recovery) Rules 1967. By order dated 22.8.2010, the Tahasildar of Chandgad directed the sugar factory not to alienate any movable or immovable property.

7. It is the case of the Bank that the Respondent No. 4-Tahsildar of Chandgad directed the sugar factory to open the Godown Nos. 3 & 6 for inspection of the sugar stock which is pledged with it. The godown keeper of the said two godowns reported this fact to the Bank under his report dated 22.8.2010. The Respondent No. 4-Tahasildar of Chandgad took possession of the sugar stock in the Godown Nos. 3 & 6 belonging to the sugar factory under the possession receipt and the panchanama dated 22.8.2010. The Bank has challenged these actions on the ground that the entire stock of sugar is in the custody of the Bank and the pledge deeds are in force. The action of the Respondent No. 4-8 Tahasildar of Chandgad of attaching/sealing Godowon Nos. 3 & 6 as also taking possession of the sugar stock therein is contrary to the provisions of law. Respondent No. 4-Tahasildar of Chandgad has no authority to dispossess the Bank for recovery of dues of the members of the sugar factory, as the Bank is a pledgee. In support of this contention, the Bank has relied upon the judgment of the Apex Court in the case of The Bank of Bihar Vs. The State of Bihar and Others, as also the the order dated 6.2.2008 passed by the Division Bench of this Court (J.N. Patel as the leaned Chief Justice then was, and Smt. Nishita Mhatre, JJ.) in Writ Petition No. 7936 of 2007 filed by the Bank against the sugar factory in respect of the controversy arising in the crushing season of 2006-07. Relying upon this, the Bank has prayed for withdrawing the attachment/sealing of the sugar stock in the Godown Nos. 3 & 6 by issuing appropriate directions to the Respondent Nos. 1 to 4 and for delivery of possession of the sugar stock in the Godown Nos. 3 & 6 of the sugar factory to the Bank.

8. The matter was heard on 20.9.2010. This Court issued notice to the sugar factory returnable on 23.9.2010. Hamdast was allowed. In addition, the Advocate''s notice by fax to the sugar factory was also allowed. The Court recorded the submissions made on behalf of the Bank and also directed the Secretary in the Department of Co-operation, Government of Maharashtra to remain present before the Court on the next date of hearing. The office noting indicates that on behalf of the Bank, an affidavit of service was filed on

21.9.2010 alongwith the fax report evidencing the service. On 23.9.2010, the 9 returnable date was extended to 30.9.2010 and the hamdast was permitted. On 30.9.2010 petition was adjourned to 8.10.2010. In the meantime, on 5.10.2010, office made noting to the effect that notice issued to the sugar factory on 23.9.2010 is returned duly served.

9. On 8.10.2010 this Court heard the learned Counsel appearing for the Bank and the learned AGP for the State. On that date none appeared for the sugar factory despite service. Dr. Sudhir Kumar Goel, Secretary in the Department of Co-operation, Government of Maharahstra who was present on that date was heard. Dr. Goel invited attention of the Court to the Order issued by the Government of India u/s 3 of the Essential Commodities Act, 1955 and more particularly Clause 3 (3) and 3(3A) of the said Order.

10. After recording the submissions, the Court directed the Collector of Kolhapur to auction the entire sugarcane stock in the Godown Nos. 3 & 6 of the sugar factory and deposit the sale proceeds with the Bank. The Bank was directed to remit the said sale proceeds in a separate account, and it was made clear that the the disbursement of the sale proceeds was subject to the further orders to be passed in the petition.

11. The sugar factory filed Civil Application No. 2782 of 2010 for recalling the order dated 8.10.2010 and praying for an injunction restraining the Collector of Kolhapur from conducting auction sale of the entire sugar stock lying in Godown Nos. 3 & 6 of the sugar factory, and further prayer for directions against the Respondent Nos. 2 to 5 (Respondent No. 2-State of Maharashtra, Respondent No. 3-Commissioner of Sugar & Special Registrar, Co-operative 10 Societies, Respondent No. 4-Collector of Kolhapur and Respondent No. 5-Tahasildar of Chandgad) to release the said sugar stock from the attachment.

In paragraph No. 3 of the application it was averred that due to some communication gap and some unavoidable reasons, the sugar factory could not appear for hearing on 8.10.2010 and subsequently it became aware of the said petition as also the order passed therein.

