

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.755 OF 2003

Afsar Ali Abdul Rehman ...
Appellant
Vs
The State of Maharashtra ...
Respondent

...

Ms. Anita Kuttikrishnan I/by S.D.Khot for the
Appellant.
Mr. A.R.Patil AGP for the Respondent-State.
Mr. Sunil Pawar, EOW Unit VII present in Court.

**CORAM : K. K. TATED &
SANDEEP K. SHINDE**

JJ.

DATE : 24 AUGUST, 2018

P.C. :

Heard learned counsel for Parties.

2 By this First Appeal, the Appellant is
challenging the orders dated 30.9.2002, 17.10.2002
and 31.10.2002 passed by the Trial Court in Criminal
Miscellaneous Application No.533 of 2002 under
Section 11 of the Maharashtra Protection of Interest of

Depositors Act, 1999 (Said Act) for releasing their properties situated at C-17, 699/3/3, Prem Nagar, Jogeshwari (East), Mumbai from attachment.

3 It is the main contention of the learned counsel for the Appellant that the Respondent neglected to place on record Notification, if any, issued under Section 4 of the said Act. It is her case that without issuing Notification under Section 4 of the said Act, Respondents attached their properties which is against law. She submits that on this ground alone, the impugned order passed by the Trial Court dated 30.9.2002, 17.10.2002 and 31.10.2002 is required to be set aside directing the Respondents to release their properties from attachment.

4 Yesterday this Court called upon the learned AGP to place on record Notification, if any, issued by them under Section 4 of the said Act. Today, the learned AGP Mr. Patil after taking instructions from the concerned officer

who is present in the Court makes a statement that there is no Notification issued by them as required under Section 4 of the said Act in respect of the said property. To that effect, he has given in writing with signature of the concerned officer. Same is taken on record and marked 'X' for Identification.

5 Without issuing Notification as required under Section 4 of the said Act, the Respondents attached Appellant's property under the said Act. Reading of Section 4 shows that it is mandatory on the part of the Respondent to issue Notification before taking any steps under the said Act. Section 4 reads thus:-

***SECTION 04: ATTACHMENT OF PROPERTY ON
DEFAULT OF RETURN OF DEPOSITS***

(1)Notwithstanding anything contained in any other law for the time being in force,

(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed,

*(a)to return the deposit after maturity or on demand by the depositor;
or*

(b)to pay interest or other assured benefit; or

(c)to provide the service promised against such deposit; or

(ii)where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them; and if the

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Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the Government may, in order to protect the interest of the depositors of such Financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or the property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment as the Government may think fit.

(2) On the publication of the order under sub-section (1), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the Government, pending further order from the Designated Court.

(3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation.

On this ground only, the order passed by the Trial Court dated 30.9.2002, 17.10.2002 and 31.10.2002 in Criminal Miscellaneous Application No.533 of 2002 is required to be set aside. Hence, the following order:

(a) Orders dated 30.9.2002,
17.10.2002 and 31.10.2002 passed by
Special Judge, Special Court constituted

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under MPID Act, 1999, Greater Bombay
in Cri. Miscellaneous Application No.533
of 2002 in C.R.No.121 of 2001 is set
aside.

(b) Respondents are directed to
raise the attachment immediately in
respect of property situated at C-17,
699/3/3, Prem Nagar, Jogeshwari
(East), Mumbai.

(c) Respondents are free to take
action as per law if they so desire after
following due process of law.

(d) First Appeal allowed
accordingly.

(e) No order as to costs.

(SANDEEP K. SHINDE, J.)

(K. K. TATED, J.)

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