Jayant D. Kandarkar
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION ST. NO. 22404 OF 2019

Reliance Home Finance Ltd. & Anr. .. Petitioners

Vs.

The State of Maharashtra & Ors. .. Respondents

....

Mr. Rohan Savant a/w Mr. Nikhil Rajani & Ms. Jyoti Sanap i/b M/s. V.Deshpande & Co. for Petitioners

Mr. K.S. Thorat AGP for Respondent Nos. 1 to 4

....

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

DATED : NOVEMBER 19, 2019

P.C.:

1. Heard learned counsel for the parties. On November 13, 2019 Writ Petition No. 3820/2018 *The Cosmos Co-Operative Bank Vs. State of Maharashtra & Ors*. was disposed of by this Bench. The order reads as under:

"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."

2. In the instant case, the asset was secured in favour of the 1st petitioner by a mortgage dated 4th October 2015. The account was declared non-performing on 16th July 2017. Concededly, the dues under Maharashtra Value Added Tax Act, 2002 were quantified on 13th October 2016 and 2nd August 2017 i.e. after 1st September 2016.

3. Thus, the Writ Petition is disposed of declaring that over the properties of respondent Nos. 5 and 6 which were mortgaged to the 1st petitioner, the first charge would be of the 1st petitioner and not the respondent Nos. 1 to 3. Meaning thereby, from out of the sale proceeds after sale of the secured assets the petitioner would be entitled to appropriate the

amount due to it and if there is any surplus the same shall be paid to the Sales Tax Department, State of Maharashtra.

4. No costs.

SMT. BHARATI DANGRE, J. CHIEF JUSTICE