12. The Civil Application No. 2785 of 2010 was filed by the Distilleries for impleading it as party Respondent in Writ Petition No. 7447 of 2010, as also praying for modification of the order dated 8.10.2010 by directing the Collector of Kolhapur to deliver 35050 quintals of M-30 Grade sugar to the Distilleries in accordance with the order dated 22.10.2010 issued by the Commissioner of Sugar & Special Registrar, Co-operative Societies, Maharashtra State, Pune.

13. In support of this application, the Distilleries averred that it had placed an order of purchase of 52000 quintal of sugar with the sugar factory through its broker Atharva Intertrade on 25.9.2010. The said sugar was to be purchased @ Rs. 2373/- per quintal. It was learnt by the Distilleries that for the sugar crushing year 2009-10 the sugar factory had produced an approximate quantity of 3,37,000 quintals of sugar. On the same day i.e.25.9.2010 the sugar factory

confirmed the sale of 52000 quintals of sugar to the Distilleries, alongwith direction to remit the sale amount in the State Bank of India, Belgaum Branch, in the account of the sugar factory, by Real Time Gross Settlement (for short RTGS). Accordingly the Distilleries remitted amount of 11 Rs. 12,33,96,000/- towards the full satisfaction of the payment for purchase of 52000 quintals of M-30 Grade sugar from the sugar factory on 27.9.2010.

14. It is further averred that the sugar factory delivered initially 16950 quintals of sugar to the Distilleries by around 30.9.2010 and thereafter the Distilleries had sent its transporter to lift remaining 35050 quintals of sugar from the sugar factory. However, the said transporter was not allowed to lift the sugar as the Tahasildar of Chandgad had seized the sugar from Godown Nos. 3 & 6 on the orders passed by his superiors .14. It was further averred that the action was taken due to non-payment of the Fair and Reasonable Price (FRP) of the farmers by the sugar factory. The sugar factory was required to pay an amount of Rs. 11,09,24,496.80 to the farmers as the FRP @ of Rs. 1268.40 per ton as fixed by the Central Government. The sugar factory thus utilised the money paid by the Distilleries towards the payment of FRP to the farmers, and despite this, the balance quantity of 35050 quintals of sugar was not delivered to the Distilleries. In view of this, the Distilleries wrote a letter to the Regional Joint Director, Sugar, Kolhapur on 15.10.2010 requesting him to release the sugar from the sugar factory. Pursuant to this letter, the Regional Joint Director, Sugar, Kolhapur by his letter dated 16.10.2010 communicated his no objection to the Commissioner of Sugar for releasing the balance sugar to the Distilleries. Pursuant to this, the Commissioner of Sugar who had ordered seizure of sugar of the sugar factory, in turn, directed the Collector of Kolhapur by letter dated 22.10.2010 to release the sugar of an quantity, of 12 which, the FRP was paid to the farmers. When the representative of the Distilleries went to the office of the Collector of Kolhapur with a request to release the balance quantity of sugar as per the letter dated 22.10.2010 issued by the Commissioner, the representative was intimated that the sugar attached was to be auctioned in pursuance of the order dated 8.10.2010 passed by this Court in Writ Petition No. 7447 of 2010 filed by the Bank. The Distilleries therefore took out this application for the aforesaid reliefs as it is directly aggrieved by the order dated 8th October, 2010 passed by this Court in the Writ Petition.

15. Apart from filing the Civil Application No. 2785 of 2010 by the Distilleries in the Writ Petition No. 7447 of 2010, it also filed substantive writ petition bearing No. 8896 of 2010 praying for identical reliefs and further in the alternate for direction to the Sugar factory to repay the price of 35050 quintals of M-30 Grade sugar at the rate of Rs. 2373/- per quintal.

RIVAL SUBMISSIONS:

16. We have heard learned Counsel appearing for the parties in the Writ Petition No. 7447/2010, Civil Application No. 2782/2010, Civil Application No. 2785/2010, so also the learned Counsel appearing for the parties in the Writ

Petition No. 8896/2010.

