

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8231 OF 2017

Dalmia Bharat Sugar and Industries	]	
Limited, Ninaidevi Sahakari Sakhar	]	
Karkhana Unit having its office at	]	
Kavangali-Aarala, Taluka Shirala, District	]	
Sangli through its authorized signatory )	]	
Mr Bhimgouda N K (DGM Accounts) )	]	...Petitioner
	]	(Org. Appellant)
<b>Versus</b>	]	
	]	
1 M/s New Ball Bearings Company )	]	
A partnership firm registered under the )	]	
Indian Partnership Act, 1932 having its )	]	
Head Office at "Aaj Ka Anand" Building)	]	
Opposite Shivaji Statue, Shivaji Nagar )	]	
Pune through its partner Shri Bharatbhai)	]	
Labhshankar Pandya )	]	
	]	
2 Ninaidevi Sahakari Sakhar Karkhana )	]	
Limited, having its office at Kokrud, )	]	
Taluka Shirala, District Sangli )	]	...Respondents
	]	(No.1 Org.decrece Holder,
	]	No.2Org.Judgment debtor)

.....  
*Adv. S. S. Patwardhan (through VC.) a/w Adv. Rahul Desai, for  
Petitioner.*  
*Adv. Yash Joshi a/w Adv. Kaustubh Joshi, Adv. Sharvari Tipugade and  
Adv. Girish Mujumdar, for Respondent No.1.*  
.....

**CORAM : SHAILESH P. BRAHME, J.**

**RESERVED ON : 15<sup>th</sup> JUNE, 2026.**

**PRONOUNCED ON : 19<sup>th</sup> JUNE, 2026.**

**JUDGMENT :**

Heard both sides.

2. **Rule.** Rule is made returnable forthwith by the consent of parties.
  
3. Being aggrieved by the order dated 01.09.2016 passed below Exhibit-9 directing the petitioner to be impleaded in Regular Darkhast No.39 of 2015, present petition is filed under Article 227 of the Constitution of India.
  
4. The respondent No.1 is the Decree Holder of Special Civil Suit No.210 of 2009. The respondent No.2 is the judgment debtor, who suffered a money decree of Rs.2,25,912/- along with interest, which is sought to be executed. The Maharashtra State Cooperative Bank Limited had independently initiated the proceedings against the respondent No.2, borrower, under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act"). The petitioner is the consortium of banks, which purchased the assets of the respondent No.2-Sugar Factory in public

auction dated 01.09.2014.

5. In the above backdrop, the learned counsel, Mr. S. S. Patwardhan (through V.C.) appearing for the petitioner, submits that the petitioner is neither necessary nor proper party to the execution. The assets purchased by it were not encumbered by the respondent No.1- the Decree Holder. The petitioner can not be held liable for the transaction and judicial orders between the respondents *inter se*. It is submitted that the petitioner was a *bona fide* purchaser and it was not apprised of the proceedings pending between respondent No.1 and respondent No.2. The Executing Court committed grave error in observing that, as the assets of the Sugar Factory are purchased by the petitioner accepting dues, it is liable to pay the outstanding to the Decree Holder in execution.

6. The learned counsel for the petitioner submits that no timely steps are taken by the respondent No.1 to take out proceedings of attachment before judgment, as against the assets purchased by the petitioner in public auction. The reliance is placed on a judgment of Co-ordinate Bench of this Court dated 01.12.2025 in the case of ***Sangli Zilla Parishad Employees, Co-operative Credit Society, Limited, Sangli Versus Ninaidevi Sahakari Sakhar Karkhana Limited, Kokarud*** in Civil Writ Petition No.7905 of 2023, and on the judgments of Hon'ble

Supreme Court in the cases of *Rana Girders Limited Versus Union of India and Others*<sup>1</sup> and *State of Karnataka and Another Vs. Shreyas Papers (P) Ltd. and Others*.<sup>2</sup>

7. Per contra, the learned counsel appearing for the respondent No.1, the contesting party, submits that there was an attachment of the assets of the respondent No.2 and an endorsement to that effect, was recorded on 05.01.2012 on the memo of the execution. The objections of the petitioner can be gone into during the course of execution. It is submitted that, if the writ petition is allowed, there would be no remedy available for the Decree Holder to execute the decree. The respondent No.1 is deprived of the claim since 2009. As the entire liabilities are transferred to the petitioner, it can not run away from the liability towards the respondent No.1. Lastly, it is submitted that the petitioner has remedy under Section Order XXI Rule 46 C of CPC(H)., and therefore, the writ petition is not tenable.

8. The respondent No.1 had filed Special Civil Suit No.2110 of 2009 for recovery of a sum towards the goods supplied to the respondent No.2. It was decreed on 30.06.2010 to the extent of Rs.2,25,912.24/- with interest. The said decree is sought to be executed by the respondent No.1 against the respondent No.2 in Regular Darkhast

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1 (2013) 10 SCC 746.

2 (2006) 1 SCC 615.

