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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3149 OF 2023

WITH

INTERIM APPLICATION NO. 3944 OF 2023

IN

WRIT PETITION NO. 3149 OF 2023

Vidya Sahakari Bank Ltd,
A co-operative Bank registered under the provisions of Maharashtra Co-operative Societies Act 1960, having its registered office at S. No 1355, Plot No 72, Natu Baug, Shukrawar Peth, Pune 411 002.
Through its Chief Executive officer, Mrs Shubhda Mankar ...Petitioner

~ versus ~

1. **The State of Maharashtra,**
Through Investigation Officer & Senior Police Inspector, Crime Branch Unit 1, Pimpri Chinchwad, Pune
2. **The State of Maharashtra,**
Through The Inspector General Of Registration , Pune.
3. **The Sub Registrar of Assurances,**
Tal Mulshi, Dist Pune. ...Respondents

APPEARANCES

FOR THE PETITIONER IN WP/3149/2023.	**Mr SS Panchpor**, *with GD Tamboli.*
FOR RESPONDENT-STATE.	**Mrs AA Purav, AGP**, *with* **SB Kalel, AGP.**

CORAM	**:**	**G.S.Patel & Neela Gokhale, JJ.**
DATED	**:**	**11th July 2023**

ORAL JUDGMENT (*Per GS Patel J*):-

1. Rule. Rule returnable forthwith.

2. The Vidya Sahakari Bank Ltd ("**Vidya Bank**"), a cooperative bank registered under the Maharashtra Cooperative Societies Act, 1960 ("**MCS Act**"), approaches us for a mandamus to quash impugned communications of 23rd July 2022 and 20th September 2022 addressed by the Senior Police Inspector to the Inspector General of Registration and the Sub-Registrar of Assurances. By the impugned communications, the authorities have demanded a no objection for registering certain transfer documents, and it is claimed that a no objection certificate is required under the provisions of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 ("**MPID Act**"). Until then, the bank is told, transfer documents that it needs to execute to recover its debts cannot be registered and will not be permitted to be registered. What was sought to be registered was a Sale Certificate issued by the Petitioner bank in part or whole satisfaction of its debt.

3. The approach is entirely incorrect and unsustainable in law. This is quite apart from the fact there is not even a notification under the MPID Act.

4. A few facts will suffice.

5. The Petitioner sanctioned a term loan facility of Rs 4 crores to SRK Global Tours Pvt Ltd ("**SRK Global**") on 6th February 2015. The loan was secured by a mortgage dated 13th February 2015. There was also another term loan of Rs 60 lakhs to Sairang Developers & Promoters Pvt Ltd ("**Sairang Developers**") and a Deed of Mortgage dated 30th May 2017. The borrower in the second case, Sairang Developers, also agreed to be a guarantor to the loan and facility sanctioned to SRK Global along with one KR Malik. Thus, there came to be executed a Mortgage Deed dated 13th February 2015. This is registered in the office of the Sub-Registrar, Mulshi. It created a valid mortgage over properties owned by Sairang Developers. A copy of that Mortgage Deed is annexed to the Petition.

6. Before sanctioning the term loan of Rs 60 lakhs to Sairang Developers, the Petitioner had also sanctioned term loans of Rs 2 crores and a cash credit of Rs 1.50 crores under previous mortgages. Since the borrower repaid their term loan of Rs 2 crores, the cash credit limit was increased by Rs 25 lakhs and then further enhanced to Rs. 50 lakhs with corresponding Mortgage Deeds, all registered with the Sub-Registrar, Taluka Haveli. These mortgages created a charge on commercial office premises at Plaza Premises CHSL, Shivajinagar, Pune. Then some of these properties were substituted with other properties at Village Maan, Taluka Mulshi and there were Deeds of registered mortgages. Further details are not necessary at this stage. It is sufficient to note that both borrowers defaulted. The Petitioner invoked its rights under the Securitization And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**"). A notice under Section 13(2) came to be issued on 19th January 2021. The bank then took symbolic possession of the properties on 5th September 2022. It also obtained a recovery certificate under Section 101 of the MCS Act. Following the procedure under Rule 107 of the MCS Rules, the bank attached the properties and took symbolic possession. Both borrowers and guarantors today owe the bank an amount of over Rs 3.5 crores plus ongoing interest.

7. It seems that in the meantime, the directors of the two borrower companies, including one KR Malik, have been confronted with criminal charges under the Indian Penal Code, 1860 ("**IPC**") and charges under Sections 3 and 4 of the MPID Act by the filing CR No. 145 of 2021. On account of this criminal complaint, the Senior Police Inspector of the Crime Branch Unit, Pimpri Chinchwad, Pune, wrote to the Inspector General of Registrar, Pune and Sub-Registrar of Assurances not to register any transactions or documents pertaining to the mortgage properties. The bank was also told that since the FIR was registered no transaction would be allowed pertaining to these properties.

8. It is this directive that brings the Petitioner bank to this Court.

9. On 21st March 2022, in a Petition filed by the very same KR Malik (Civil Writ Petition No 7969 of 2021), we granted Rule and made the following order.