17. In support of Bank''s Writ Petition No. 7447/2010 Mr. Patwardhan, learned Counsel appearing for the Petitioner-Bank relied upon the judgment of the Apex Court in the case of Central Bank of India Vs. Siriguppa Sugars and Chemicals Ltd. and Others, and contended that pawnee/pledgee''s right of retainer would have precedence over workmen''s dues and those of statutory authorities viz.in the present case, the Commissioner of Sugar. The Commissioner of Sugar (on behalf of cane growers) and the workmen of the pawner/pledgor, in the absence of liquidation proceedings u/s 529 and 529-A of the Companies Act, 1956 stand only as unsecured creditors and their rights cannot prevail over the rights of the pawnee of the goods. The Apex Court has exhaustively considered the earlier judgments dealing with the right of the pledgee in the light of Sections 172 to 176 of the Indian Contract Act, 1872. The Apex Court considered the following judgments:

(1) Lallan Prasad Vs. Rahmat Ali and Another,

(2) The Bank of Bihar Vs. The State of Bihar and Others,

(3) Karnataka Pawnbrokers Association v. State of Karnataka (1998) 7 SCC, 707.

(4) Dena Bank v. Bhikabhai Prabhudas Parekh & Co. (2000), 5 SCC 694.

(5) O. Konavalou v. Commander, Coast Guard Region (2006), 4 SCC 620,

(6) Workers of Rohtas Industries Ltd. Vs. Rohtas Industries Ltd., ,

(7) State of Madhya Pradesh Vs. Jaora Sugar Mills Ltd., and others etc., .

18. Ultimately, in paragraph No. 17, the Apex Court observed as under:

17. Thus, going by the principles governing the matter propounded by 14 this Court, there cannot be any doubt that the rights of the Appellant Bank over the pawned sugar had precedence over the claims of the Cane Commissioner and that of the workmen.

19. Mr. Patwardhan also invited our attention to the order dated 6.2.2008 passed by this Court in Writ Petition No. 7936 of 2007 in respect of this very Bank and very sugar factory, raising the identical controversy. Division Bench of this Court observed in paragraph No. 4 as under:

4. The question which arises in this petition is as to who has precedence over the stock of sugar which is sought to be attached pursuant to the order passed by the Respondent Commissioner of Sugar for making payment to sugar cane growers. The issue stands covered by the recent decision of the Supreme Court rendered in the case of Central Bank of India v. Siriguppa Sugars and Chemicals Limited and Ors. 2007(6) All M.R.431. In the said matter the Supreme Court held that the principles which would govern the issue and as propounded by the Supreme Court there cannot be any doubt that the rights of the appellate bank over the pawned sugar has precedence over the claims of the Cane

Commissioner and that of the workmen.

20. Mr. Patwardhan therefore submitted that the reliance placed on behalf of the sugar factory as also the authorities of the State Government and the Distilleries on the Order and in particular clauses 3(3) and 3 (3-A) thereof is of no avail as it is a settled position of law that the Commissioner of Sugar who is unsecured creditor cannot have any higher rights than that of pawnees 15 rights.

21. On the other hand the learned Counsel appearing for the authorities of the State Government, sugar factory and the Distilleries submitted that in terms of clauses 3(3) and 3(3-A) of the Order, the sugar factory is obliged to pay within 14 days from the date of delivery of the sugarcane to the seller or tender him the price of the cane sold at the rate agreed to between the purchaser and the sugarcane growers or sugarcane growers co-operative society, and on failure to make payment for sugarcane purchased within 14 days of the date of delivery, the sugar factory has to pay interest on the amount due @ 15% p.a.for the period of such delay beyond 14 days. Thus, the provision is made to protect the interest of farmers who supply sugarcane to the sugar factory. Since these clauses protect the interest of the farmers and the order is issued u/s 3 of the Essential Commodities Act, 1955, they will override and/or curtail the rights of the Bank in the instant case. It was therefore submitted that the sale proceeds deposited in a separate account maintained by the Bank should not be allowed to be appropriated by the Bank towards its dues from the sugar factory.

22. On behalf of Distilleries it was submitted that the Collector of Kolhapur be directed to deliver 35050 quintals of M-30 Grade sugar in accordance with the order dated 22.10.2010 issued by the Commissioner of Sugar, Maharashtra State, Pune. It was further submitted that there was concluded sale between the sugar factory and the Distilleries in respect of 52000 quintals of sugar. The Distilleries had remitted an amount of Rs. 16 12,33,96,000/- by RTGS. Pursuant to this concluded sale, the Distilleries received 16950 quintals of sugar and therefore the Distilleries is entitled to get 35050 quintals of M-30 Grade sugar. In the alternative, to direct the sugar factory to repay the price of 35050 quintals of M-30 Grade Sugar @ Rs. 2373/- per quintal. It was further submitted that basically the Bank''s claim is based on the pledge deeds at annexures ''A'' & ''B'' to the Writ Petition No. 7447 of 2010. Perusal of this exhibits will show that they do not bear any dates and they cannot be said to be valid pledge deeds, and consequently, the Bank is not entitled to lay its claim on that basis.

