

**SUPREME COURT OF INDIA**

Sahyadri Co-operative Credit

Vs.

Society Ltd.

C.A.No.1840 of 2013

(Ranjan Gogoi and Prafulla C.Pant,JJ.)

28.03.2016

**JUDGMENT**

**Prafulla C.Pant. J.,**

1. These appeals are directed against judgment and order dated 10.02.2012, passed by the High Court of Judicature at Bombay in Writ Petition Nos. 8452 of 2011 and 8453 of 2011, whereby the High Court dismissed the writ petitions filed by the writ petitioner-societies (present appellants), observing that the alternative remedy of filing suit was available to them under Section 218 of Maharashtra Land Revenue Code, 1966 (for short “the MLR Code”).

2. Brief facts of the case are that the appellants are Multi State Co-operative Societies registered under Multi States Co-operative Societies Act, 2002 and operate in the geographical territories of Maharashtra and Karnataka. The appellant-societies are engaged in the business of accepting deposits from its members, and lending money to them. Respondent no. 6 M/s. Tasgaonkar Sugar Mills Ltd. is lessee of business of respondent no. 5 Daulat Shetkari Sahakari Sakhar Karkhana Ltd. under the deed dated 15.10.2010, and, as such, respondent no. 6 has taken over the business of respondent no. 5. They approached the appellants for financial assistance. Appellant Sahyadri Co-operative Credit Society Ltd. sanctioned loan of Rs.7,00,00,000/- repayable within a period of six months to respondent no. 5, and appellant Navhind Co-operative Credit Society Ltd. sanctioned loan of Rs.12,20,00,000/- on similar terms to it. Both the sums are credited into the account of Kolhapur District Central Co-operative Bank Ltd., erstwhile creditor of respondent no. 5. Said Bank had consented to respondent No. 5 for creation of charge in favour of the appellants in the form of pledge. As such, sugar stock of 35,000 quintals stored in godown no. 6 of respondent nos. 5 and 6 was agreed to be pledged in favour of appellant Sahyadri Co-operative Credit Society Ltd., and sugar stock of 80,985 quintals stored in godown Nos. 7-I and 7-II was agreed to be pledged in favour of appellant Navhind Co-operative Credit Society Ltd. In respect of said transactions of pledge, separate letters dated 31.03.2011 regarding consent of respondent no. 6 were issued in favour of the appellants. The appellants and respondent nos. 5 and 6 entered into an agreement on 25.05.2011 and the same was duly

registered. It is pleaded that respondent no. 8 Daulat Sakhar Kamgar Sangh (workers union) also gave consent for creation of pledge.

