Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1098 OF 2023

Imran Hanif Soorya
Occ: Business, Adult, Mumbai
Inhabitant, residing at 14th floor,
flat No. 1403, Mariam Apartments,
Pydhonie, Mumbai 400 003. ....Appellant

Versus

1) State of Maharashtra
through Competent Authority
under the MPID Act Economic
Offence Wings – Unit V, Mumbai

2) M/s. Peacock Media Ltd.,
Having its office at 24-B, Apollo
Industrial Estate, Off Mahakali
Caves Road, Andheri (East),
Mumbai – 400 093 ....Respondents

Mr. Zain Shroff i/b Y & A Legal for the Appellant
Mr. J. P. Yagnik APP for the State

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 16th OCTOBER 2023

ORAL JUDGMENT:

1. Heard. Admit.

2. Learned APP waives service on behalf of respondent no. 1 for

final disposal of the appeal. Respondent no. 2 is the accused in the MPID case. Office remark shows that notice issued to respondent no. 2 is unserved with the remark that the company has been closed since 2009 and no information is available about the proprietor-Sandeep Chawla. Considering the nature of the present order, the appeal can be disposed of without service of notice upon respondent no. 2. Hence, the appeal is taken up for final disposal.

3. This appeal is filed under section 11 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ('MPID' Act) for challenging the order dated 6th March 2020 passed by the Special Judge below Exhibit 1-G in MPID Special Case No. 7 of 2014. By way of amendment, the appellant has also challenged the order dated 20th December 2014 passed by the Special Judge in Misc. Application No. 164 of 2014 in MPID Special Case No. 7 of 2014. By way of amendment, the appellant has prayed for restoring the appellant's Shop No. H-9 situated on the first floor in the building known as Virwani Air Conditioned Market bearing Survey No. 393, bungalow no. 11, Elphinstone Road, Pune

Cantonment Board, Pune ('said shop') by directing to remove the seal.

4. It is the case of the appellant that he had started supplying printing materials to respondent no. 2 in the year 2007. Since 2009-2010, respondent no. 2 had stopped making payments, and outstanding dues were amounting to Rs. 9.50 Lacs. After that, by registered sale deed dated 7th July 2012, respondent no. 2 transferred the said shop in favour of the appellant. On 30th July 2013, FIR No. 120 of 2013 was registered against respondent no. 2 and other accused for offences under sections 406, 420 and 34 of the Indian Penal Code and sections 3 and 4 of the MPID Act.

5. The appellant had filed an application below Exhibit 1-G for releasing original documents of the said shop and permitting him to deal with the said shop. By the impugned order dated 6th March 2020, the Special Judge rejected the said application by holding that as per the order dated 20th December 2014 passed on an application being Misc. Application No. 164 of 2014, filed by the appellant, he was directed to furnish bank guarantee of Rs. 10 Lacs with indemnity

bond of the same amount; however, he failed to comply with the said conditions. Hence, the learned Judge observed that the prayers made in the application at Exhibit 1-G were already considered in the order dated 20th December 2014 and thus rejected the application filed by the appellant by holding that the appellant was seeking a review of the original order dated 20th December 2014.

6. Learned counsel for the appellant has tendered an affidavit dated 8th September 2023 stating that the appellant shall not create any third-party rights with respect to the said shop during the pendency of the trial. Learned counsel submitted that the appellant is not arraigned as an accused in the MPID Case and that the registered sale deed is executed in favour of the appellant before the registration of the FIR as well as publication of the Notification under section 4 of the MPID Act.

7. Learned counsel for the appellant submitted that in lieu of the outstanding dues from respondent no. 2, amounting to Rs. 9.50 Lacs, the said shop was transferred by respondent no. 2 in favour of the

appellant. Respondent no. 2 had informed the appellant the original documents of the said shop were mis-placed by him. However, the appellant was interested in securing the amounts due to him. Hence, after due diligence, he agreed to get the rights of the said shop assigned in his favour in lieu of the amounts due to him from respondent no. 2. Learned counsel for the appellant submitted that the appellant is a bonafide purchaser of the said shop. During the investigation of the FIR filed against Mr. Sandeep Deepak Chawla and others, the original documents of the said shop were seized and the said shop was attached as per the notification under section 4 of the MPID Act.

8. Hence, the appellant had filed Misc. Application No. 164 of 2014 for getting the original documents and releasing the said shop. However, by an order dated 20th December 2014, the learned Special Judge had directed that on furnishing a bank guarantee of Rs. 10 Lacs with an indemnity bond of the same amount by the appellant and on a condition that the appellant shall not dispose of the property without two months pre-intimation to the Court had directed to release the

said shop from attachment or restrained from attachment, if not attached. By the said order, the investigating officer was also directed to hand over the documents of the said shop. Learned counsel further submitted that the appellant was unable to comply with the conditions imposed by the said order. Hence, an application was filed at Exhibit 1-G praying for handing over the original documents of the said shop and handing over possession of the said shop after removing the attachment. Learned counsel submitted that the said application is rejected by the learned Special Judge on the ground that the same would amount to reviewing the earlier order.

