

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1211 OF 2018

IN

CRIMINAL APPEAL NO.813 OF 2016

Shri Suresh Raju Shetty

... Applicant/Appellant

versus

The State of Maharashtra and Anr.

... Respondents

Mr.Sanjeev Kadam a/w Mr.Ramdas
Hake Patil for the Applicant/Appellant.

Mr.J.P.Yagnik, APP for State.

Mr.Vinay Bhanushali for Respondent
No.2.

CORAM :- S. C. DHARMADHIKARI &
G.S.PATEL, JJ.

DATE :- OCTOBER 3, 2019

P.C. :-

1. We have heard both sides on this application.
2. The apprehension of the appellant is that this Court's detailed order and judgment disposing of the Criminal Appeal is being construed as a permission or a liberty to agitate

grievances concerning the attachment of all the immovable properties and that the order is restricted only to the commercial premises more particularly described as Sairaj Bar and Restaurant, Gala Nos.1, 2, 3, 8 and 9, Pallav Niwas, J.N.Road, Mulund (West), Mumbai.

3. There are other premises styled as Room Nos.1 and 3 in the very building and it is complained that though the order passed by the trial Court is set aside in its entirety granting liberty to the parties to raise objections to the attachment of both, the commercial as also the residential property, the learned Judge is not allowing that course to be adopted. He insists that the objections be restricted to the commercial premises.

4. We have perused the order passed by this Court. Every order passed by this Court must be read in its entirety. The order of the higher Court quashes and sets aside the trial Court's order in relation to Sairaj Bar and Restaurant and directs that the objections to the attachment of that property be considered and maintains the order of the trial Court in regard the other properties. However, during the course of

hearing of the Criminal Appeal No.813 of 2016, there was another order passed prior to the order of 30th November, 2017 which, took the affidavit of the appellant on record. In that affidavit, the appellant stated that he had complied with the earlier order and deposited a sum of Rs.40,00,000/- and which sum is lying invested. Further, he is 62 years of age, having no source of income and is dependent solely on his married daughter who is taking care of his daily needs. What has been thereafter done by this Court is to list the matters, namely, the Criminal Appeal and all applications together.

5. From the previous orders, what we have noted is that on 11th October, 2017, this Court had recorded the statement of Mr.Kadam appearing for the appellant. It is to the effect that the daughter of the appellant is making sincere and genuine efforts to repay some funds which are due and payable to the investors.

6. We have thereafter noted in the order of 21st November, 2017 that the immovable property, which is the restaurant-cum-bar business, was in possession of a conductor under a conducting arrangement. That conductor/licensee was paying a

sum of Rs.60,000/- per month. In relation to that, the objector-Satyaprakash Laxmi Singh was directed to file an affidavit. The statement of the objector-Satyaprakash Laxmi Singh was also recorded that he will not create any third party interest nor induct any third party in possession even under licensing arrangement in future and except with prior leave of the competent Court. The matter, therefore, is understood as being restricted to the commercial premises.

7. However, the order passed by this Court records that one application-Exhibit 22 was filed in the competent Court. The Court was seized of that application. The Court was seized of the issue in relation to this application. This application was heard and an order came to be passed. The operative part of the order dated 16th November, 2016 has been reproduced in para 9. Thereafter, from para 10 onwards, the order records the submissions of the appellant's advocate Mr.Kadam. It also records the submissions on the question of interpretation of the legal provisions. Then comes the reference to the impugned order. Exhibit-22 was filed by the informant to take appropriate steps/action against the appellant for disposing of the properties. The appellant was alleged to have floated a scheme

and committed default. He was arrested. Apart from three immovable properties, a few bank accounts were attached/frozen. Then, the learned Judge refers to the order passed by the Designated Court after the application-Exhibit 22 was filed. In para 18, there is a reference made to the order of the learned Judge at internal page 5 which concerns the objection of the appellant-Suresh Raju Shetty. There was a distinct objector-Satyaprakash Laxmi Singh. This Court then makes a reference to internal pages 6 and 7 of the order which relate to the steps to be taken, namely, first to treat the application-Exhibit 22 as made under Section 8 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as the **“MPID Act”**) and to decide whether the transfer was a *mala fide* transfer and secondly, to proceed under Section 439(2) of the Code of Criminal Procedure, 1973 for cancellation of the bail granted to the accused. The complaint was that the orders took note of the objections styled as Exhibits 1-D and 1-K. The order, according to the appellant, purports to deal with the objections, but under Section 5(3) of the MPID Act. Application-Exhibit 22 and its contents are referred to in the internal pages 16 and 17

of the order. The complaint was that a common or composite order is passed purporting to deal with all the applications/objections. The argument was that this is not permissible in law. This argument is noted in para 18 and equally the complaint that the learned Judge has omitted from consideration the objection that the property has been sold after it was purchased and prior to the commencement of the investment business. The date of the purchase is held to be immaterial and the learned Judge says that it need not be gone into. Thereafter, the mode of transfer is also termed as immaterial. All these arguments are noted and this Court found that the appeals have been filed challenging the order passed by the learned trial Judge. These appeals were opposed before us.

