IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 311 OF 2021

Ganesh Ramdas Hajare,
Age : 36 Years, Occu.: Business,
R/at : R. No.1, R.P. Trust, Sambhaji Chowk,
Kurla (W), Mumbai – 400070.

(At present in Taloja Jail, Navi Mumbai) .. Appellant

Versus

1. The State of Maharashtra
Through Competent Authority and Sub-Divisional Officer, (Encroachment Removal), Andheri Administrative Building, "A" – Wing, 1st Floor, S.R.A. Anant Kanekar Marg, Bandra (E), Mumbai – 400051.

2. Capri Global Capital Ltd.
A Company registered under the Companies Act having registered office at 52, Tower-A, Peninsula Business Park, Senapati Bapat Marg, Lower Parel, Mumbai.

3. Senior Police Inspector
EOW, Unit-7, Mumbai,
Commissioner of Police, Near Crawford Market, Mumbai. .. Respondents

WITH
INTERIM APPLICATION NO. 317 OF 2024
IN
CRIMINAL APPEAL NO. 311 OF 2021

Capri Global Capital Ltd.
A Company registered under the Companies Act having registered office at 52, Tower-A, Peninsula Business Park, Senapati Bapat Marg, Lower Parel, Mumbai. .. Applicant

Versus

1. Ganesh Ramdas Hajare,
   Age : 49 Years, Occu.: Business,
   R/at : R. No.1, R.P. Trust, Sambhaji Chowk, Kurla (W), Mumbai – 400070.

   (At present in Taloja Jail, Navi Mumbai)
2. The State of Maharashtra
   Through Competent Authority and Sub-Divisional Officer, (Encroachment Removal), Andheri Administrative Building, "A" – Wing, 1st Floor, S.R.A. Anant Kanekar Marg, Bandra (E), Mumbai – 400051.
3. Senior Police Inspector
   EOW, Unit-7, Mumbai,
   Commissioner of Police, Near Crawford Market, Mumbai. .. Respondents

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Mr. S. B. Talekar i/b Talekar & Associates, for the Applicant.

Mr. J. P. Yagnik, A.P.P., for the State-Respondent.

Mr. Siddh Pamecha a/w Mr. Nilesh Mandavkar i/b Ms. Anjana Mishra, for the Respondent No.2.

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CORAM : BHARATI DANGRE & MANJUSHA DESHPANDE, JJ.

RESERVED ON : 20th JUNE, 2024.

PRONOUNCED ON : 25th OCTOBER, 2024.

JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-

1. The Appellant being aggrieved by the order dated 22.02.2021, passed below Exh-27 in MPID Case No. 23 of 2018,

arising out of C.R. No. 55 of 2018, registered with the Economic Offences Wing, Unit-VII, Mumbai ("EOW"), has filed present Appeal under Section 11 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, (hereinafter referred to as " the MPID Act").

Vide C.R. No. 402 of 2018, an offence punishable under Sections 406, 409, 120B of the Indian Penal Code (hereinafter referred as "the IPC") alongwith the Sections 3 and 4 of the MPID Act, came to be registered against Atharv 4 You Infra and Agro Pvt. Ltd. and their Directors at Dahisar Police Station on 08.06.2018. The said C.R. No. 402 of 2018 later on was transferred to EOW, Unit-VII, which came to be re-numbered as C.R. No. 55 of 2018.

The present Appellant is one of the Directors of the Atharv 4 You Infra and Agro Pvt. Ltd., and in capacity of the Director of the said company, is arraigned as accused in the FIR.

2. It is contended by the Appellant that, he alongwith his wife has purchased two apartments one each in their name, i.e. Flat Nos. 2703 and 2704 in B-Wing, Rustomjee Azziano, Majiwada, Thane, on 30.03.2015 and they are residing in the same since then. The Appellant alongwith his

wife Smt. Smita Hajare issued NOC to mortgage Flat Nos. 2703 and 2704, on 23.05.2017. On 24.05.2017, the loan agreement was executed between a financial institution Capri Global Capital Ltd. i.e. the Respondent No.2 and Rushabh Enterprises, a sole propriety firm belonging to the son of the Appellant. The title deeds of both the flats were deposited with the Respondent No.2 Capri Global. The Respondent No.2 registered its charge over the secured assets i.e. Flat Nos. 2703 and 2704 by recording their security interest.

3. A term loan of Rs.1,15,00,000/-, was sanctioned by Capri Global, a financial institution within the meaning of Section 2(m) of the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002, (hereinafter referred to as "the SARFAESI Act, 2002"). The Appellant, his wife and M/s. Rushabh Enterprises, were classified as a non-performing asset (NPA) on 31.12.2018.

In the meanwhile the Investigating Officer, EOW, Unit-VII, Mumbai, took symbolic possession of the properties in question on 18.07.2018. Intimation notices were issued by the Investigating Officer to the Sub-Registrar, Thane as well as Secretary, Rustomjee Azziano, CHS Ltd., Majiwada, Thane, intimating not to allow transfer of the subject properties, including sale or mortgage etc.

On 14.02.2019, a notice under Section 13(2) of the SARFAESI Act, calling upon the Appellant, his wife and M/s. Rushabh Enterprises to pay the principal amount alongwith interest came to be issued.

Since, the Appellant and his wife failed to repay the loan amount or reply to the demand notice, the Respondent No.2 filed an Application under Section 14 of the SARFAESI Act, before the District Magistrate, Thane, for securing physical possession of the flat Nos. 2703 and 2704. The said application was allowed and Tehsildar, Thane, was appointed to take physical possession of the secured assets by order dated 16.08.2019. Accordingly, Tehsildar, Thane, issued notice for taking physical possession of the flats on 04.11.2019. However, Tehsildar, Thane was unable to take possession of the properties, since the property was occupied by the Appellant and his family members and they refused to handover the possession to the Tehsildar, Thane.

4. It is the case of the Appellant that, he has filed an Application (Exh-27) in MPID Case No. 23 of 2018, under Section 10(a) of the MPID Act, seeking a direction against the Respondent Nos.2 and 3 not to take any further steps to secure

the physical possession of the property, in which he was residing alongwith his family members without permission of the Court, with a further relief that the Appellant be allowed to continue to reside in the said properties, till the final decision in the MPID case, on such terms and conditions as the Court deems fit, where the Special Judge, MPID Court was pleased to pass an order granting him ad-interim relief on 04.02.2020 directing the Respondent No.2-Bank, not to take physical possession of the properties.

The Application was opposed by the EOW, Unit-VII, Mumbai, contending that, the properties in question were purchased from the deposits of the investors and the properties are required to be auctioned in order to return the deposits.

5. The Respondent No.2 has filed affidavit-in-reply on 04.02.2020 opposing the Application of the Appellant herein at Exh-27, citing two Judgments alongwith affidavit.

6. It is contended by the Appellant that, he has not disputed the veracity and genuineness of the documents filed by the Respondent No.2, but it is his contention that alongwith his two properties, the Principal Secretary (Special),

Government of Maharashtra, has attached about 87 properties in exercise of his powers under Section 4 of the MPID Act, by issuing a notification dated 28.05.2020 and hence, he may be allowed to reside in his properties till decision of the MPID Case.

The Application filed by the Appellant at Exh-27 was heard on 22.02.2020, and vide order dated 22.02.2021, the same has been rejected.

7. It is contended by Mr. Talekar on behalf of the Appellant that the Division Bench of this Court has declared the provisions of MPID Act, ultra-vires for want of legislative competence. Thereafter, constitutional validity of the MPID Act, has been upheld, in the case of ***Sonal Hemant Joshi And Ors., V/s. The State of Maharashtra And Ors., reported in (2012) 10 SCC 60***, relying on the earlier Judgment of ***K. K. Bhaskaran V/s. State Represented By Its Secretary, Tamil Nadu And Ors., (2011) 3 SCC 793***. Therefore, according to him, MPID Act is a complete code, enacted to protect the interests of the depositors of financial establishments. The MPID Act and SARFAESI Act operate in two distinct areas and there can be no conflict between the two Acts, one passed by the Parliament i.e. the SARFAESI Act, and the other by the State Legislature i.e. the MPID Act.

It is further urged by the learned counsel Mr. Talekar that the MPID Act is not subservient to the SARFAESI Act, merely because it incidentally encroaches on the subject assigned to the Parliament for the purpose of deciding the constitutional validity. Thus, the Appellant has raised an objection that considering that the properties in question are attached vide notification dated 28.05.2020 by the Competent Authority, under Section 5 of the MPID Act, cannot be taken into possession by the Tehsildar and put to auction under the orders of Designated Court under the MPID Act, without following procedure prescribed under Section 7 of the MPID Act.

