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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3820 OF 2018

The Cosmos Co-operative Bank .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

Ms. Sayyam Maheshwari i/by Raval - Shah & Co. for Petitioner.
Mr. K. S. Thorat, AGP for Respondent Nos.1 & 2.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

NOVEMBER 13, 2019.

P.C.

1. On 1st September, 2016 the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFESI Act) was amended by a Central Legislation vide Act No. 44 of 2016. Section 26E was inserted in the statute book. It reads as under :-

“26E. Priority to secured creditors. - 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.

Explanation. - For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.”

2. The Maharashtra Value Added Tax Act, 2002 which came into force on 1st April, 2005. Vide Section 37 it was stipulated as under:-

“37. Liability under this Act to be the first charge. - Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, sum forfeited, fine or any other sum payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer or, as the case may be, person”.

3. Suffice it to state that Section 26E of the SARFESI Act has a *non obstante* clause and so does Section 37 of the Maharashtra Value Added Tax Act, 2002, but notwithstanding the *non obstante* clause in Section 37 it is subject to any provision regarding creation of first charge in any Central Act. Meaning thereby, harmoniously read, a secured creditor would have a first

charge over an asset and the charge created in favour of the State of Maharashtra under Section 37 of the Maharashtra Value Added Tax Act, 2002 would be subject to the first charge created by the Central Legislation which in the instant case would be SARFESI Act, 2002.

4. Thus, we hold that the Petitioner, Co-operative Bank, would have the first lien over the sale proceeds realised by selling the secured assets. If there is any surplus, the same would be credited to the account of the State of Maharashtra.

3. Noting that the dues of the Petitioner as claimed in the notice under Section 13(2) of the SARFESI Act were ₹ 123/- Crores, we direct that the amount lying in this Court pursuant to sale of Flat No. 302, Heera Kunj, Bhagat Singh Road, Vile Parle (W), Mumbai 400 056 together with interest which is accrued thereon shall be released by the Registry of this Court in the name of the Petitioner for the reason the said amount is much less than ₹ 123/- crores.

4. The Writ Petition is accordingly disposed of.

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE