

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8261 OF 2023

Ambit Finvest Private Ltd.

.. Petitioner

Versus

Shahi Zaika Family Restaurant & Ors.

.. Respondents

Mr.Sanjeev Sawant i/b Murlidhar Kale, Advocates for the
Petitioner.

Mr.A.I. Patel, Addl. G.P. a/w M.S. Bane, AGP for
State/Respondent No.5.

Mr.Anand Mudliar, Senior Police Inspector, EOW, Mira-
Bhayander, Vasai-Virar Police Commissioner Office, is present in
Court.

**CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**
DATE : FEBRUARY 05, 2024

P. C.

1. The above Writ Petition is filed seeking the following
reliefs:-

- "(a) Rule be issued;
- (b) That, this honourable court be pleased to pass appropriate order or
direction thereby directing the respondent no.4 Society to issue
NOC to the petitioner to transfer/sale the secured asset i.e. Shop
No.13, Ground floor, Building No.J 83 and 84, Happy Home Estate-
III, Co-operative Housing Society, Poonam Sagar Complex, Mira
road East, Joggers Park Road, 401 107.

(c) *That this Hon'ble Court be pleased to pass appropriate directions/order thereby quash and set aside the notices dated 21.09.2021, 15.01.2020 and 19.12.2020 issued by the Respondent No.5 to the Respondent No.4 i.e. to the Happy Home Estate Co-op. Hsg. Society and further be pleased to declare the said notices are bad, contrary to law and illegal in view of section 26E of the SARFAESI Act, 2002;"*

2. At the outset, it is pointed out to us that there is typographical mistake in prayer clause (c) and the date 21st September, 2021 should be read as 21st September, 2019. The same is duly noted.

3. We find that prayer clause (c) is the main prayer and the prayer clause (b) is the consequential prayer. As far as prayer clause (c) is concerned, what the Petitioner seeks is to quash and set aside the notices dated 21.09.2019, 15.01.2020 and 19.12.2020 issued by the Respondent No.5 to Respondent No.4, instructing it not to further transfer the property which forms the subject matter of the Petition. The property in question is Shop No.13, Ground Floor, Building No.J 83 and 84, Happy Home Estate-III Co-operative Housing Society, Poonam Sagar Complex, Mira Road East, Joggers Park Road, 401107 (for short the "**secured asset**").

4. It is the case of the Petitioner that these notices have been wrongly issued by the EOW (Respondent No.5) to Respondent No.4 on

the basis that Government of Maharashtra has issued a notification dated 14th June, 2023 attaching the secured asset under the provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short "**the MPID Act, 1999**"). It is the Petitioner's case that they being secured creditors and their mortgage being registered under CERSAI [as contemplated under Section 26B of the SARFAESI Act, 2002], the dues of the secured creditors, by virtue of Section 26E, get preference over all other dues.

5. We have heard the learned counsel appearing on behalf of the Petitioner. We have also heard the learned AGP. We find that since the attachment is levied by the Government under the provisions of the MPID Act, 1999 it would be appropriate for the Petitioner to approach the concerned MPID Court and seek raising of the attachment. If this is done, then necessarily all notices issued by the EOW would automatically stand withdrawn.

6. In these circumstances, we dispose of the above Writ Petition by permitting the Petitioner to file an Application for raising the attachment on the secured asset, namely Shop No.13, Ground Floor, Building No.J 83 and 84, Happy Home Estate-III, Co-operative

Housing Society, Poonam Sagar Complex, Mira road East, Joggers Park Road, 401107, before the concerned MPID Court within a period of 2 weeks from today.

7. If such an Application is filed within the time stipulated, we would request the concerned MPID Court to decide the Application filed by the Petitioner herein as expeditiously as possible and in any event within a period of 4 weeks from the date of filing of the said Application.

8. We have made this request specifically keeping in mind that the secured creditors ought to be allowed to realize their dues as expeditiously as possible keeping in mind the object and purpose of the SARFAESI Act.

9. The Writ Petition is accordingly disposed of. However, there shall be no order as to costs.

10. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN,J.]

[B. P. COLABAWALLA, J.]