IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1152 OF 2024
WITH
CRIMINAL APPEAL NO. 1153 of 2024

Vanita Harish Shetty and ors .. Petitioner

Versus

The State of Maharashtra and ors .. Respondent

…

Mr.Aabad Ponda, Sr. Advocate with Mr.Vikram Sutariya i/b Advait Uday Shukla for the petitioner.
Mr.Sachin Mhatre with Ishita Kamath i/b Mhatre Law Associates for the Intervenor.
Mr. J.P. Yagnik, APP for the State.
Suvarnbal N. Mungekar (Clerk) from Competent Authority office, Bhandup, Mumbai.

CORAM: BHARATI DANGRE AND MANJUSHA DESHPANDE, JJ.
DATED : 24th OCTOBER, 2024.

P.C:-

1 In Criminal Appeal No. 1152/2024, challenge is raised by the appellants to the order dated 10/10/2024 passed by the Designated Court under the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short 'MPID Act'), thereby rejecting application for release of the property being a residential flat no.B-302, Vastu Park, Evershine Nagar, Malad (W), Mumbai, from attachment.

Criminal Appeal No. 1153/2024, raise a challenge to the order passed by the Designated Judge on the very same day, rejecting the application for release of property bearing Shop No.18/19, Deepmala Co-operative Housing Society, Marve Road, Malad(W), Mumbai, from attachment which is informed to be a running hotel.

We have heard learned Senior Counsel Mr.Ponda for the appellant in both the Appeals and Mr.Yagnik who represent the competent authority as well as Economic Offences Wing (EOW), Mumbai.

The learned counsel Shri Sachin Mhatre for the intervenor, one of the investors is desirous of filing an application for intervention and we permit him to do so, but in the contemplation of such application being filed, we have also heard him.

2 The learned senior counsel Mr. Ponda has invited our attention to the Banning of Unregulated Deposit Schemes Act, 2019, an enactment of the Parliament, for the purpose of providing a comprehensive mechanism to ban the unregulated deposit schemes other than deposits taken in the ordinary course of business, and to protect the interest of depositors and for the matters connected therewith or incidental therewith.

Our attention is invited to the Statement of Objects and Reasons, justifying the passing of the legislation, which has made reference to the resolutions enacted by the State Governments, and it is specifically recorded that these legislations were not able to completely address the issue of Unregulated Deposit Schemes run by unscrupulous elements and this regulatory gap was highlighted in the 21st Report of the Parliamentary Related Standing Committee on Finance Sixteenth Lok Sabha, titled as 'Efficacy of Regulation of Collective Investment Schemes, Chit Funds, etc."

Mr.Ponda has also placed before us a report of the Standing Committee on Finance, of September 2015, which has recommended the requirement of "appropriate legislative provisions coupled with effective administrative and enforcement measures in order to protect the hard earned savings and investments made by millions of people."

3 Setting the background for the Act of 2019, our attention is also invited to the specific provisions contained therein and one particular provision in form of Section 34, which provide that the Act of 2019 shall have effect, provide contained in any other law for the time being in force, including any law made by any State or Union Territory.

In addition, our attention is also invited to the procedure to be adopted under the enactment, and in specific, Chapter VIII thereof, which contemplate investigation of offences thereunder by the Central Bureau of Investigation (CBI) and a provision to that effect that no Designated Court shall take cognizance of offence punishable under that Section, except upon a complaint made by the Regulator.

4 Juxtaposing this statute against under the MPID Act, a State Legislation it is the submission of Mr.Ponda that as far as the Act of 2019 is concerned, by virtue of Section 1, it has come into effect from 21/2/2019 and its operation extend to the whole of India except the State of Jammu and Kashmir.

In the wake of the aforesaid enactment, with a specific Scheme contained therein, it is his submission that the steps to be taken under the said enactment do not contemplate the latter part of Section 4 of the MPID Act, where the property of the Directors, promoters, employees, etc. of the Financial Establishment is permitted to be attached, in case, if it is found that the properties of the financial establishment or its directors which are found to be purchased from the money collected by deposit is not sufficient to meet the liability that is set out in the complaint or in the charge-sheet.

Relying upon Section 7, of The Banning of Unregulated Deposit Schemes Act, 2019, it is the submission of Mr.Ponda that the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, must give way to the new statute since it has a Pan India Operation, except the State of Jammu and Kashmir and considering the avowed purpose for which the Parliament has enacted the legislation, the State Legislation must take a back seat.

Mr.Ponda has also placed before us a decision of the Kerala High Court in case of ***P. Raveendran Pilla Vs. State of Kerala, represented by the Chief Secretary and Ors*** *[WP(C)No. 18199/2020,* where the conflict in the two legislations was taken cognizance by the learned Single Judge and we have carefully perused the observations therein.

5 In light of the above, the appellant is desirous of raising a challenge, by bringing out a comprehensive amendment in the Appeals, and we permit him to raise such a challenge, by effecting the necessary amendment within a period of two weeks from today.

Upon the amendment being carried out in the Appeals, let the amended memo of Appeals be served upon the State Government so as to solicit appropriate response in that regard.

We also expect Mr. Ponda to furnish copies to the learned counsel for the Intervenor.

6 Since Mr. Yagnik, representing respondent no.1 seek time to file an affidavit, as according to him, presently the officers are engaged somewhere else, we grant four weeks time to file necessary affidavit.

7 Mr. Yagnik, on instructions from Suvarnbal N. Mungekar (Clerk), Competent Authority office, Bhandup, Mumbai, who is present in the Court also make a categorical statement that the status quo shall be maintained in respect of the properties covered in the impugned order dated 10/10/2024, in the two Appeals before us.

Re-notify to 9/12/2024.

(MANJUSHA DESHPANDE,J) (BHARATI DANGRE, J.)

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