IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO.942 OF 2018
WITH
CIVIL APPLICATION NO.14936 OF 2018
IN
WRIT PETITION NO.942 OF 2018
WITH
CIVIL APPLICATION NO.14935 OF 2018
IN
WRIT PETITION NO.942 OF 2018
WITH
CIVIL APPLICATION NO.1242 OF 2019
IN
WRIT PETITION NO.942 OF 2018

THE OSMANABAD DISTRICT CENTRAL CO OPERATIVE BANK LTD ..PETITIONER

VERSUS

ASSISTANT PROVIDENT FUND COMMISSIONER SOLAPUR AND OTHERS ..RESPONDENTS

WITH
WRIT PETITION NO.2600 OF 2018

THE MAHARASHTRA STATE CO-OPERATIVE BANK LTD. ..PETITIONER

VERSUS

ASSISTANT PROVIDENT FUND COMMISSIONER SOLAPUR AND OTHERS ..RESPONDENTS

WITH
WRIT PETITION NO.2777 OF 2018

THE MAHARASHTRA STATE CO-OPERATIVE BANK LTD. ..PETITIONER

VERSUS

ASSISTANT PROVIDENT FUND COMMISSIONER SOLAPUR AND OTHERS ..RESPONDENTS

WITH
WRIT PETITION NO.2897 OF 2018

THE MAHARASHTRA STATE CO-OPERATIVE BANK LTD. ..PETITIONER

VERSUS

ASSISTANT PROVIDENT FUND COMMISSIONER SOLAPUR AND OTHERS ..RESPONDENTS

WITH
WRIT PETITION NO.3694 OF 2018

THE CHIKHALI URBAN CO-OPERATIVE BANK LTD. ..PETITIONER

VERSUS

ASSISTANT PROVIDENT FUND COMMISSIONER SOLAPUR AND OTHERS ..RESPONDENTS

…

Mr. R. N. Dhorde, Senior Advocate with Mr. Vikram R. Dhorde, Advocates for the Petitioners.
Mr. N. K. Chaudhari h/f Mr. K. B. Chaudhari, Advocates for Respondent No.1.
Mr. Hiraji T. Gaikwad, Advocate for Respondent No.2.

…

CORAM : S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.

DATED : 02nd MAY, 2019.

PER COURT:-

1. The petitioners in these writ petitions contend that the warrant of sale issued by the recovery officer is illegal and that secured

creditor has priority of claim over the provident fund dues.

2. We have heard Mr. Dhorde, learned senior counsel and Mr. Suryawanshi, learned counsel adopts the argument of Mr. Dhorde, learned senior counsel. We have also heard Mr. Chaudhary, learned counsel for Provident Fund Department.

3. The learned counsel for the respective parties vehemently canvassed the submissions. However, on the last date it was brought to our notice that Section 26-E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 has not yet been brought into force. The reference is also given to the judgment of the Delhi High Court in **CRL.A. 143/2018 & Crl. M.A. 2262/2018** dated **02.04.2019** wherein it was observed as under:

> "129. At the hearing, however, it was noted that some of the amendments made to the SARFEAESI Act by second chapter of Act No.44 of 2016 are yet to come into force and this includes the chapter (no.IV-A) on the subject of "registration by secured creditors and other creditors". Section 26-E (priority to secured creditors) with reference, *inter alia*, to which the aforementioned view has been taken by the Appellate Tribunal falls in said Chapter (no.IV-A) by virtue of Section 18 of the Act No.44 of 2016. Strictly speaking, therefore, a view to the effect taken by the tribunal by reference to Section 26-E (which is yet to come into effect) was

> impermissible. Be that as it may, since the said Chapter (no.IV-A) has been inserted in SARFEAESI Act by the legislature, and is likely to come into force in future, its effect on the issues being addressed in these matters may be considered also on the assumption that it is part of the law."

4. The edifice of the argument of petitioners is based on the Section 26-E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002.

5. The Section 1 of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, more particularly sub-section (2) of Section 1 states that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Proviso to sub-section (2) of Section 1 further provides that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision. Chapter IV-A includes provisions from Section 26-B to 26-E. Section 26-B (1) states that the Central Government may by notification, extend the provisions of Chapter IV relating to Central Registry to all creditors other than secured creditors as defined in clause (zd) of sub-section (1) of section 2, for

creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower. Sub-section (2) of section 26-B further states that from the date of notification under sub-section (1), any creditor including the secured creditor may file particulars of transactions of creation, modification or satisfaction of any security interest with the Central Registry in such form and manner as may be prescribed. The Section 26-E states that notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

6. No such notification is placed on record to suggest that the said provisions (Section 26-E) has come into force pursuant to the notification issued by the Central Government.

7. In absence thereof, the reliance cannot be placed on Section 26-E of SARFEAESI Act.

8. The law as stood prior to the provision on which reliance is placed by the learned counsel for

the petitioner viz. 26-E of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is no longer *res integra* in view of the judgment of the Apex Court in case of **Maharashtra State Co-operative Bank Limited Vs. Assistant Provident Fund Commissioner** reported in **AIR (2010) SCC 868.**

9. In light of the above, relief prayed cannot be granted. We really appreciate the fairness and assistance of Mr. R. N. Dhorde, learned senior counsel as an officer of the Court for bringing on record the correct position of law.

10. Writ Petitions stand disposed of. No costs.

11. In view of disposal of writ petitions, present civil applications also stand disposed of.

(A. M. DHAVALE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/May-19