

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1080 OF 2017**

Mr. K.L. Jain

....Appellant.

Vs.

The State of Maharashtra & Ors.

....Respondents.

Mr. Alankar Kirpekar i/by Deepak Sabharwal & Associates alongwith Shaila Taware for the Appellant.

Mr. Pradeep D. Gharat, Special Counsel a/w Ms. M.H. Mhatre, APP for the Respondents-State.

**CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 9th MARCH, 2018.

P.C.:-

The Appellant is aggrieved and dissatisfied with an order passed on 5th December, 2017 by the Special Judge, presiding over a Court under the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, "*the MPID Act*").

2 An application was filed by the Appellant before us in his capacity as an owner of an immovable property. The property is a flat bearing No. 14-C, Tower No. 19, Sector 48, Central Park-2, now

Gurugram, earlier known as Gurgaon, Haryana.

3 He states that he had inducted the third Respondent to this Appeal as a tenant/licensee in this property/flat. The flat belongs to the Appellant and proof of ownership was tendered. Admittedly, the licensee was paying to the Appellant licensor/lessor, in addition to a deposit, (which is styled as one time deposit), monthly fee/rent. The rentals were determined Rs.55,000/- whereas, the one time security deposit collected was Rs.1,10,000/-. The argument was that such a flat, which belongs to an independent third party and in the absence of any privity of contract with the accused otherwise, or in the absence of any nexus or connection with his business activities, this flat was erroneously and wrongfully sealed. As a pre-condition for removing of the seal, the learned Special Judge has passed the following order-

“ORDER

1. Application is allowed subject to condition that the applicant shall deposit Rs.5,50,000/- (Five Lakh Fifty Thousand rupees only) within 30 days from the date of order.

2. Respondent no.1 is directed to de-seal and give vacant possession of suit property situated at 14-C, Tower no. 19, Sector 48, Central Park-2, Gurgaon, Haryana to the applicant after effecting panchanama in presence of respondent no. 2 and 3

or either of them.

3. Respondent no.1 is directed to inform the applicant, respondent nos. 2 and 3 in advance about date of effecting panchanama.

4. Respondent no.1 is directed to seize all valuable articles, found in the suit property to secure interest of depositors, for sale and prepare detail panchanama.

5. On compliance of above conditions, the suit property shall deemed to be released from attachment.

Dated:-05.12.2017”

4 The correctness of this order is under challenge in this Appeal.

5 Having heard both sides, we find that, in the scheme of the MPID Act 1999, there could not have been any authority to go and seal the flat. That means taking over possession, locking it and placing a seal on its outer-side door. That would disallow even the owner of the flat to enter it, leave alone, deal with it.

6 If this drastic action was otherwise permissible or within

the scheme of the MPID, Act, 1999, we could have very well understood the consequences of such sealing and then obliging the Appellant to move the Special Judge with an Application to remove the seal and conditional order is passed thereon. The sealing cannot be equated with attachment.

7 Mr. Gharat, the learned Special PP appearing for Respondent No. 1, with his persuasive ability, could not show us any attachment of this flat. He conceded that any such attachment has not been levied yet, but the authorities are in the process of doing so. That is a different aspect altogether. Going and sealing property like this, without any power or authority in the scheme of the law, is enough for us to set aside the impugned order.

8 Considering the nature of the act and its drastic consequences, the learned Judge was in complete error in imposing the condition on a person claiming to be the owner of the flat and, *prima-facie*, unconnected with the crime.

9 For these reasons, we allow the Appeal at this stage itself.

The order under Appeal is quashed and set aside. We, however, clarify that it will be open for the first Respondent to act in accordance with law and in the event they desire to attach the property, they should proceed strictly within the four corners of the MPID Act 1999 and our order directing them to remove the seal shall not preclude or prohibit them from doing so.

10 We clarify that we have not expressed any opinion on the rival contentions, insofar as the right, title and interest in the immovable property.

11 On the request of Shri Gharat, the learned Special P.P., we grant 15 days time to the first Respondent to remove the seal on the flat. While removing the seal in the presence of the Appellant or his duly authorized representative, opening the flat, entering it, it will be open for the Investigating Officer to remove such incriminating articles and documents as are subject matter of the crime but, clearly identifying them and entering them in a panchanama. That panchanama be drawn in the presence of the Appellant or his authorized representative and his endorsement obtained thereon. For

a period of 15 days, we direct that the Appellant, without prejudice to his rights and contentions, not to create any third party interest in the subject flat.

PRAKASH D. NAIK, J

S.C.DHARMADHIKARI, J.