CONSIDERATION:

23. We have considered the rival submissions made by the learned Counsel appearing for the parties. We have also gone through the written submissions filed on behalf of the sugar factory as also the written submissions filed by the distilleries in both the petitions. We will take up first the Writ Petition No. 7447/2010 and the Civil Application Nos. 2782/2010 & 2785/2010 filed therein for consideration.

24. As noted earlier the Bank has filed Writ Petition No. 7447/2010 praying for directions against the authorities of the State Government to withdraw the attachment/sealing of the sugar stock in the Godown Nos. 3 & 6 of the sugar factory and has further prayed for issuance of directions against these authorities to deliver possession of the sugar stock to the Bank, which is stored in the said godowns. The matter was heard on 20.9.2010 when notice 17 was issued to the sugar factory, returnable on 23.9.2010. The Court recorded the submissions made on behalf of the Bank and also directed the Secretary in the Department of Co-operation, Government of Maharashtra to remain present before the Court on the next date of hearing. The matter was heard on 8.10.2010 when none appeared on behalf of the sugar factory despite service. Dr. Goel, Secretary in the Department of Co-operation, Government of Maharashtra, invited attention of this Court to the Order issued by the Government of India u/s 3 of the Essential Commodities Act, 1955 and particularly clauses 3(3) and 3(3A) of the said Order. After recording the submissions, this Court directed the Collector of Kolhapur to auction the entire sugar stock in the Godown Nos. 3 & 6 of the sugar factory and deposit the sale proceeds with the Bank. The Bank was directed to remit the sale proceeds in a separate account. It was made clear that the disbursement of the sale proceeds would be subject to the further orders to be passed in the petition.

25. The sugar factory filed Civil Application No. 2782/2010, for recalling the order dated 8.10.2010 and praying for an injunction restraining the Collector of Kolhapur from conducting the auction sale of the entire sugar stock lying in Godown Nos. 3 & 6 of the sugar factory and further praying for directions against the authorities of the State to release the sugar stock from the attachment. Civil Application No. 2785/2010 was filed by the Distilleries for impleading it as a party Respondent in Writ Petition No. 7447/2010 as also praying for modification of the order dated 8.10.2010 by directing the 18 Collector of Kolhapur to deliver 35050 quintals of M-30 grade sugar to the Distilleries in accordance with the order dated 22.10.2010 issued by the Commissioner of Sugar and the Special Registrar, Co-operative Societies, Maharashtra State, Pune.

26. Now it is common ground and equally it is not in dispute that pursuant to the order dated 8.10.2010, the Collector of Kolhapur conducted auction and sold 35050 quintals of sugar that was lying in the Godown Nos. 3 & 6 of the sugar factory and realised an amount of Rs. 18,86,90,000/- and the said amount is remitted in a separate account maintained by the Bank. Thus the order dated 8.10.2010 passed by this Court in Writ Petition No. 7447/2010 is already implemented and therefore there is no question of recalling the said order as also for issuing an injunction restraining the Collector of Kolhapur from conducting the auction sale of the entire sugar stock lying in the Godown Nos. 3 & 6 of the sugar factory and for directions against the authorities of the State to release the said sugar stock from attachment. The prayers made in the Civil Application have become infructuous.

27. As far as Civil Application No. 2785/2010 filed by the Distilleries is concerned, the prayer is made for impleading it as a party Respondent in Writ Petition No. 7447/2010 as also praying for modification of the order dated 8.10.2010 by directing the Collector of Kolhapur to deliver 35050 quintals of M-30 grade sugar to the Distilleries in accordance with the order dated 22.10.2010 issued by the Commissioner of Sugar and the Special Registrar, Co-operative Societies, Maharashtra State, Pune. The prayer for modification 19 of the order dated 8.10.2010 has also become infructuous as the said order has already been implemented. The Distilleries has also filed substantive petition being the Writ Petition No. 8896/2010 praying for identical reliefs. In view of this, nothing survives in the Civil Application Nos. 2782/2010 filed by the sugar factory and the Civil Application No. 2785/2010 filed by the Distilleries. Rule is discharged in both the applications with no order as to costs.

