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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 518 OF 2019

Atul Bhalchandra Kulkarni & Anr. ... Appellants
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. K. B. Rajput, for the Appellants.

Mr. Angad R. More i/b Sandeep Karnik, for Respondent No. 3..

Mrs. M. M. Deshmukh, APP for the Respondent-State.

**CORAM : INDRAJIT MAHANTY, &
A. M. BADAR, JJ.**

DATE : JULY 23, 2019

PC :

1. Heard the learned counsel for the respective parties in this batch of appeals filed under Section 11 of the Maharashtra Protection of Interest of Depositors Act (hereinafter referred to as MPID Act). In these appeals, orders dated 26th October 2018 passed in Miscellaneous Application Nos.840 of 2018, 841 of 2018 and 842 of 2018 arising out of MPID Case No.5 of 2001 have come to be challenged. In this batch of applications, it appears from the impugned order, that these three applications were filed by the Appellants. Directions were issued by the Designated court inter

alia allowing the said applications and directing respondent no.2 (Competent Authority) with the assistance of respondent no.1 i.e. the State of Maharashtra, EOW, Unit VII, to take physical possession of rented premises from various tenants/purchasers of tenanted rights/premises locked.

2. At the very outset, senior learned advocate appearing for the appellants submitted that the impugned orders cannot be sustained in view of the fact that the Appellants had filed such an application did not possess the necessary “locus standi” and further without making the appellants herein (tenants), who are necessary parties, parties in the application before the Designated court. On perusal of the impugned order and on query to the learned counsel appearing for the Appellants, he fairly admitted that the present appellants were necessary parties, since directions had been sought in the said applications for their removal and for recovery of possession of the tenanted premises from them.

3. After hearing the learned counsel for the respective parties, without entering into the merits of the other contentions

placed, we are prima facie satisfied that the present batch of applications, at the behest of the Appellants ought not to have been entertained by the Designated court, for the simple reason that necessary parties against whom directions had been sought had not been impleaded in the said applications. We are constrained to record our concern as to how the Designated court proceeded to pass the impugned order, without ensuring that the parties who were likely to be adversely impacted, upon the directions sought for being issued.

4. Accordingly, we have no hesitation in setting aside the impugned orders on the ground that the applicant(accused) had failed to implead necessary parties in his application before the Designated court. Consequently, we set aside the order dated 26th October 2018.

5. We, further, grant liberty to the Appellants, if he is so advised, to initiate appropriate proceedings by making all necessary parties, party to such proceedings, but at the same time, leave open the issues raised by the appellants herein, questioning

the *locus standi* of the Appellants for initiating such a proceeding.

6. Before parting, we hereby direct that the order of the Designated court relating to deposit of rent with the Economic Offences Wing (EOW) and/or other directions must be adhered to and complied by the Appellants.

7. We further direct that by various interim orders passed from time to time, this court had directed continuation of possession in the hands of the appellants subject to deposit of rent with the Economic Offences Wing. We observe that those directions shall continue subject to any modification that may be made by the Designated court from time to time, if such circumstance arise.

8. In terms of the aforesaid directions, the appeal stands disposed of. With disposal of the appeals, pending application, if any, also stands disposed of.

Sd/-
[A. M. BADAR, J.]

Sd/-
[INDRAJIT MAHANTY, J.]

Vinayak Halemath