It is further contended that, the Respondent No.2 is not a 'Depositor' and the money lent by Respondent No.2 to M/s. Rushabh Enterprise or the Appellant or his wife cannot be termed as 'Deposit', within the meaning of Section 2(c) of the MPID Act. The Designated Court under the MPID Act, cannot act in aid to secure the loan advanced by the Respondent No.2 in an Application filed under Section 10(a) by the Appellant without following procedure prescribed under Section 7 of the MPID Act.

Under the MPID Act, either the Competent Authority or the Designated Court has powers to protect the interest of the Depositors. There are more than 100 immovable properties shown under 84 heads which can be auctioned and all of them are not required to be auctioned at once. The valuation of the properties is required to be done by the Government approved valuer, appointed by the Competent Authority. It is submitted that the Special Judge cannot direct valuation of only two properties, when there are more than 100 properties attached. According to the Appellant, the Respondent No.2 ought to have filed an objection under Section 7 and the Designated Court ought to have followed summary procedure as contemplated under Section 7(3) of the MPID Act.

8. The Appellant has also relied on Section 10(a) of the MPID Act claiming that, the Designated Court ought to have made an order for maintenance of the Appellant and his family and expenses for defending the Applicant, where the criminal proceedings have been instituted against him in the Designated Court.

The reason assigned for the rejection of his application under Section 10(a) of the MPID Act, is irrelevant and extraneous.

The Special Judge, MPID Court, should not have gone into the controversy as to whether the Section 35 of the SARFAESI Act, will override Section 14 of the MPID Act. Hence, on this premise the Appellant has challenged the order passed by the Special Judge, MPID and Additional Sessions Judge, Mumbai, dated 22.02.2021.

9. The present Appeal has been opposed by the Respondent No.2, by filing reply-affidavit through authorized representative, who has been authorized by Board Resolution dated 05.06.2023. According to him, one M/s. Rushabh Enterprise alongwith the Appellant and his wife had approached him for availing loan facility. The Secured Creditor sanctioned MSME loan of Rs.1,01,00,000/- on 18.05.2017 and the Borrowers created security interest by mortgaging Flat No. 2703 and 2704 located on the 24th Floor of the B-Wing of the building known as Azziano situated at Rustomjee Azziano, off Mumbai Nashik Highway, Majiwada Junction, Eastern Express Highway, near Saket Society, Thane.

10. A notice under Section 13(2) of the SARFAESI Act was issued on 14.02.2019, requiring the borrowers to make final payment within 60 days from the receipt of notice. They were also put to notice that they were barred from

transferring, alienating or creating any third-party interest with regard to the secured assets. Since the said amount was not paid, the Secure Creditor moved an application under Section 14 of the SARFAESI Act, before the District Magistrate, which was allowed on 16.08.2019. The Tehshildar, Thane was authorised to take physical possession of secured assets and hand over the said assets to the Authorized Officer.

It is contended that as per Section 26 E of the SARFAESI Act, the Secured Creditor's debt shall have priority over any other debts. The said clause is reproduced herein below :

> *" Section 26E – Priority to secured creditors Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority."*

The Secured Creditor's right of recovery have preference over all other claims. Hence, he has precedence over any other claims.

11. It is the stand of the Respondent No.2 that, the

Appellant has suppressed various relevant and material facts and has not approached this Court with clean hands. The Special Judge, MPID has directed the Respondent No.2 to obtain valuation of the subject properties from the registered Government valuer within four weeks vide order dated 22.02.2021. When the matter was listed before this Court on 06.09.2021, this Court had granted the ad-interim relief staying Clause (4) of the order dated 22.02.2021, passed by the learned Special Judge MPID Court. The impugned order reads thus :

> ***"ORDER***
>
> *1. Application is rejected.*
>
> *2. The reply – Exh. 27-R/1, documents at Exh.27-R/2 and written documents at Exh.27-R/4 filed by respondent no.2 are treated as objections u/sec. 7 of the MPID Act against attachment of properties at Sr. No. 36 and 37 of the Notification dtd. 28.5.2020.*
>
> *3. Respondent no.2 is directed to obtain current market value of the aforesaid properties from a Government registered valuer within 4 weeks and submit before this Court.*
>
> *4. Further orders in respect of auction of said properties shall be passed after receiving the valuation report."*

Thus, there was restraint imposed on passing further orders after receiving the valuation report. The said matter was thereafter listed before this Court and ad-interim relief has been continued. According to the Respondent No.2 the interim-relief has been granted without going into the merits of the matter.

12. It is the contention of the Respondent No.2 that in terms of the statement of account(s) maintained by the Respondent No.2 during the course of its day-to-day business, there is an outstanding liability of the Appellant to the tune of Rs.2,11,00,232.79/- till 21.12.2023. In furtherance of the order passed by the learned District Magistrate, Thane, under Section 14 of the SARFAESI Act, the physical possession of the secured assets has been taken over by the Respondent No.2 on 26.10.2023. After receiving physical possession, the Appellant had also filed Application No. 510 of 2023 before the Debts Recovery Tribunal-III, Mumbai, for various reliefs under the SARFAESI Act.

According to the learned counsel for the Respondent No.2, the Special Judge MPID has passed order dated 22.02.2021, taking into consideration that the SARFAESI Act, has overriding effect over the provisions of the MPID Act, and the proceedings initiated by the Respondent No.2 are for the sole purpose of recovering its secured debt.

They have first charge over the subject properties, therefore, the Respondent No.2 has prayed to vacate the interim-relief granted in favour of the Appellant herein.

13. In furtherance of order of the Special Judge, MPID, dated 22.02.2021, the Respondent No.2 has filed valuation report before the Special Judge on 17.08.2021.

14. We have considered the submissions of the learned counsel Mr. Talekar, representing the Appellant, the learned A.P.P. Mr. Yagnik for the State and Mr. Pamecha, for the Respondent No.2.

We have perused the Application of the Appellant as well as impugned order. In the Application filed by the Appellant, it is the prayer of the Appellant seeking direction to the Respondent Nos.2 and 3 not to take further steps, for taking physical possession without permission of the Court and to allow the family of the Appellant to reside in the properties till the final decision of the Special Court under Section 10(a) of the MPID Act, on such terms and conditions as this Court may deem fit. The second prayer is to allow the family of the Applicant to reside in the properties which have been attached till the final decision is made by the Special MPID Court, under

Section 10(a) of the MPID Act, on such terms and conditions as this Court may deem fit.

From the perusal of the record it is evident that after the said application has been filed, ad-interim relief has been granted in favour of the Appellant by order dated 04.02.2020, by the Special Judge, directing the Respondent No.2 not to take physical possession of the properties from the Appellant. After considering the stand of the respective parties, the Special Judge has decided the Application of the Appellant vide order dated 22.02.2021.

The learned Judge was confronted with a situation wherein the EOW had attached properties in MPID Case No.23 of 2018, and the Respondent No.2 being a Secured Creditor was also trying to take possession of the secured properties, in pursuance of the order passed by the District Magistrate for taking physical possession of the secured asset vide order dated 16.08.2019.

The Special Judge has observed that, Section 35 of the SARFAESI Act provides that the provisions of the Act shall have overriding effect over all other laws notwithstanding anything inconsistent thereto contained in any other law. An identical provision is also found in Section 14 of the MPID Act. Hence, when order of attachment is issued against the same property, under the SARFAESI Act as well as the MPID Act, there being conflict of interest between parties claiming interest, the one claiming rights under the MPID Act, which is a State Legislation, will have to give way to the claim under the SARFAESI Act which is a Central Legislation. Reliance is placed on the Judgment of ***UCO Bank And Ors. V/s. Dipak Debbarma And Ors., reported in (2017) 2 SCC 585***, wherein the Hon'ble Apex Court has held that, the provisions of SARFAESI Act which is a Central Act shall prevail over the Tripura Act, 1960, which is a State Act.

Hence, in view of the judicial pronouncement in ***UCO Bank And Ors. V/s. Dipak Debbarma And Ors.*** (Supra) the Special Judge has held that the prayer of the Applicant i.e. present Appellant cannot be granted.

