IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 424 OF 2023

Mirador Constructions Pvt. Ltd.
through its Director Vijay Babusing
Pawar, Age: 42 years, Occ: Business
Registered office at: 1109, Lodha
Supremus, Daki Vihar Road,
Sakinaka, Mumbai 400072,
Email ID: vijayp@mirador.co.in
Contact: + 9867571457 ...Appellant

Versus

1. State of Maharashtra
(EOW Unit V) To be served through
Public Prosecutor, High Court,
Bombay

2. Bharat Laljee Shah
Age – 58 years, Occ: Business
Legal representative of Investors
residing at 02, Prashant Apartment,
Eksar Road, Baby Naka, Kamdhenu
CHS, Borivali West,
Mumbai – 400092
bharat.shah.tcs@gmail.com
Contact: 9769234060 ...Respondents

Mrs. Manjula Rao a/w Mr. V. S. Kapse, Mr. Rohan Deshmukh and Mr. Pravin Rathod i/b Mr. Vikas G. Surve for the appellant
Mrs. P. P. Shinde, APP for the State
Mr. Asadullah Shaikh for respondent no. 2
Mr. Callistus D'mello, PI, EOW Unit - 1

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 1st NOVEMBER 2023

JUDGMENT: (PER: GAURI GODSE, J.)

1. Heard. Admit.

2. Learned APP waives notice for respondent no. 1. Mr Asadullah Shaikh waives notice for respondent no. 2. By consent of the parties, the appeal is taken up for final disposal.

3. This appeal is preferred by the original accused for challenging the dismissal of an application jointly filed by the accused and representative of the investors praying for defreezing the secured assets of the accused and bank accounts by directing respondent no. 1 to withdraw the letter dated 13th July 2020. Respondent No. 2 claims to be the legal representative of the investors.

4. A perusal of the record shows that on 11th July 2019, CR No. 308 of 2019 was registered against the appellant and its directors for the offences punishable under section 409, 420 read with 120B of the Indian Penal Code ('IPC') and under section 3 of The Maharashtra

Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (‘MPID’ Act). Thereafter, the said crime was transferred to respondent no. 1 (EOW unit -V), and the CR is renumbered as CR no. 54 of 2019. It is the case of the appellant that the investigation is still pending; however, the investigating officer, by letter dated 13th July 2020, intimated the Sub-Registrar of Assurances, Taluka-Shahapur, District-Thane directing not to register any transaction with respect to the appellant's property being survey no. 8/1, survey no. 5/2, survey no. 32/3, Gat no. 115 and survey no. 2/5 situated within the limits of village Shahpur, District Thane.

5. It is the case of the appellant that the investigating officer also directed to freeze the appellant’s bank accounts. Hence, the appellant and respondent no. 2 herein filed an application being Misc. Application No. 1558 of 2022 before the designated MPID court praying for directing respondent no. 1 to release the secured assets and defreeze the bank accounts of the appellant by taking necessary steps to withdraw the letter dated 13th July 2020. It appears that in the said application, the respondent-State filed written submissions at

Exhibit 2, and ultimately the investigating officer gave no objection for granting relief as prayed in the said application. However, the learned Special Public Prosecutor opposed the application. Thereafter, the learned Designated Judge under the MPID Act decided the said application by considering the submissions made by the learned Special PP and by taking into consideration the rival submissions. Thus, by the impugned Judgment and Order, the Misc. Application filed by the appellant and respondent no. 1 was rejected.

6. In the present appeal, the appellant was granted leave to file an affidavit-cum-undertaking with respect to properties owned by the appellant and all the documents showing their title to the said properties. Pursuant to the leave granted to file such affidavit-cum-undertaking, the appellant has filed an affidavit-cum-undertaking dated 3rd October 2023 and placed on record copies of title documents of various properties. In the said affidavit-cum-undertaking, the appellant has given particulars of an action plan for securing the interest of the investors. The appellant has further stated that in view of the offers given by the appellant, 54 investors out of

322 investors accepted the offer of the appellant and accordingly appellant has executed a registered agreement for sale in their favour. In the said affidavit-cum-undertaking, the appellant has also stated that 101 investors are willing to accept the appellant's offer, and the appellant is ready and willing to execute the agreement for sale in their favour. So far as the balance 167 investors are concerned, the appellant has undertaken in the said affidavit-cum-undertaking that the offers of the appellant shall remain in force so far as the balance investors are concerned. The appellant has further stated that till each one of the investors is secured, the appellant shall not dispose of or create third-party interest in the immovable properties mentioned in paragraph no. 3 of the said affidavit-cum-undertaking save and except the property mentioned in paragraph no. 3 (e), as the said property, is not attached by the EOW.