8. The contra argument is that the attachment is rightly levied. It is then stated that the objections are raised by one person who is an accused. His version cannot be treated as final. Thereafter in para 22, this Court observed that the objections reproduced in the foregoing paragraphs and particularly of the appellant in Criminal Appeal No.813 of 2016 concern an attachment levied pursuant to a notification dated 18th March, 2016. That is a notification which is issued by the

State Government in purported exercise of the powers conferred by Sections 4, 5, 8 and 12 of the MPID Act. However, before that, the State has recorded its satisfaction that the financial establishment and its Chairman/Directors are not likely to return the deposit to the depositors and hence, the Government has to protect the interest of the depositors. The notification refers to the property and states that the properties specified in the Schedule are alleged to have been acquired by the financial establishment out of the deposits collected from the depositors. The properties are listed in the schedule. Then, the reference is made to the show cause notice where the appellant is called upon to show cause as to why the attachment should not be made absolute. Though this Court's order in para 22 says that it is concerned with one immovable property styled as Sairaj Bar and Restaurant and the arguments in relation to that are noted in para 23, the subsequent observations are that the learned Judge has not noted the scheme of the Securitisation and Reconstruction of Financial Assets Enforcement of Security Interest Act, 2002 (for short, "**SARFAESI Act**"). The scheme of that Act, and which is stated to be not affected by the MPID Act, is required to be

noted. The order, therefore, highlights as to how the learned Judge was duty bound to note the same.

9. It is true that the trial Court's order has been set aside by this Court. The order of the trial Court impugned in this appeal has been quashed and set aside in relation to the property, namely, Sairaj Bar and Restaurant, but eventually, it directs that the objections of the appellants in both the appeals shall be decided afresh on merits, uninfluenced by the earlier observations and findings of the trial Court. The condition that was imposed on the appellant-Satyaprakash Laxmi Singh, therefore, needs to be considered by us.

10. Mr.Kadam has also brought to our notice the affidavit that has been filed by the appellant-Suresh Raju Shetty. In that affidavit, it is stated that the appellant in Criminal Appeal No.813 of 2016 has undertaken not to dispose of or alienate the property styled as a residential house being Room No.3, Pallav Niwas, first floor, J.N.Road, Mulund (W), Mumbai. The notification referred to in the order passed by this Court, and which is also extensively referred by the learned trial Judge, is of 18th March, 2016. In that, there is a Schedule. That Schedule

refers to not only the commercial premises, but the residential premises as also the immovable property. When the order of the trial Court is set aside, may be with reference to one property, but this Court's order in para 26 further directs that the objections of the appellants in both the appeals shall be decided afresh on merits, uninfluenced by the earlier observations and finding of the trial Court, then, in the facts and circumstances peculiar to this case, the learned trial Judge should not have restricted the inquiry only to the objections concerning Sairaj Bar and Restaurant. He should have permitted the appellants to resist the attachment to both, the residential as also commercial premises. That is how the objections would have to be dealt with pursuant to our order.

11. We do not think that the learned trial Judge was justified in informing the parties that the objections in relation to the residential premises would not be considered by him. More so, when he had before him specific objections of the accused-Suresh Raju Shetty in writing duly forwarded to him. They are on his file. These objections are of 28th July, 2016 and copy of which is at pages 41 to 43 of the paper-book.

12. Today also, this aspect becomes clear because of the affidavit filed by Suresh Raju Shetty in Criminal Appeal No.813 of 2016 on 7th November, 2017. This affidavit, to the extent relevant, reads as under:-

“I further say that I undertake to not to dispose off or alienate the property which is residential house property i.e. Room No.3, Pallav Niwas, 1st Floor, J.N.Road, Mulund (W), Mumbai - 400 080 till the final disposal of MPID case No.8 of 2005 pending before the MPID Court, Mumbai. Similarly an injunction order to that effect is already passed against me.”

13. In the circumstances, we do not think that it would be fair, just or proper to restrict the inquiry to the objections to the commercial property alone. The objections would have to be taken in their entirety and they should concern the residential property equally. Once the orders are set aside and all the objections are directed to be decided afresh on merits, then, needless to clarify that the learned Judge shall now consider the objections raised by the appellants in the Criminal Appeals and they will cover both, the residential as also the commercial premises.

14. However, the objectors shall not be entitled to object to the attachment of the movable properties and particularly, the bank accounts.

15. The Criminal Application No.1211 of 2018 in Criminal Appeal No.813 of 2016 is allowed accordingly.

16. The objections will now be considered in accordance with law.

17. The learned trial Judge's observations and findings recorded in the roznama dated 22nd August, 2019 shall stand set aside. He will consider the objections raised by the respective objectors to the attachment of the immovable properties mentioned in the Schedule to the notification. That notification is dated 18th March, 2016.

18. When we issued this direction, it was brought to our notice that Special Case No.8 of 2005 has proceeded to the extent of examining five prosecution witnesses/investors. Now, two more witnesses are going to be examined by the prosecution, namely, the investigating officer and one more

investor. The prosecution will then conclude its evidence. These witnesses will have to be cross-examined by the appellant. The cross-examination, according to Mr.Kadam, will be carried on day-to-day and no unnecessary adjournments will be sought by the appellant. The appellant feels that his interest is equally protected and secured by a day-to-day trial. He will, therefore, co-operate with the trial Court in expeditious disposal of the Special Case itself. He will also endeavour to conclude the defence evidence, if any, within the time schedule prescribed by this Court. Both sides, therefore, feel that instead of having the objections decided and thereafter the trial, it would be in the interest of justice if the trial and then the objections are taken-up. If the trial Judge accepts the prosecution case and proceeds to convict the accused and sentence him, then, while directing further steps in accordance with law, including sale of attached properties, all objections raised and pending on his file can be decided by the trial Judge.

19. Therefore, the learned trial Judge shall dispose of the Special Case No.8 of 2005 latest by 15th December, 2019.

20. The Criminal Application No.1211 of 2018 stands disposed of accordingly.

(S.C.DHARMADHIKARI, J.)

(G.S.PATEL, J.)