15. The scope of Section 10(a) of the MPID Act has been misconceived by the Appellant. The Designated Courts are granted discretionary powers under Section 10 of the MPID Act, for administration of the property attached. Section 10 of the MPID Act reads thus :

> *"10. Administration of Property attached.*
> *The Designed Court may, on the application of any person interested in any property attached and vested in the Competent*

> *Authority under this Act and after giving the Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for--*
>
> *(a) providing from such of the property attached and vested in the Competent Authority as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in the Designated Court under section 3;*
>
> *(b) safeguarding, so far as may be practicable, the interest of any business affected by the attachment and in particular,the interest of any partners in such business."*

Upon going through the said provision, it is evident that the Designated Court is conferred with the discretionary powers to grant reasonable amount for maintenance to an Applicant, who has filed an application, who has an interest in the property attached, which is vested with the Competent Authority, for the maintenance of his family and for expenses connected with the defence of the Applicant's criminal proceedings, which have been instituted against him in the Designated Court under Section 3. The very purport of the said provision is administration of property which is attached by the Competent Authority. It is only upon the satisfaction of the

Designated Court that, the person whose property has been attached, is not in a position to maintain himself and his family, in exercise of the discretionary powers of the Designated Court, the Court can pass an order granting either maintenance and/or expenses for the defence of the Applicant in the criminal proceedings pending before the Designated Court under Section 3.

In the pleadings in the Application, there is a specific averment made that, the properties have already been attached and also charge-sheet is filed before the Court. The said property is already attached by the EOW, Unit-VII, Mumbai, according to the own pleadings of the Appellant. His only submission is that his family is residing in the said properties since 2016, since he has no alternate accommodation and considering that he is in jail, the family members are unable to make arrangement of alternate accommodation. If his prayer is not granted, great prejudice would be caused to the Applicant. Apart from this, there is no ground made out by the Appellant as to why discretionary powers should be exercised by the Special Judge, as provided under Section 10(a) of the MPID Act.

16. Upon going through the said provision, the object of

the said provision is apparent, it provides for maintenance to be granted to the Appellant and his family members whose property is attached. Even some amount towards expenses connected with the defence of the Applicant in the criminal proceedings can be granted by the Designated Court. The prayer of the Appellant before the Designated Court is to allow him to continue to reside in the property which is attached, is beyond the very scope of Section 10(a). Upon going through the prayers made in the Application, it is evident that inspite of attachment of the properties the Appellant wants to continue to reside in the said property and delay further proceedings.

17. If we go through the statement of objects and reasons of the MPID Act, the object of this Act is to make suitable legislation in public interest, to curb the unscrupulous activities of the, 'financial establishments' who have committed defaults in returning the deposits on maturity or to pay interest or render services in kind, as assured to the public. The hard earned money, mostly of the middle class and poor families is grabbed by the so called 'financial establishments', who have promised a handsome return on its maturity. It is for the protection of interest of 'Depositors' who are duped on a large scale, the said Act has been enacted.

In the present case the Appellant is facing the prosecution before the Special Court, for having cheated large number of Depositors. The Depositors are waiting for return of their deposits, which is to be realized by auctioning the property, which is purchased by the Appellant from the deposits. The proceedings initiated against the Appellant needs to be taken to its logical end, at the earliest in the interest of Depositors without further delay.

18. The Appellant has already placed on record copy of the charge-sheet by way of amendment pursuant to the leave granted by this Court vide order dated 21.02.2024. Upon going through the said charge-sheet, it is evident that there were various schemes which were floated by the Atharv 4 You Infra and Agro Pvt. Ltd. of which the Appellant is one of the Directors. Huge amount of money was collected from Depositors in various schemes promising handsome returns. There is ample material collected to show that various properties have been purchased from the deposits collected from the investors. The property of the Appellant is one of such property which is purchased from the money of the Depositors. Therefore, it would be against the interest of the Depositors if the Appellant is allowed to continue to reside in the said

property of which valuation is ordered for conducting auction. It also needs to be considered that while rejecting the Application of the Appellant, the Special Judge MPID Court, and Additional Judge, City Civil and Sessions Court, Mumbai, has passed order directing the Respondent No.2 i.e. the financial establishments to obtain current market value of the aforesaid properties from a government registered valuer, within four weeks and submit a report before the Special Judge. It is only after receipt of valuation report, further orders in respect of auction were to be passed by the Special Court. As stated hereinabove the valuation report is already filed by the Respondent No.2 on 17.08.2021.