7. Respondent no. 2 has also filed an affidavit, thereby stating that after the registration of the FIR, the informant, Mr Pradeep Kumar Singh, accepted the offer of the appellant and a registered agreement for sale was executed in his favour. Respondent no. 2 has further

stated that in view of protecting the interest of all the investors, respondent no. 2 made efforts to reach out to the maximum number of investors, and accordingly, almost 91 investors have executed authority letters in favour of respondent no. 2. In the said affidavit, respondent no. 2 has annexed a list of the names of the investors who have executed authority letters in favour of respondent no. 2. Respondent no. 2, in addition to the said authority letters further stated that he has also received 75 emails from the investors.

8. In view of the aforesaid affidavits filed on behalf of the appellant and respondent no. 2, we, by an order dated 10th October 2023, had granted time to the learned APP to enable the concerned officer to verify the contents of the aforesaid affidavits and the particulars of the title documents of the appellant.

9. Learned APP, on instructions of the officer who is present today, states that the contents of the affidavits filed on behalf of the appellant, as well as respondent no. 2 are verified by him. Learned APP submits that the concerned investigating officer has no objection

to release the assets and defreeze the bank accounts of the appellant, in view of the affidavit-cum-undertaking filed by the appellant.

10. We have perused the papers. It appears that after the registration of FIR, the investigating officer, by letter dated 13th July 2020, intimated the Sub-Registrar of Assurances, Taluka-Shahapur, District-Thane, not to allow the creation of any third party interest/transfer/lease deed/mortgage/sale/purchase regarding the appellant's property mentioned in the said letter without the permission of the designated MPID Court. It is the contention of the appellant that the investigating officer also directed the concerned banks to freeze the bank accounts of the appellant. A perusal of the letter dated 13th July 2020 reveals that there is no direction in the said letter directing any bank to freeze the appellant's bank account. The appellant has annexed a list of bank details at Exhibit 'B' to the present appeal, thereby giving particulars of the bank accounts of the appellant, which are freezed as directed by the investigating officer. Learned APP does not dispute that the said bank accounts are freezed as directed by the investigating officer.

11. Perusal of the impugned Judgment and Order indicates that the respondent-State had submitted their written submissions below Exhibit 2 in the Misc. Application No. 1558 of 2022. However, in paragraph no. 2 of the impugned Judgment and Order, the learned Judge has recorded that the investigating officer had given no objection for granting the relief sought by the appellant; however, learned Special Public Prosecutor had strongly opposed the plea of the appellant. Learned Judge of the Designated MPID Court, thus, considered the submissions of the parties and examined the documents on record. After referring to the rival submissions made by the parties, the Learned Judge recorded a *prima facie* finding that there was collusion between the appellant and respondent no. 2, the original applicant no. 1, before the MPID Court. The learned Judge has observed that respondent no. 2, who claims to be a victim, is not entitled to ask for relief for the accused; hence, the appellant's plea sought to be raised through respondent no. 2 was unjustified.

12. The learned Judge also considered the magnitude of the amount involved in the said CR and the value of the immovable property of

the appellant. The learned Judge further observed that though the appellant had submitted that they had settled the dispute with most of the depositors, there was no considerable material placed on record with respect to the same. The learned Judge observed that even according to the appellant, almost 191 depositors had not yet settled the dispute with the appellant. Thus, the learned Judge refused to allow the appellant's application by holding that the interest of the investors and the depositors must be protected and secured. Since the interest of almost 311 investors amounting to Rs.53.7 Crores were involved in the matter, the learned Judge refused to grant relief of releasing the assets and defreezing bank accounts of the appellant.

13. It is not disputed that till date, the State Government has not issued any orders under section 4 of the MPID Act and there is no Competent Authority appointed. However, the appellant has filed an affidavit-cum-undertaking in this Court, thereby placing on record the claim of some of the investors settled by the appellant and the attempts being made on behalf of the appellant to secure the interest of all the investors. A perusal of the affidavit-cum-undertaking filed by

the appellant reveals that the appellant has placed on record the title documents of the appellant's properties. In the said affidavit, in paragraph no. 3, the appellant has given all the particulars of the properties of the appellant. In the said affidavit, the appellant has stated that the total value after utilising the entire land for development, the cost would be approximately Rs. 159,28,42,500/- as per the valuation report by the authorised government valuer. The appellant has also annexed a copy of the valuation report to the affidavit. In the affidavit, the appellant has also given the details of the status of the projects.

