

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.962 OF 2015

Himanshu Kothari	..	Petitioner
Versus		
Pen Coop. Urban Bank Ltd.	..	Respondent

WITH

CRI. APPLICATION NO.133 OF 2015

M/s.MSTC Ltd.	..	Applicant
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In the matter of:

Himanshu Kothari	..	Petitioner
Versus		
The Pen Cooperative Urban Bank Ltd. through the Administrator	..	Respondent

WITH

CRI. APPLICATION NO.364 OF 2015

Himanshu V. Kothari	..	Applicant
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In the matter of:

Himanshu V. Kothari	..	Petitioner
-Versus-		
Pen Coop. Urban Bank Ltd.	..	Respondent

ALONG WITH

WRIT PETITION NO.1390 OF 2016

MSTC Ltd.	..	Petitioner
Versus		

The Directorate of Enforcement & Ors.

.. Respondents

Mr. Avinash Rambelge with Aditya Chitale i/b,. MNSQ Legal i/b. W.P.1390 of 2016

Mr. Shram Kulkarni with Sachin Chavan for petitioners in W.P.962 of 2015 with Application Nos. 133 and 364 of 2015

Mr. Ratnesh Dube h/f Rutuja Ambekar for respondent No.1 in W.P.962 of 2015

Mr. S.K.Shinde, Addl. Public Prosecutor with Mr. Y.M.Nakhwa, APP for E.D.

Mr. Dinesh Adsule, Special P.P. for State Respondent no.4

CORAM : V.M.KANADE &
MRS. SWAPNA JOSHI, JJ

DATE : 7th October 2016.

P.C.

1] Heard the learned Counsel for the petitioner and learned APP for State. By this petition which is filed under Article 226 of the Constitution of India, the petitioner is seeking following reliefs:-

(A) Be pleased to forthwith release the properties attached under the provisions of money laundering act more particularly stated in the final attachment order dated 9th October 2014 (Exh.F) at paragraph 4.3 passed by the adjudicating authority under the Money Laundering Act, 2002, in favour of the competent authority duly constituted under the provisions of M.P.I.D. Act;

(B) Be pleased to direct the competent authority i.e. respondent No.3 duly appointed by the State Government under section 4 of the M.P.I.D. Act to forthwith take steps for releasing the properties under section 8(7) of the Prevention

of Money Laundering Act, 2002;

(C) Be pleased to direct the Directorate i.e. respondent No.2 to forthwith take steps for releasing the properties under section 8(7) of the Prevention of Money Laundering Act, 2002 and entrust the same to the competent authority under M.P.I.D. Act.”

2] The brief facts which are relevant for the purpose of deciding this petition are as under:-

The petitioner has deposited certain amounts with the Pen Urban Cooperative bank. However, on account of mismanagement and misfeasance on the part of the Managing Committee of the said Bank, the bank went into liquidation and as a result depositor's money was freezed. A criminal complaint was also filed against the persons who are responsible for committing this fraud and embazzelment. The M.P.I.D. court passed an order of attachment of properties which were purchased out of the this money which was siphoned off from the bank.

3] When the investigations were completed by the Enforcement Directorate, a case was registered under the Prevention of Money Laundering Act, 2002. In the said investigation, the accused and the persons who had purchased the properties in their name from the monies

siphoned off from the bank have given a statement which is recorded under section 164 of the Code of Criminal Procedure that they have no objection if these properties are sold for the recovery of amounts due and payable to the depositors. Their statements were also recorded in the attachment proceedings under the Prevention of Money Laundering Act, 2002 and there also they have said that they have no interest in the properties in question.

4] Taking into consideration the aforesaid facts, we are also of the view that instead of these properties vesting in the Central Government as per the provisions of the Prevention of Money Laundering Act, 2002, it would be advisable if this money is utilised for the purpose of disbursement of amount to the rightful claimants. We, therefore, direct the Enforcement Directorate to release and hand over these properties under the M.P.I.D. Act to respondent No.3 herein. Thereafter the competent authority shall act in accordance with the provisions of M.P.I.D. Act. Petition is allowed to the aforesaid extent and disposed of.

(MRS. SWAPNA JOSHI, J)

(V.M.KANADE, J)