> "1. Rule.
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> 2. There is an Affidavit in Reply from Respondents Nos. 3 to 5. Notice was issued to the other Respondents and we directed fresh service on 14th January 2022. Earlier we have granted protective relief on 25th November 2021. We can make Rule returnable forthwith and take up the Petition for final disposal.
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> 3. The short challenge in this Petition is to the refusal by Respondents Nos. 3 to 5 to register certain transfer documents in relation to immovable properties. Prayers (a), (b), (c) and (d) in the Petition read thus:
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> "(a) This Hon'ble Court be pleased to issue a writ of Mandamus and/or any other writ, order or direction in the nature of Mandamus against Respondent Nos. 4 and 5, thereby directing them not to act contrary to the provisions of the Registration Act 1908, and to perform their duties in accordance with the same;
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> (b) This Hon'ble Court be pleased to issue a writ of Mandamus and/or any other writ, order or direction in the nature of Mandamus against Respondent No.7, thereby directing them not to act contrary to the provisions of Interest of Depositor's (in Financial Institution) Act, 1999 and to perform their duties in accordance with the same;
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> (c) That this Hon'ble Court be pleased to order and declare that the Impugned Letters dated 27.05.2021 and 05.06.2021 (Exhibits B, C and A hereto) along with the Impugned

Actions of Respondent Nos.4, 5 and 7 violates Articles 14, 19(1) (g) and 21 of the Constitution of India and are in derogation of the principles of natural justice and are accordingly illegal, non-est, bed in law and liable to be set aside;

(d) Strictly without prejudice to the above and in the alternative, this Hon'ble Court be pleased to direct Respondent Nos. 4 and 5 to grant an opportunity to the Petitioner of a personal hearing and thereafter, pass appropriate speaking orders on basis of the representation by the Petitioners, on such terms and conditions as this Hon'ble Court may deem fit and proper;"

4. The facts are not contentious. According to the Petitioners, many of their real estate projects suffered a downturn after 2016. Several police complaints were filed against the Petitioners although the Petitioners were trying to settle the claims being made against them. The police authorities seem to have invoked the provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 **("MPID Act")**.

5. The Petitioners have entered into a number of agreements in regard to land in and around Pune District. Nine such are mentioned in a table in paragraph 6. The details are also annexed at page 65. It appears that when the Petitioners attempted to register the various agreements for sale, Respondents Nos. 3 to 5 declined to do so on the basis that they had received letters dated 27th May 2021 and 5th June 2021 from Respondent No.7, the Crime Branch, alleging that certain criminal complaints had been lodged against the Petitioners including under the MPID Act.

6. The Affidavit in Reply by the registering authorities states that in fact such a request was received from the Crime Branch and that the registering authorities acted on them.

> 7. It is clear from the record that there is no notification under Section 4 of the MPID Act. None of the properties in question have been attached under the MPID Act or any other law or under any order of any Court or Tribunal. There are merely these communications from the Crime Branch.
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> 8. We do not believe that the Crime Branch is entitled to hold up compulsory registration of documents relating property transfer in this fashion and to do indefinitely. Section 17 of the Registration Act makes registration compulsory for documents transferring or creating interest in land.
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> 9. The ongoing refusal by Respondents Nos. 3 to 5 is based only on the request of the Crime Branch. Their Affidavit makes it clear that they have no other cause to withhold the registration. Accordingly, we make Rule absolute.
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> 10. However, we will need to mould the relief. We direct Respondents Nos. 3 to 5 to complete the registration of all documents submitted by the Petitioners, the registration of which was withheld by the impugned communications dated 27th May 2021 and 5th June 2021.
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> 11. Lastly, we make it clear that if the Crime Branch intends to halt the registration of any documents, it can do so only in a manner contemplated by law and not otherwise.
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> 12. The Petition is disposed of in these terms. No costs."

10. We do not see how the registration of documents can be permitted to the defaulting borrower but not to the creditor bank when it is seeking to enforce its security. The impugned communications by the 1st Respondent are wholly unsustainable.

There is not even a notification under the MPID Act. We note this today on 11th July 2023 because since 21st March 2022 when we made our order in the KR Malik Petition, at least in this regard, nothing has changed.

11. Indeed, in law the implicit proposition from the 1st Respondent is wholly unsustainable. It amounts to this: that registration of all documents required to be compulsorily registered under the Registration Act, 1908 and particularly under Section 17 can be held up indefinitely on the mere filing of an FIR and nothing more. Part III of the Registration Act deals with registrable documents and Section 17 sets out the documents of which registration is compulsory. It is inconceivable that the mere filing of an FIR could ever result in the suspension of operation of Section 17.

12. Apart from this, we are unable to see how property validly secured to the bank under a subsisting mortgage that has never been called into question can be taken away as security or how this only security available to the bank can literally be confiscated in this fashion. The bank has its remedies under a dedicated statue namely, the SARFAESI Act amongst others. Nobody has challenged the Mortgage Deeds. There is no suit filed to have those mortgages cancelled and delivered up for cancellation. All mortgages are duly registered. It is simply not open to the police authorities to arrogate to them powers that vest only in a civil court in a properly instituted civil proceeding.

13. We are making this clear because we see no reason why we should have to make the same pronouncement of law again and again. It is not for the police authorities to issue such directions to registering authorities under the Registration Act. If there is to be such an injunction de hors a MPID Act notification, it has to be obtained from a Court of competent jurisdiction and is not within the jurisdictional remit of police authorities functioning under the Indian Penal Code, 1860 or the Code of Criminal Procedure, 1973.

14. Accordingly, Rule is made absolute in terms of prayer clause (b) at page 15 which reads thus:

> "(b) A writ of Mandamus or any other appropriate writ, order be issued and thereby impugned letters dated 23.7.2022 and 20.9.2022 addressed by Respondent No 1 to Respondent No 2 and 3, be quashed and set aside."

15. No costs.

(Neela Gokhale, J) **(G. S. Patel, J)**