14. In the affidavit, in paragraph no. 8, the appellant has given the particulars of the three options offered to the investors to secure their claim. The affidavit further states that 54 investors out of 322 investors have accepted the offer of the appellant, and accordingly, they have executed the registered agreement for sale in favour of the said investors. The appellant has further stated that as on today, 101, investors are ready and willing to accept the appellant's offer no. 7(b) as reproduced in paragraph no. 8 of the affidavit. The appellant has

further undertaken that offers reproduced in paragraph no. 8 of the affidavit shall remain in force for the balance 167 investors. The appellant has, in paragraph no. 12 of the affidavit, undertaken that till each one of the investors is settled in terms of the offer reproduced in the said affidavit, the appellant shall not dispose of or create third-party interest in the immovable properties mentioned in paragraph no. 3 of the affidavit except paragraph no. 3 (e), as the said property, is not attached by the EOW.

15. The offers of the appellant are described in paragraph no. 8 of the affidavit; however, it appears that in paragraph no. 12 of the affidavit, inadvertently, the appellant has stated that offers are mentioned in paragraph 7. It appears that paragraph 7 is inadvertently typed instead of paragraph no. 8. Paragraph nos. 8 to 12 of the said affidavit-cum-undertaking dated 3rd October 2023 filed by Vijay Babu Singh, Pawar, director of the appellant, reads as under.

> *"8. In view of the aforesaid communications, I had given three options to secure the financial interest of the investors.*

a) By invoking clause 5 of the investment agreement, we offered plot of land by executing Registered Agreement for Sale in favor of investors subject to payment of differential amount, in view of different sizes of the plot in project Oasis Avani (para no.3 (a) above).

b) We offered flats by way of Registered Agreement for Sale in our projects Mirador Prangan (para no.3 (e) above), Mirador Sangam (para no.3 (b) above) and also in independent project Mirador Utsav situated in the same vicinity i.e. Shahapur, District Thane subject to differential amount.

c) We also offered the same amount invested by the investors for further period of 3 years at the interest rates agreed in the agreement and on development of the aforesaid properties, I shall pay the investors at the end of completion of 3 years, if mutually agreed.

9. I say that in view of the offers given above, 54 investors out of 322 came forward and accepted offer no. 7(b) above. Accordingly, we have executed registered agreement for sale in their favor. One of such agreement for sale is hereto annexed and marked as

__Exhibit "X"__. And further list of such 54 investors is annexed and marked as __Exhibit "Y"__

10. In view of the offer made by me as of today the 101 investors which are one before this Hon'ble Court are ready and willing to accept our offer no. 7(b). I am also ready and willing to execute the same Agreement for sale in their favor.

11. I undertake that the aforesaid offers shall remain in force so far as balance 167 investors are concerned. In whatever mode this Hon'ble Court directs I shall adopt the same in the interest of the investors.

12. I undertake till each one of such investors are settled in terms of the offer above mentioned at Para no. 7. I shall not disposed off or create third party rights in the immovable property mentioned in the para no.3 above, except para no.3 (e) as this property is not attached by EOW."

16. We have also perused the affidavit filed on behalf of respondent no. 2 in support of the affidavit-cum-undertaking filed by the appellant.

17. Learned APP, on instructions of the investigating officer present in the court, has stated that he has verified the authenticity of the appellant's title documents referred to in the aforesaid affidavit-cum-undertaking. Learned APP, on instructions, states that in view of the aforesaid affidavit-cum-undertaking, the investigating officer has no objection to releasing the assets and defreezing the bank accounts of the appellant, which are freezed as per the letter dated 13th July 2020.

18. Considering the aforesaid, we are inclined to accept the affidavit-cum-undertaking submitted by the appellant. The affidavit-cum-undertaking dated 3rd October 2023 filed on behalf of the appellant, and in particular paragraphs nos. 8 to 12 are accepted as an undertaking to this court. Hence, for the reasons stated above, the following order is passed.

O R D E R

I. The Judgment and Order dated 25th January 2023 passed by the Special Judge, Sessions Court, Mumbai, is quashed set aside.

II. Misc. Application No. 1558 of 2022 is allowed, and respondent no. 1 is directed to withdraw the letter dated 13th July 2020 issued to the Sub-Registrar of Assurances, Taluka-Shahapur, District-Thane. The properties of the appellant mentioned in the letter dated 13th July 2020 are released from attachment subject to compliance with the appellant's undertaking as reproduced in paragraphs nos. 8 to -12 above.

III. The bank accounts of the appellant as per Exhibit B to the Criminal Appeal No. 424 of 2023 are directed to be defreezed subject to compliance with the appellant's undertaking reproduced in paragraphs nos. 8 to 12 above.

IV. The appeal is allowed in the aforesaid terms.

19. List the appeal on 29th January 2024 for recording compliance of the aforesaid undertakings given by the appellant.

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

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