IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.309 OF 2020
IN
MISCELLANEOUS APPLICATION NO.1767 OF 2019
IN
MPID CASE NO.1 OF 2014

ICICI Bank Limited .... Appellant
versus
State of Maharashtra & Ors. .... Respondents

WITH
INTERIM APPLICATION NO.2652 OF 2021
IN
CRIMINAL APPEAL NO.309 OF 2020

Kamal Kant Dewan …. Applicant/ Intervenor

IN THE MATTER BETWEEN :

ICICI Bank Limited .... Appellant
versus
State of Maharashtra & Ors. .... Respondents

…....

- Mr.Santosh Bhide i/b. M/s. Bhide & Associates, Advocate for Appellant.
- Mr.Vinay Bhaushali, Advocate for Applicant in IA No.2652/21.
- Ms.Rebecca Gonsalvez, Special Counsel a/w Mr.K.V. Saste, APP for State/Respondent.

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

DATE : 15 DECEMBER 2021

P.C. :

. By this Appeal, the Appellant bank is challenging the order passed by the learned Special Judge for MPID below Ex.1 in MPID Miscellaneous Application No.1767 of 2019 in MPID Special Case No.1 of 2014.

2. The Appeal is admitted. Taken up for consideration forthwith by consent of the Respondents.

3. According to the Appellant-Bank one Kamal Kant Dewan and his brother had applied for housing loan to the Bank to the tune of Rs.3,63,95,020/- for purchasing a residential property. The additional loan of Rs.6,36,04,980/- was also applied for and availed of. According to the Appellant-Bank the loan documents were executed creating charges and equitable mortgage by depositing title deeds. The Appellant Bank took steps under the Securization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). Notice under section 13(2) was issued on 22 January 2018. After completing all the proceedings, pursuant to the order passed by the learned Magistrate, when the Appellant-Bank sought to take possession of the property, the Appellant came to know that the property is attached by the Government of Maharashtra in C.R.No.89 of 2013 for offences

under The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short ‘MPID Act’). In light of this position, the Appellant made an application for taking possession of the property, which is rejected by the impugned order.

4. The State of Maharashtra has opposed the application. It is also contended that the attachment is not yet made absolute. A legal question that would arise is, provisions of which Act, that is SARFAESI Act or the MPID Act will have the overriding effect. The learned Special Judge has observed in one sentence that the SARFAESI Act would not prevail over the provisions of MPID Act. However this aspect is not rooted only in law, but an analysis of facts is required. Such as what were the exact dates on which the steps were to be taken, both under SARFAESI Act and MPID Act. Then the significance and consequence of those dates will have to be examined. In the impugned order there is no reference to the steps under MPID Act datewise. Without such factual foundation being laid in the impugned order, the decision on legal issue will not be possible.

5. For absence of these facts, no purpose will be served by keeping the appeal pending. The appropriate course of action would be to set aside the order and restore the application before the learned Special Judge. Furthermore under section 7 (3) of the MPID

Act the person who is claiming interest in the property can also raise an objection before making the attachment absolute. Thus, the course of action is also available to the Appellant.

6. The Appeal is allowed. The impugned in the order is quashed and set aside. The Miscellaneous Application No.1767 of 2019 is restored to the file of the learned Special Judge, to decide and in light of the observations above. If the Appellant lodges any objections the same can be decided together.

7. In view of disposal of the Appeal, the pending application stands disposed of.

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