Clause-4 of the said order pertains to auction of the said property, this Court while issuing notice has granted interim-relief to the Appellant vide order dated 06.09.2021, by directing that the said order shall remain stayed, if already not acted upon. The said interim relief continues till date.

19. The Appellant has challenged the order dated 22.02.2021, which is passed by the Special Judge, MPID Act, on two grounds. Firstly, challenging order rejecting the Application seeking maintenance under Section 10(a) being

erroneous and other objection raised by the Appellant is to clause (2) of the order, in which the written submissions at Exh-27-R/2 filed by the Respondent No.2 have been treated as objection under Section 7 of the MPID Act, against the attachment of the properties at Sr. No. 36 and 37 of the notification dated 28.05.2020.

20. So far as the challenge to the rejection of prayer of the Appellant for relief of permission of the Designated Court to continue to reside in the attached properties is concerned, we have already observed that Section 10(a) does not contemplate any such relief which would empower the Designated Court to grant permission to the Appellant whose property has been attached to continue to reside in the premises. Hence, the MPID Court has rightly passed the order refusing the relief to the Appellant.

21. The Appellant has objected to the part of the order whereby the Respondent No.2, which is a financial institution is directed to obtain current market value of the property by entertaining his written submission and treating it as objection under Section 7 of the MPID Act. It is objected on the ground that the Government of Maharashtra, has attached the

property in question vide notification dated 28.05.2020, and thus the possession of the properties in question was already taken over by the Competent Authority, appointed under Section 5 of the MPID Act.

22. The Appellant has taken objection to the order of the Special Judge wherein the reply at Exh-27-R/1, document at Exh-27-R/2 and written submissions at Exh-27-R/4 have been treated as objection under Section 7 of the MPID Act, against the attachment of the properties.

As far as objection to the observations of the Special Judge, whereby the reply/submissions/documents in the pending Application, was treated as objection to the attachment of properties under Section 7 of the MPID Act, is concerned, we do not find any substance in the said objection, as there is no particular format as such provided for filing objection before the attachment is made absolute. In fact Section 7(3) is clear in this regard, which provides that any person who is claiming interest in the property attached or any portion thereof, even without notice being served upon him, can make an objection to the Designated Court at any time before the order of attachment is made absolute. Therefore, we do not find any substance in the objection raised by the Appellant to the form in which the objection was raised.

23. So far as the rival claims of the Respondent No.2 Capri Global, the Competent Authority and the Sub Divisional Officer, Andheri, is concerned, from the averements and record produced, it transpires that the two flats i.e. Flat No. 2703 and 2704 were purchased by the Appellant on 30.03.2015. It was mortgaged on 23.05.2017 by obtaining loan from the Respondent No.2-Capri Global. The Title Deed of both the flats were deposited with the Respondent No.2. The Appellant, his wife and M/s. Rushabh Enterprises were classified as NPA on 31.12.2018. Notice under Section 13(2) of SARFAESI Act was issued on 14.12.2019 and the order under Section 14 SARFAESI Act was issued by District Magistrate appointing Tehsildar to take possession was issued on 16.08.2019. Notice for taking possession of flats came to be issued by Tehsildar on 04.11.2019.

The Respondent No.3 herein has objected to the claim of the Respondent No.2 Capri Global by its additional report dated 21.10.2020, Exh-D to the Appeal opposing Misc. Application Exh.27/19 filed by the accused, contending that the properties are purchased by the Appellant from the deposits of the crime. Since the said properties have been purchased from the funds which are raised from the Depositors and they have been cheated they have a prior claim over the proceeds which are likely to be received by the auction of the properties. The Depositors have a prior claim over the money received after the auction. The properties in question were protected on 19.07.2018 and notification to that effect has been published in the official gazette on 08.06.2020.

24. From the objection raised by the Respondent No.3 in the proceedings before the Special Judge, it is evident that though it is claimed that the property in question was claimed to have been protected on 19.07.2018 but the notification has been issued on 08.06.2020 in the official gazette, therefore the effective date of the said notification, would be the date on which it is notified in the gazette.

If we consider the relevant dates, the properties in question has been mortgaged on 29.05.2017 by executing an agreement, therefore, the said date is prior to the date of issuance of notification under the MPID Act dated 08.06.2020, as well as the date on which the property is claimed to have been protected i.e. 19.08.2018. Both the date which are relevant for deciding the claims of the respective parties are subsequent to the date of mortgage.

