IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1561 OF 2018

WITH
INTERIM APPLICATION NO.229 OF 2019
IN
CRIMINAL APPEAL NO.1561 OF 2018

Arun Kumar Sharma & Ors. .... Appellants

versus

The State of Maharashtra & Ors. .... Respondents

WITH
CRIMINAL APPLICATION NO.40 OF 2019
IN
CRIMINAL APPEAL NO.1561 OF 2018

Pankaj Ramnaresh Saraf …. Applicant/ Intervenor

IN THE MATTER BETWEEN :

Arun Kumar Sharma & Ors. .... Appellants

versus

The State of Maharashtra & Ors. .... Respondents

…....

- Mr.Dilip Shukla, Advocate for Appellants.
- Ms.Rebecca Gonsalvez, Spl. PP a/w Ms. M.H. Mhatre, APP for State/Respondent.

CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.

DATE : 15 DECEMBER 2021

P.C. :

. This Appeal is filed challenging the rejection of Miscellaneous Application filed by the Appellants bearing No.378 of 2016 by the learned Special Court under The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short 'MPID Act') .

2. The application is filed by the Appellants for a relief that certain amounts from the accounts which have been frozen, pursuant to attachment under the Act, be released to the Appellants for their day to day expenses and other liabilities. Also an order of restraint was sought for. This application was filed on 13 October 2016 before the Special Court. Thereafter it was rejected by the impugned order on 27 November 2018. The appeal which is filed on 18 December 2018. There is no interim order in this appeal granting that the Respondents should earmark the money claimed by the Appellant till disposal of the Appeal.

3. By order dated 1 December 2021 Criminal Appeal

No.1375 of 2018, Criminal Appeal (ST) No. 410 OF 2019, Criminal Application No.444 of 2019, Criminal Appeal (ST) No.437 of 2019, Criminal Application No.468 of 2019, the Appeals filed by the Appellants challenging order of attachment and freezing of the account, were dismissed holding that the delay in challenging the first order dated 12 August 2016 could not be condoned. It was also noted in the said order that, in the meanwhile the amounts have been distributed to the depositors.

4. This appeal was listed along with other appeals. When they were disposed of on 1 December 2021, this appeal was adjourned to 8 December 2021. On 8 December 2021 the request was made that the arguing counsel is not available. The learned Special Counsel had objected to adjournment. The matter was kept on next day. On 9 December 2021, when the appeal was called out neither advocate on record was present nor the arguing counsel was present. The advocate who appeared had no instructions. Therefore in the morning session we had dismissed the appeal. Later on in the afternoon, the learned counsel for the Appellant appeared and tendered apology. In light of the same, the appeal was restored and it was listed on 15 December 2021. Today in the morning session when it was called out, even though the appeal was restored by indulgence, the learned counsel for the Appellant was not present. When we commenced hearing of the appeal in presence of the

learned Special Counsel, mid-way the learned counsel for the Appellant appeared and advanced submissions. This conduct needs to be deprecated. It has to be seen in light of the background that the companion appeals were dismissed and the matter was sought to be adjourned thereafter.

5. The learned Counsel for the Respondents states that in view of the fact that the money has been distributed and since there was no restraint order against the Respondent no relief can be granted to the Appellants. The learned counsel for the Appellants states that the order dated 12 August 2016 dismissing the appeals is in process of being challenged. However as on date the finding of fact rendered in that decision still holds that the amount is distributed. Therefore the relief sought for in this Appeal cannot be granted. Further, in light of this position, the legal arguments sought to be contended by the learned counsel for the Appellant do not arise for consideration.

6. Further the learned Special Judge while rejecting the application has held that as per the report of the Forensic Audit cash amount of Rs.10.43 Crores was withdrawn by the applicants during the period of 20.03.2012 to 25.09.2012 and therefore this amount is with the Appellants. The learned Judge also observed that the amount claimed are excessive and if granted, the purpose of protecting the interest of the depositors would be frustrated.

7. Considering these aspects, there is no merit in the appeal. The appeal is dismissed.

8. Pending applications stand disposed of.

(SARANG V. KOTWAL, J.) **(NITIN JAMDAR, J.)**