3. Admittedly, respondent nos. 5 and 6 ran into losses and failed to pay the outstanding dues of the cane growers. Consequently, respondent no. 2, Commissioner of Sugar/ Special Registrar, Co-operative Societies, State of Maharashtra, Pune, passed an order under Sugarcane (Control) Order, 1966 directing release of Rs.36,22,66,591 with interest accrued to be paid to the members who had supplied their sugarcane post May 15, 2010. Respondent no. 3 Collector, Kolhapur, was nominated as authorized officer for disbursement of said amount. In pursuance of said order, respondent no. 3 directed respondent no. 4 Tehsildar, Chandgad, District Kolhapur, Maharashtra, to recover the amount of Rs.36,22,66,591/- as arrears of land revenue under clause 3(9) of the Sugarcane (Control) Order, 1966, from respondent no. 5. Accordingly, respondent no. 4 visited site of respondent no. 5 and attached the stock of godown no. 6 and godown nos. 7-I and 7-II under clause 3(9) of the Sugarcane (Control) Order, and directed respondent no. 5 not to dispose of the stock of sugar lying in the above godowns. Respondent nos. 5 and 6 objected to the attachment of sugar stock pledged to them. The appellants also raised their objections to the attachment. However, on 18.6.2011 a public notice was issued in the newspapers, including Daily Sakal, wherein it was informed that godown no. 6 and godown nos. 7-I and 7-II along with other stock would be put to auction on 22.6.2011 at 3.30 p.m. in pursuance of the order dated 28.5.2011. Aggrieved by this, appellant Navhind Co-operative Credit Society Ltd., and appellant Sahyadri Co-operative Credit Society Ltd. filed Writ Petition Nos. 4539 and 4533 of 2011 respectively before the High Court of Judicature at Bombay pleading that they have right of precedence in the repayment of loan amount. The High Court, vide its order dated 22.6.2011 (on the day of public auction), directed that auction, as notified, should be conducted after fixing the set price. The High Court further directed that the amount receivable against the stock of sugar pledged to the appellants shall be deposited with the Registrar (Judicial) of the High Court where after the Registrar (Judicial) was to keep the amount in a nationalized bank in fixed deposit. On 11.7.2011, Sub Divisional Officer filed an affidavit stating that the entire stock of sugarcane was sold for a sum of Rs.52,95,36,483/-, out of which the amount realized against the pledged sugar was Rs.27,94,27,910/-. A sum of Rs.21,65,00,000/- was deposited in the High Court, and regarding rest, it was stated before the High Court that the same would be deposited after receiving the same from the auction-purchaser. The High Court finally disposed of both the writ petitions (Nos. 4533 and 4539 of 2011) holding that the appellants would have first right over the amount of pledged sugar, and respondent no. 3 was directed to make distribution of the amount collected in accordance with rules keeping in mind the rights of precedence of the parties. Consequently, the appellants approached respondent no. 3, but said authority rejected the claim of the appellants and held that the payment of Provident Fund amounting to Rs.4,66,40,511/- on account of dues to the Assistant Provident Fund Commissioner would be the first priority, and a sum of Rs.36,22,66,591/- plus interest shall be paid to the cane growers who supplied sugarcane to respondent no. 5 (Daulat Shetkari Sahakari Sakhar Karkhana Ltd.). It is further directed by respondent no. 3 that the balance amount, after auction of sugar stock, be paid to the workers of factory of respondent no. 5.

4. Aggrieved by aforesaid order of the Collector, Kolhapur (respondent no. 3), the appellants, namely, Sahyadri Co-operative Credit Society Ltd. and Navhind Co-operative Credit Society Ltd. filed Writ Petition Nos. 8452 of 2011 and 8453 of 2011 respectively before the High Court. Notices were issued and the respondents objected to the maintainability of the two writ petitions. Vide interim order dated 17.11.2011, the High Court passed common order in both the writ petitions declining interim stay prayed by the writ petitioners and observed that a sum of Rs.27,94,27,910/- deposited in the High Court shall continue to remain invested in fixed deposit and the objection relating to the maintainability shall be heard at the time of arguments on admission. In said order the High Court took note of the fact that the total amount realized after auction of 2,17,984 bags/ quintals of sugar manufactured by respondent no. 5 (including the disputed pledged sugar in favour of the appellants), is Rs.52,95,36,483/-. It is further observed by the High Court in the interim order dated 17.11.2011 that a sum of Rs.27,94,27,910/- was deposited in the High Court, and out of balance amount of Rs.25,01,08,573/- with the Collector, Kolhapur, an amount of Rs.20,00,00,000/- has been distributed amongst workers. And rest of the sum left with the Collector, as allowed by the High Court on 23.12.2011, was disbursed towards Provident Fund of workers. Finally, the High Court, vide impugned order dated 10.2.2012, dismissed the writ petitions on the ground that the appellant-creditors have alternative remedy available to them to file suit under Section 218 of the MLR Code.

5. Section 218 of the MLR Code reads as under: -

“218. Claims to attached property how to be disposed. –

(1) If any claim is set up by a third person to the property attached or proceeded against under the provisions of this Code, the Collector may on a formal inquiry held after reasonable notice, admit or reject it.

(2) The person against whom an order is made under sub-section (1) may, within one year from the date of the order, institute a suit to establish the right which he claims to the property attached or proceeded against, but subject to the result of such suit, if any, the order shall be conclusive.”