The position of law in this regard is settled by way of various decisions of this Court as well as the Hon'ble Apex Court.

While deciding the Application of the present Appellant the Special Judge has relied on the ruling of ***UCO Bank And Anr. V/s. Dipak Debbarma And Ors., reported in (2017) 2 SCC 585*** and ***Kulbir Singh Dhaliwal V/s. UT Chandigarh, reported in 2019 SCC Online P&H 2168*** .

25. The Hon'ble Apex Court has considered the Doctrine of federal supremacy and inconsistency between the Central Act and State Act. In UCO Bank And Anr. V/s. Dipak Debbarma And Ors. (Supra), the Hon'ble Apex Court has clarified the position of law in para No.11 of the Judgment, which reads thus :

> *" 11. In interpreting Article 246 regard must be had to the constitutional scheme which visualises a federal structure giving full autonomy to the Union Parliament as well as to the State legislatures in their respective/demarcated fields of legislation. The problem may, however, become a little more complex than what may seemingly appear as the two legislations may very well be within the respective domains of the concerned legislatures and, yet, there may be intrusion into areas that fall beyond the assigned fields of legislation. In such a situation it will be plain duty of the Constitutional Court to see if the conflict can be*

resolved by acknowledging the mutual existence of the two legislations. If that is not possible, then by virtue of the provisions of Article 246(1), the Parliamentary legislation would prevail and the State legislation will have to give way notwithstanding the fact that the State legislation is within the demarcated field (List II). This is the principle of federal supremacy which Article 246 of the Constitution embodies. The said principle will, however, prevail provided the pre- condition exists, namely, the Parliamentary legislation is the dominant legislation and the State legislation, though within its own field, has the effect of encroaching on a vital sphere of the subject or entry to which the dominant legislation is referable. This is the principle that is discernible from the Constitution Bench judgment of this Court in State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal and Ors.[3] Paragraphs 25, 26 and 27 which illuminates the issue may be conveniently extracted below.

"25. The non obstante clause in Article 246(1) contemplates the predominance or supremacy of the Union Legislature. This power is not encumbered by anything contained in clauses (2) and (3) for these clauses themselves are expressly limited and made subject to the non obstante clause in Article 246(1). The State Legislature has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule and it also has the power to make laws with respect to any matters enumerated in List III (Concurrent List). The exclusive power of the State Legislature to legislate with respect to any of the matters enumerated in List II has to be exercised subject

to clause (1) i.e. the exclusive power of Parliament to legislate with respect to matters enumerated in List I. As a consequence, if there is a conflict between an entry in List I and an entry in List II, which is not capable of reconciliation, the power of Parliament to legislate with respect to a matter enumerated in List II must supersede pro tanto the exercise of power of the State Legislature.

26. Both Parliament and the State Legislature have concurrent powers of legislation with respect to any of the matters enumerated in List III. The words "notwithstanding anything contained in clauses (2) and (3)" in Article 246(1) and the words "subject to clauses (1) and (2)" in Article 246(3) lay down the principle of federal supremacy viz. that in case of inevitable conflict between the Union and State powers, the Union power as enumerated in List I shall prevail over the State power as enumerated in Lists II and III and in case of an overlapping between Lists II and III, the latter shall prevail."

26. Therefore, we do not find any perversity in the order passed by the Special Judge MPID Court. None of the grounds raised by the Appellant are capable of being entertained, in view of the observations which have been made herein above. It is very much within the powers of the Special Judge, to entertain objections in whatsoever form taken to the attachment, before it is made absolute.

Similarly, the part of the order which observes that "further orders in respect of the auction of said properties shall be passed after receiving valuation report", is also perfectly legal and within the competence of the Court.

However, we clarify that we have not expressed any opinion about the priority of claims by the interested parties in the present Appeal.

The observations made by us in the present Appeal are restricted only to the extent of correctness of order under challenge. The Special Judge is empowered to pass appropriate orders regarding priority of claims and apportionment of the sale proceeds from the auction sale.

27. Hence, we do not find any merit in the Appeal as a result, the Appeal is dismissed.

In view of the disposal of the Appeal, the pending Application are also disposed off.

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