9. Learned counsel submitted that in such circumstances, the appellant has filed the aforesaid affidavit-cum-undertaking not to transfer the said shop during the pendency of the trial. Learned counsel thus submitted that by taking into consideration the aforesaid affidavit-cum-undertaking and considering that the appellant is a bonafide purchaser of the said shop, present appeal be allowed and the said shop be released from attachment, and the possession of the said shop and the original title documents be handed over to the

appellant.

10. Learned APP opposes the appeal by contending that the said shop is undervalued by the appellant at the time of executing the sale deed. Learned APP thus submitted that considering the allegations in the said MPID Case against respondent no. 2, it is necessary to secure the said shop. Hence, it is necessary to continue with the attachment of the said shop. Learned APP, however, does not dispute that the appellant is not arraigned as an accused in the said case and that the sale deed in favour of the appellant is prior to the registration of the FIR as well as the Notification issued under section 4 of the MPID Act.

11. We have considered the submissions made on behalf of both parties. A perusal of the record shows that the appellant is not an accused in the said MPID case. It is not disputed that the registered sale deed in favour of the appellant in respect of the said shop is executed much prior to the registration of the FIR as well as Notification under Section 4 of the MPID case. By an order dated 20th

December 2014, the learned Special Judge had allowed the application filed by the appellant for releasing the said shop from attachment, however, the learned Judge imposed conditions directing the appellant to furnish a bank guarantee of Rs. 10 Lacs with an indemnity bond and had further imposed condition that the appellant shall not dispose of the said shop.

12. So far as the condition of not disposing of the said shop is concerned, the appellant has already filed an undertaking that he would not dispose of the said shop during the pendency of the trial. So far as furnishing bank guarantee is concerned, the appellant has submitted that he is not in a position to furnish bank guarantee and, hence, has requested to accept the affidavit-cum-undertaking submitted on behalf of the appellant and release the said shop from the attachment. We have perused the affidavit-cum-undertaking dated 8th September 2023. In the said affidavit, the appellant has given an undertaking in paragraphs 10 and 11 as under:

> *"10. I say that in the event that this Hon'ble Court is inclined to allow the present Appeal and release the*

original chain of documents pertaining to the said Property and also handing over possession of the said property to me, I undertake not to sell, dispose, alienate, mortgage or create any third party rights with respect to the aforesaid Property situated at Pune which is under my exclusive name as per Sale Deed dt. 07.07.2012 until trial is completed or any further order is passed, However, I crave leave and permission from this Hon'ble Court to be able to give the premises on Leave and Licence basis to suitable licencees. I undertake that under no circumstances will I create any permanent rights or title in respect of the said premises until the trial is completed or any further order is passed.

11. In view of the aforesaid undertaking, I am praying for possession of the said property and also for handing over the chain of original documents in respect thereof to me."

13. In addition to the aforesaid undertaking, learned counsel for the appellant on instructions submitted that the appellant is ready and willing to submit a personal bond for an amount of Rs. 10 Lacs.

14. In view of the aforesaid facts and circumstances, we do not see any reason for directing the appellant to furnish the bank guarantee as directed by an order dated 20th December 2014. So far as the rest of the conditions imposed by the said order are concerned, the appellant has already submitted an undertaking as stated aforesaid and has further agreed to furnish a personal bond for an amount of Rs. 10 Lacs. Thus, in view of the aforesaid admitted facts coupled with the fact that the appellant has submitted the aforesaid undertaking and agreed to submit a personal bond of Rs. 10 Lacs, the appellant is entitled to releasing the said property by removing the attachment and handing over possession and title documents of the said shop to the appellant.

15. Hence, for the reasons stated above, following order is passed.

<u>O R D E R</u>

I. The affidavit-cum-undertaking dated 8th September 2023 is accepted as an undertaking to this Court.

II. The appellant shall submit a personal bond for an amount of Rs. 10 Lacs in the MPID Special Case No. 7 of 2014 within a period of four weeks from today.

III. The said shop i.e. Shop No. H-9 situated on the first floor in the building known as Virwani Air Conditioned Market bearing Survey No. 393, bungalow no. 11, Elphinstone Road, Pune Cantonment Board, Pune shall stand released from attachment, and the possession of the said shop as well as the original title documents shall be handed over to the appellant on the appellant submitting personal bond for an amount of Rs. 10 Lacs as directed by clause (II) above and subject to the conditions 10 and 11 of the affidavit-cum-undertaking dated 8th September 2023, as reproduced in paragraph no. 12 above.

IV. The impugned order dated 6th March 2020 passed by the Special Judge below Exhibit 1-G in MPID Special Case No. 7 of 2014 is quashed and set aside.

V. The order dated 20th December 2014 passed by the Special Judge in Misc. Application No. 164 of 2014 in MPID Special Case No. 7 of

2014 stands modified in the aforesaid terms.

VI. Appeal is allowed in the aforesaid terms.

All parties to act on the authenticated copy of this order.

GAURI GODSE, J. **REVATI MOHITE DERE, J.**