6. On behalf of the appellants it is argued that the claim of the appellants is independent of the MLR Code, and the Collector, Kolhapur, passed the order in exercise of power under the provisions of Sugarcane (Control) Order, 1966, as such the bar contained in clause 218(2) of the MLR Code is not applicable to them. In this connection, it is pointed out that the High Court, while disposing of the writ petitions filed in earlier round, had directed the Collector to disburse the sum keeping in mind the right of precedence.

7. It is further argued that the appellants, being secured creditors, had a right of precedence in repayment of dues outstanding against respondent no. 5, and sugar pledged in their favor was not liable to be attached by the respondent authorities. It is reiterated that there was already an order passed by the High Court on 12.8.2011 in Writ Petition Nos. 4533 of 2011

and 4539 of 2011 holding the right of precedence of the appellants in respect of the pledged sugar. Attention of this Court is drawn to the principle of law laid down by this Court in *Central Bank of India v. Siriguppa Sugars & Chemicals Ltd. and others* <sup>1</sup>, and it is submitted that the High Court has lost sight of right of precedence of pawnee, recognized in said case.

8. On the other hand, learned counsel for the contesting respondents argued that the transactions of alleged pledge in favour of the appellants are sham, and created only to defeat the payment due to the workers and the cane growers. In this connection, our attention is drawn to Annexure P-1, i.e. copy of Working Capital Loan Agreement. It is pointed out that in respect of loan disbursed on 31.3.2011 the agreement was registered later on 26.5.2011, and the document shows pledge of sugar was only promised.

9. In reply to the above argument, the appellants drew our attention again to the order dated 22.6.2011, passed in Writ Petition No. 4533 of 2011 (Annexure P-5 to Civil Appeal No. 1841 of 2013) and order dated 12.8.2011 passed in Writ Petition No. 4539 of 2011 (Annexure P-5 to Civil Appeal No. 1840 of 2013), wherein the High Court has observed that stock of sugar in question was pledged in favour of the appellants, and it is submitted that the orders in that round of litigation have attained finality, as such, the same cannot be questioned now.

10. We have considered the above submissions and also perused the record of the case. It is not disputed that in the earlier round of litigation appellants Navhind Co-operative Credit Society Ltd. and Sahyadri Co-operative Credit Society Ltd. filed Writ Petition Nos. 4533 of 2011 and 4539 of 2011 respectively which were disposed of by the High Court on 12.8.2011. It is also not disputed that in said writ petitions the factum relating to pledge made in favour of appellant Sahyadri Co-operative Credit Society Ltd of godown no. 6, and the pledge of godown nos. 7-I and 7-II in favour of appellant Navhind Co-operative Credit Society Ltd. by respondent no. 5 was considered, and the High Court accepted that the stock of sugar in question was pledged in favour of the appellants. However, the High Court observed that the order dated 28.5.2011, passed by the Commissioner of Sugar & Special Registrar, Co-operative Societies, Maharashtra, was not challenged, as such, no adjudication was made in respect of entitlement of the appellants as against the claims of workers' union or the sugarcane farmers. The High Court disposed of the writ petitions directing the Collector to consider the entitlement and priority of the appellants, sugarcane farmers and the workers. It appears that the order dated 12.8.2011 was passed by the High Court in the earlier round of litigation not only after hearing the respondents of said case but also the interveners, who are contesting respondents in the present round of litigation, as such, in our opinion, it is not open for the contesting respondents now to challenge the genuineness of the pledge made in favor of the appellants, as the order in the earlier round has attained finality.