28. As far as Writ Petition No. 7447/2010 is concerned, the Bank has prayed for issuance of directions against the authorities of the State to withdraw attachment/sealing of the sugar stock in the Godown Nos. 3 & 6 of the sugar factory and for directions against the authorities of the State to deliver possession of the sugar stock to the Bank, which is stored in the said godowns. As noted earlier on 8.10.2010 the Court has directed the Collector of Kolhapur to sell the said stock. The Court has further directed that the sale proceeds shall be remitted to a separate account to be maintained by the Bank. Accordingly, an amount of Rs. 18,86,90,000/- realised from the auction sale is lying with the Bank. The Court has further made it clear in the order dated 8.10.2010 that the disbursement of the sale proceeds shall be subject to the further orders to be passed in the petition. We have therefore to consider the question i.e.how to disburse the sale proceeds which are for the time being lying with the Bank.

29. Mr. Dhakephalkar, learned Senior Counsel submitted that basically the Bank''s claim based on pledge deeds at Exhibits ''A'' and ''B'' to the petition is 20 unenforceable. He submitted that the pledge deeds are not valid. In so far as sugar factory is concerned, no such stand is taken either in the affidavit filed in Writ Petition No. 7447/2010 or in the Civil Application No. 2782/2010. The Distilleries which is totally a stranger to the pledge deeds has no locus to question their veracity. There is no privity of contract between the Bank and the Distilleries. We are therefore of the opinion that the said contention is devoid of any merits.

30. In the case of Central Bank of India (supra) the Apex Court, after exhaustively considering the earlier judgments dealing with the right of the pledgee in the light of Sections 172 to 176 of the Indian Contract Act, 1872 has held that there cannot be any doubt that the rights of the Bank over the pawned sugar has precedence over the claims of the Cane Commissioner (in the present case the Commissioner of Sugar and the Special Registrar) and that of the workmen. The Apex Court has held that the Commissioner of Sugar (on behalf of the cane growers) in the absence of liquidation proceedings u/s 529 and 529-A

of the Companies Act, 1956 stand only as unsecured creditor and their rights cannot prevail over the rights of the pawnee of the goods. The Division Bench of this Court had an occasion to consider the controversy between the Bank and the sugar factory in Writ Petition No. 7936 of 2007. By order dated 6.2.2008 the Court held that the said issue stood covered by the judgment of the Apex Court in the case of Central Bank of India (supra). In view of the settled legal position, the reliance placed by the authorities of the State Government, the sugar factory 21 and the distilleries on clauses 3(3) and 3(3A) of the Order is wholly misconceived. It will have to be held that since there are no liquidation proceedings in respect of the sugar factory in question, the right of the Commissioner of Sugar cannot prevail over the rights of the Bank and the status of the Commissioner of Sugar is that of an unsecured creditor. We therefore hold that the Bank is entitled to retain the sale proceeds subject to the taking of accounts. In case it is found that the sale proceeds exceed the dues of sugar factory, the Bank shall refund the surplus to the sugar factory. In the result, Rule is made absolute in the aforesaid terms with no order as to costs.

31. The Distilleries has filed substantive writ petition being Writ Petition No. 8896 of 2010 praying for directions against the Respondent No. 3-Collector of Kolhapur to release 35050 quintals of M-30 grade sugar in accordance with the order dated 22.10.2010 issued by the Respondent No. 2-Commissioner of Sugar and the Special Registrar, Co-operative Societies, Maharashtra State, Pune and/or in the alternative for direction to the sugar factory to repay the price of 35050 quintals of M-30 grade sugar @ Rs. 2373/- per quintal alongwith the interest @ 24% p.a.to be calculated from 27.9.2010. The Distilleries has averred that through its broker Atharv Intertrade, it had ordered purchase of 52000 quintals of sugar with the sugar factory on 25.9.2010 @ Rs. 2373/- per quintal, as it was learnt by the Distilleries that for the sugar crushing season of the year 2009-2010 the sugar factory had produced approximate quantity of 3,37,000 quintals of sugar, and that the 22 sugar offered to the Distilleries was from ''free hold'' category. As per the purchase order, the sugar factory confirmed the sale on the same day i.e.25.9.2010 and directed the Distilleries to remit the sale amount by RTGS. The Distilleries remitted an amount of Rs. 12,33,96,000/- towards the full satisfaction of payment for purchase of 52000 quintals of M-30 grade sugar to the sugar factory on 27.9.2010. The sugar factory also issued its Receipt No. 291 on 27.9.2010 confirming that it had received an amount of Rs. 12,33,96,000/- in lieu of sale of 52000 quintals of M-30 grade sugar. It is the case of the Distilleries that initially the sugar factory delivered 16950 quintals of sugar by 30.9.2010. Thereafter the Distilleries has sent its transporter to lift the remaining 35050 quintals of sugar from the sugar factory. However, the said transporter was not allowed to lift the sugar as the Tahasildar of Chandgad, on the orders passed by his superiors, had seized the sugar from the Godown Nos. 3 & 6.