No.39 of 2015. The Maharashtra State Co-operative Bank Limited has secured the assets of the respondent no.2 under SARFAESI Act. As per sales certificate following are the encumbrances created in favour of the creditor Bank :

**“List of Encumbrances/Dues :-**

1. As per para 8 of terms and conditions on Page No.13 of the tender document known dues are as under :-

Sr. No.	Particulars	As on Nov.13
1.	NA land revenue	3,25,000.00
2.	Electricity (MSEB)	1,22,105.27
3.	Provident fund	60,61,470/-
4.	Sales Tax	7,21,67,18.12 as on 2009-2010
5.	Professional tax	Nil
6.	Workers Salary	8,34,979/-as per letter no. 42/13-14, 21 <sup>st</sup> November 2013 from the Workers Union.
7.	Sugar Cane Purchase Tax	10,76,60,58.00 as on 2009-10

2. Any other liability not quantified as on the date of valuation of assets.”

9. In pursuance of the charge created as above, the creditor Bank conducted public auction of the properties of the respondent No.2 namely the factory building, plant, machinery, and land admeasuring 31.04 hectares. The petitioner was the successful bidder in the auction, which was held on 01.09.2014. The sale certificate was also issued to it. The petitioner was not apprised of the decree passed by the Civil Court and its execution. The learned counsel appearing for the respondent is unable to point out that, despite knowledge of the decree and the claim of the respondent No.1- the Decree Holder, the assets were purchased

by the petitioner.

10. The learned counsel for the respondent has adverted my attention to endorsement dated 05.01.2012 to show that the property was attached under Order XXI Rule 43. No order of attachment is placed on record. There is substance in the submission of learned counsel appearing for the petitioner that neither any recourse was taken to attachment before judgment nor was there any attachment during the course of execution. In that view of the matter, the claim accrued to the petitioner is independent than the liability of the Judgment Debtor towards the Decree Holder.

11. It is vehemently submitted by Mr. Patwardhan, learned counsel appearing for the petitioner, that the petitioner did not purchase the running business of the respondent No.2 and no liability can be foisted against it for the payment of outstandings. Reliance is placed on the judgment of the Co-ordinate Bench in the case of *Sangli Zilla Parishad Employees, Co-operative Credit Society, Limited, Sangli (supra)*. In that case, selfsame parties were before High Court, except the present Decree Holder. The Decree Holder was Sangli Zilla Parishad Employees Co-operative Credit Society, who had taken out the application for impleadment of auction purchaser, which was rejected by the Executing Court by the impugned order. The issue germane in the present case

was also fallen for consideration, which can be seen from paragraph No.8 of the judgment. Under identical facts, *inter alia* relying upon the judgments in the case of ***State of Karnataka*** (supra) and ***Rana Girders Limited*** (supra), it was held that the auction purchaser can not be held liable to discharge the liabilities arising out of business of the borrower. Pertinently, the selfsame tender condition quoted in paragraph No.9 of that judgment is applicable also in the present case.

12. Relying upon the pronouncements of the Hon'ble Supreme Court referred above, the following observations are recorded by the Coordinate Bench, which are also applicable to the present matter. They are as follows :

*“13. The aforesaid exposition of law would make it clear that if auction purchaser has purchased entire business as ongoing concern, it would be responsible to discharge liability of erstwhile owner. However, purchase in case of assets of dormant business, auction purchaser is not liable to discharge liability arising out of business of erstwhile owner. In present case, careful reading of stipulation in tender notice and sale certificate would show that auction purchaser has agreed to discharge all liabilities, dues of authorities and departments in respect of secured assets and if payable in law, attachable to secured assets, sale proceeds. It is, therefore, important to find*

*out whether dues claimed by petitioner were attachable to secured assets.”*

13. There is nothing on record to show entire business with ongoing concerned was purchased by the petitioner. It is not that the petitioner accepted all the liabilities of the respondent No.2. What was purchased were the assets free from all the encumbrances. The petitioner is a *bona fide* purchaser for value without notice. It can not be said to be necessary or proper party. I find that the Executing Court committed an error of jurisdiction in extending the liability to the petitioner.

14. It is sought to be contended by the the respondent that the petitioner has a remedy of appeal under Order XXI Rule 46(H) of CPC. It is relevant to notice that the Decree Holder did not take out any proceeding under Order XXI Rule 46 of CPC. What was adjudicated by the Executing Court was an application under Order I Rule 10 of the CPC. The petitioner had no notice that it was to face proceedings under Order XXI Rule 46. The parties also did not advance any arguments in that regard. Hence, the plea of an alternative remedy cannot be countenanced. I find that the writ petition is maintainable and the objection raised by the respondents stands overruled.

15. For the reasons stated hereinabove, I find that the Executing

Court has committed an error of jurisdiction and interference under Article 227 is called for. Hence, the following order is passed :

**::ORDER::**

- 1) Rule is made absolute in terms of prayer clause 'A'.
- 2) There shall be order as to cost.

**[ SHAILESH P. BRAHME ]**