11. Apart from this, we have examined the papers on record pertaining to the transactions of pledge by which respondent Nos. 5 and 6 pledged the sugar stock in question in favor of the appellants and we find no reason to doubt the transactions. Copy of letter No. CMA-856/2010-11 dated 21.2.2011, on the record, discloses that Kolhapur District Central Cooperative Bank Ltd. communicated "No Objection" to respondent no. 5, Daulat Shetkari

Sahakari Sakhar Karkhana Ltd., by enclosing No Objection Certificate in favour of respondent no. 6 Tasgaonkar Sugar Mills Ltd. for raising working capital loan from other financial institutions. Copy of resolution dated 6.3.2011, passed by Special General Body of Sahyadri Multi-State Co-operative Credit Society Ltd. (Annexure A-6 to additional affidavit filed on behalf of the appellant in Civil Appeal No. 1840 of 2013) shows that a decision was taken to raise loan of Rs.12,00,00,000/- against pledge of sugar. Consequential resolution dated 8.3.2011 (Annexure A-8) appears to have been passed by appellant Sahyadri Multi-State Co-operative Credit Society Ltd. in the meeting of the Board of Management Committee. Through letter dated 23.3.2011 (Annexure A-10) respondent no. 5 Daulat Shetkari Sahakari Sakhar Karkhana Ltd. informed the appellants giving consent for raising working capital against pledge of goods. Copy of letter No. Accts/Fin/1732/2010-11 dated 25.3.2011 (Annexure A-11 to additional affidavit filed in Civil Appeal No. 1840 of 2013) shows that respondent no. 5 Daulat Shetkari Sahakari Sakhar Karkhana Ltd. requested Kolhapur District Central Co-operative Bank Ltd. for issuance of NOC in favour of the appellant-societies specifying the godown numbers and the quantity of sugar in stock. Record further reveals that through letter No. CMA-868/2010-11 dated 29.3.2011 (Annexure A-14 to additional affidavit filed in Civil Appeal No. 1840 of 2013) Kolhapur District Central Co-operative Bank Ltd. gave consent for pledge of sugar stock of godown Nos. 6 and 7 in favor of the appellants. All the above documents remove the clouds of doubt as to the transactions of pledge in question in favour of the appellants.

12. In *Central Bank of India v. Siriguppa Sugars & Chemicals Ltd.* (supra), in similar facts, this Court has held as under: -

“17. Thus, going by the principles governing the matter propounded by 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. The High Court was, therefore, in error in passing an interim order to pay parts of the proceeds to the Cane Commissioner and to the Labour Commissioner for disbursement to the cane growers and to the employees. There is no dispute that the sugar was pledged with the appellant Bank for securing a loan of the first respondent and the loan had not been repaid. The goods were forcibly taken possession of at the instance of the revenue recovery authority from the custody of the pawnee, the appellant Bank. In view of the fact that the goods were validly pawned to the appellant Bank, the rights of the appellant Bank as pawnee cannot be affected by the orders of the Cane Commissioner or the demands made by him or the demands made on behalf of the workmen. Both the Cane Commissioner and the workmen in the absence of a liquidation, stand only as unsecured creditors and their rights cannot prevail over the rights of the pawnee of the goods.

18. We are also of the view that pending the writ appeals, the High Court ought not to have passed such an interim order of consequence especially in the light of the legal principles settled by this Court. The order of the High Court, therefore, cannot be sustained and calls for interference.”

13. In view of law laid down, as above, by this Court in *Central Bank of India v. Siriguppa Sugars & Chemicals Ltd.* (supra), and further considering the facts and circumstances of the case, we are of the opinion that the High Court has erred in law in dismissing the writ petitions filed by the appellants.

14. For the reasons, as discussed above, both the appeals deserve to be allowed. Accordingly, the appeals are allowed. The impugned judgment and order dated 10.2.2012, passed in Writ Petition Nos. 8452 of 2011 and 8453 of 2011 is set aside. We direct the authorities concerned to disburse the amount in the light of the observations made above regarding entitlement of the appellants with precedence over the dues payable to workers and sugarcane farmers, under Sugarcane (Control) Order, 1966. However, we clarify that the amount already distributed shall not be recovered from the workers and the sugarcane farmers. There shall be no order as to costs.

Judgment Referred.

<sup>1</sup>(2007) 8 SCC 0353