32. It was further averred by the Distilleries that the said action was taken due to non-payment of FRP of the farmers by the sugar factory. The sugar factory

was required to pay an amount of Rs. 11,09,24,496.80 to the farmers as the FRP @ Rs. 1268.40 per ton as fixed by the Central Government. The sugar factory thus utilised the money paid by the Distilleries towards the payment of FRP to the farmers and despite this, the balance quantity of 35050 quintals of sugar was not delivered to it. The Distilleries addressed a letter dated 15.10.2010 to the Regional Joint Director, Sugar, Kolhapur, requesting him to release the sugar from the sugar factory. The Regional Joint Director, Sugar, 23 Kolhapur, in turn, by its latter dated 16.10.2010 communicated his ''no objection'' to the Commissioner of Sugar for releasing the balance sugar to the Distilleries. Pursuant to this, by a letter dated 22.10.2010, the Commissioner of Sugar who had ordered seizure of the sugar, directed the Collector of Kolhapur to release the sugar of a quantity, of which, FRP was paid to the farmers. When the representative of the Distilleries went to the office of the Collector of Kolhapur with a request to release the balance quantity of sugar as per the letter dated 22.10.2010, it was intimated that the sugar was attached and was to be auctioned as per the order dated 8.10.2010 passed by this Court in Writ Petition No. 7447/2010 filed by the bank.

33. It is the case of the Distilleries that the sugar factory and the Bank colluded with each other to over reach the orders passed by the authorities of the State Government and have malafide sought to create illegal charge on 52000 of M-30 grade sugar purchased by the Distilleries. The Distilleries asserted that the Bank has made a claim on the basis of two undated pledge deeds which are annexed at Exhibits ''A'' & ''B'' to the petition No. 7447/2010. It is in these circumstances, the Distilleries have prayed for release of 35050 quintals of M-30 grade sugar in accordance with the order dated 22.10.2010 issued by the Commissioner of Sugar, Maharashtra State, Pune, and in the alternative for a direction to the sugar factory to repay the price of 35050 quintals of M-30 grade sugar @ 2373/- per quintal together with interest @ 24% p.a.to be calculated from 23.9.2010.

34. Thus the prayers made in the Writ Petition filed by the Distilleries are based 24 upon the order dated 22.10.2010 passed by the Commissioner of Sugar, as also on the basis that the Distilleries have purchased 52000 quintals of M-30 grade sugar from the sugar factory on 25.9.2010. At the time of hearing of this petition, we suggested Mr. P.K. Dhakephalkar, learned Senior Cousnel appearing for the Distilleries to withdraw the writ petition with liberty to institute a suit, and in order to enable the learned Counsel to take instructions, the hearing of the petition was deferred. On the next date of hearing, the learned Senior Counsel reported that the Distilleries does not want to withdraw the writ petition. We accordingly proceed to consider the question whether the Distilleries is entitled to prayer (B) of the petition.

35. As indicated earlier, the Writ Petition No. 7447/2010 is filed by the Bank praying for a direction to the authorities of the State Government to withdraw the attachment/sealing of the sugar stock in the Godown Nos. 3 & 6 of the sugar factory and also for a direction to the authorities of the State Government to deliver possession of the sugar stock which is lying in the Godown Nos. 3 & 6 of

the sugar factory. On 20.9.2010 this Court issued notice to the sugar factory returnable on 23.9.2010. Hamdast was allowed. In addition, Advocates notice by fax to the sugar factory was also allowed. The Court recorded submissions made on behalf of the Bank and directed the Secretary in the Department of the Co-operation, Government of Maharashtra, to remain present before the Court on the next date of hearing. On 21.9.2010 affidavit of service was filed on behalf of the Bank alongwith a fax report showing compliance of the Court''s order dated 20.9.2010. On 25 8.10.2010, this Court heard learned Counsel appearing for the Bank and the learned AGP for the State. On that date, none appeared for the sugar factory despite service. Dr. Goel, Secretary in the Department of Co-operation, Government of Maharashtra, Pune, who was present on that date was heard. The sugar factory filed Civil Application No. 2782/2010 on 26.10.2010 for recalling the order dated 8.10.2010 and praying for an injunction restraining the Collector of Kolhapur from conducting auction sale of the entire sugar stock lying in the Godown Nos. 3 & 6. In paragraph No. 3 of that application, it was averred that due to some communication gap and some unavoidable reasons, the sugar factory could not appear for hearing on 8.10.2010 and subsequently it became aware of the said petition as also the order passed therein It is significant to note here that in the first place, the sugar factory did not dispute that it did not receive the fax sent on behalf of the Bank on 21.9.2010. Despite service none appeared on behalf of the sugar factory on 23.9.2010 or on 8.10.2010. Secondly, in the application filed on 26.10.2010, there is no mention, much less any whisper about the purported sale of 52000 quintals of M-30 grade sugar to the Distilleries on 25.9.2010. The application was filed for recalling the order dated 8.10.2010 precisely on the ground of developments that took place subsequent to the filing of the Writ Petition No. 7447/2010. In view of this, we called upon Mr. Sakhare, learned Senior Counsel to produce the record of the sugar factory for our perusal. After going through the record produced by the sugar factory, it transpired that on 23.9.2010 the sale in favour of the Distilleries was concluded. However, the 26 letter dated 25.9.2010 addressed by the Atharv Intertrade to the Chairman of the sugar factory is relied upon for showing the confirmation of purchase of 52000 quintals of sugar. The said letter is totally silent about the name of the purchaser. However, the sugar factory on the same day, i.e.25.9.2010 addressed a communication to the Distilleries confirming the sale of 52000 quintals of sugar to it. The said letter also does not bear any outward number. If at all the sale as per the record maintained by the sugar factory was concluded on 23.9.2010, there was no question of Atharv Intertraders confirming the sale on 25.9.2010 and the sugar factory, in turn, addressing the letter to the Distilleries. This is to be appreciated on the backdrop of the fact that on 21.9.2010 notice by way of a fax was sent to the sugar factory. Thus ,on one hand the sugar factory did not appear before this Court on 23.9.2010 and 8.10.2010 and on the other hand entered into the sale transaction despite the knowledge of filing of writ petition by the Bank. This is more so when the Bank had filed writ petition praying for identical reliefs against the sugar factory in the past. Considering the cumulative effect of the aforesaid, we are prima-facie of the opinion that the purported sale made by the sugar factory in favour of the Distilleries was with a view to prejudicing the claim of the Bank. The sugar factory was fully aware that 52000 quintals of M-30 grade sugar which was tried to be sold to the Distilleries was pledged with the Bank. Without taking the Bank''s permission, the sugar factory entered into the purported sale transaction with the Distilleries. Prima-facie, we are therefore satisfied that the sale effected by the sugar 27 factory in favour of the Distilleries is not a genuine transaction and it was entered into solely with a view to prejudicing the claim of the Bank. Mr. Dhakephalkar submitted that the Bank has not filed any affidavit opposing the petition of the Distilleries and no such stand is taken. We are not impressed by this submission, as we have ourselves perused the record produced by the sugar factory. We do not find any merit in this submission.

36. The Distilleries has also relied upon the order dated 22.10.2010 issued by the Commissioner of Sugar for releasing the sugar to the Distilleries. Pursuant to the directions given by us, the learned AGP produced record of the Commissioner of Sugar for our perusal. After going through the record, we found that the Commissioner of Sugar was duly served with the copy of the writ petition No. 7447/2010. The learned AGP appeared on behalf of the Commissioner of Sugar right from 20.9.2010. Shri. Rajendra R. Chavan, the Commissioner of Sugar was personally present before us at the time of hearing. Initially, he said that he was not served with the copy of the petition. When we pointed out that the copy of the petition is very much part of his office record, he said that he was not aware of any order passed by this Court in Writ Petition No. 7447/2010. We are really amazed by the stand taken by the Commissioner of Sugar. He was aware of the filing of the Writ Petition No. 7447/2010 and the prayers made therein. The least one can expect from the Commissioner of Sugar is to appraise himself about passing of any order by this Court in Writ Petition No. 7447/2010 and till that time stay his hands. Instead of doing either of these things, the Commissioner of Sugar issued 28 letter dated 22.10.2010 directing the Collector of Kolhapur to release the sugar. The Commissioner of Sugar also expressed his willingness to withdraw that order. Be that as it may, we expect Shri. Rajendra R. Chavan, to be very careful in future, particularly when the Court is seized of the controversy. We leave the matter there.

37. Mr. Dhakephalkar submitted that the sugar factory sold 52000 quintals of M-30 grade sugar to the Distilleries on 25.9.2010. By 30.9.2010, 16950 quintals of sugar was delivered by the sugar factory to the Distilleries. The balance 35050 quintals of sugar was however not delivered. The same sugar was sold by the Collector of Kolhapur in an auction. He therefore submitted that in effect so far as 35050 quintals of M-30 grade sugar is concerned, the sale was effected twice. In the first instance to the Distilleries and secondly in the auction sale. He therefore submitted that the auction sale is invalid. We have already held that the purported sale between the sugar factory and the Distilleries on 25.9.2010 is not a genuine transaction. In view thereof, we do not find any substance in the contention raised by the Distilleries that 35050 quintals of M-30 grade sugar was

sold twice.

38. Mr. Dhakephalkar has further submitted that at any rate the sale proceeds realised from the auction should not be allowed to be appropriated by the Bank. By order dated 8.10.2010 the Court made it clear that the amount remitted in the Bank account shall be disbursed subject to the further orders to be passed in the petition. He therefore submitted that the Bank should recover the said amount by following due process of law. Section 176 of the 29 Indian Contract Act, 1872 reads as under:

Section 176:- Pawnee''s right where pawnor makes default-

If the pawnor makes default in payment of the debt, or performance ,at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

(emphasis supplied)

39. As per Section 176 of the Indian Contract Act, 1872 pawnee is entitled to sell the things pledged on giving the pawner reasonable notice of the sale. In the instant case, under order dated 8.10.2010 passed by this Court, the Collector of Kolhapur was directed to sell the sugar in auction. In view thereof, it cannot be said that the sugar factory (pawnor in this case) had no reasonable notice of the sale. We are satisfied that in the present case, the Bank is entitled to appropriate the amount realised from the sale proceeds subject to taking of the accounts as indicated earlier.

40. In the result, the Distilleries is not entitled to any relief. That apart, considering the conduct of the sugar factory and the Distilleries, we are of the opinion that this is not a fit case for invocation of extra ordinary jurisdiction under Article 226 of the Constitution of India. In the result, petition fails and rule is discharged with no order as to costs.

41. It is expressly made clear that the observations made by us as far as the sale effected between the sugar factory and the Distilleries are concerned, they are 30 only for the limited purpose of disposing of the petitions. In case the Distilleries institutes suit, the observations made by us about the said sale shall not influence the Judge seized of the matter and the learned Judge shall decide the suit on the basis of material on record and in accordance with law.

CONCLUSION:

42. In the result, Writ Petitions and the Civil Applications are disposed of as

under:

(i) Rule is made absolute in the aforesaid terms in Writ Petition No. 7447 of 2010, with no order as to costs.

(ii) So far as the Civil Application Nos. 2782 of 2010 and 2785 of 2010 in Writ Petition No. 7447 of 2010 are concerned, Rule is discharged in both the civil applications, with no order as to costs.

(iii) Rule is discharged in Writ Petition No. 8996 of 2010, with no order as to costs.

43. At this stage, learned Counsel appearing for the Petitioner in Writ Petition No. 8896 of 2010 orally prayed that the Bank should not be permitted to appropriate the sale proceeds which has already been kept in a separate account with the Kolhapur District Central Cooperative Bank Limited. In view of the directions to appropriate subject to taking accounts, we do not think it necessary to grant the relief of interim stay as prayed. The prayer made in this behalf is rejected.