IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4286 OF 2025

Palapathy V Murthy .. Petitioner

Versus

M/s Gavde Finance Pvt Ltd. And Ors .. Respondents

Mr. Dinesh Dubey a/w. Mr. Pranay Chaugule, for the Petitioner.

Mr. Girish M. Agarwal, for Respondent No.1.

Mr. Mayur Sonawane , APP for the Respondent No.3-State.
API Arjun Podwale of EOW-Unit-6, Mumbai is present.

Mr. Aniruddha Hariani, for the Respondent No.4.

CORAM: RAVINDRA V. GHUGE
&
GAUTAM A. ANKHAD, JJ.

DATE: 12th AUGUST, 2025

P. C.

1. This matter was heard at length on 11th August, 2025. Though the hearing was concluded, since the learned Advocate wanted to cite case law, we granted an overnight pass-over. Today, learned Advocate for the Petitioner has cited the Judgment delivered by the Single Judge Bench of this Court in ***City***

Cooperative Credit and Capital Limited and Another Vs. Official Liquidator of M/s. Satwik Electric Controls Pvt.Ltd. 2019 SCC OnLine Bombay 888.

2. The Petitioner has put forth prayer clause (A) as under:-

> *"A. That, this Hon'ble Court may be pleased to issue the Writ of Certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned order dated 30/09/2024 passed by the Ld. PMLA Court in Exhibit 33 in PMLA Case No.25 of 2018 pending before the Ld. PMLA Court, 16th Sessions Court at Bombay. "*

3. For challenging an interlocutory Order dated 30th September, 2024, passed by the learned PMLA Court below *Exhibit 33* in PMLA Spl. Case No.25 of 2018, a Writ Petition has been filed on 22nd July, 2025.

4. In the light of the submissions of the learned Advocate for the Petitioner, we have perused the interlocutory order impugned in this Petition.

5. Respondent No.1 had preferred an application *Exhibit 33*, seeking intervention in the pending proceedings before the designated Special Court. The intervener claimed to be a Finance Company and has been adjudicated and admitted as a creditor by the Official Liquidator appointed under Order dated 21/7/2024, passed by the Hon'ble High Court in Company Petitions No. 412/2013 and 433/2013, in the matter of winding up of M/s. Birla Surya Limited. The claim of the intervener is to the extent of Rs.20,04,76,514/-.

6. The ED filed it's say to the application at *Exhibit 33,* which was granted *Exhibit 33-A*. It was pleaded that Section 71 of PMLA 2002, has an overriding effect over other existing laws in matters relating to 'Money Laundering'. The Petitioner has placed reliance upon Section 8(8) of PMLA Act and has contended that the legitimate interest of the investors who may have deposited amounts in fixed deposits and other inter-corporate deposit schemes of M/s. Birla Power Solutions Limited, have suffered loses because their monies were routed for money laundering purpose. Hence, the quantifiable loss suffered by the investors was to be safeguarded on priority. A request was made that the claim of the intervention applicant, as an unsecured creditor of M/s. Birla Surya Limited, was to be considered.

7. While deciding the application *Exhibit 33*, the learned Court adverted to the case law cited before it by the parties and dealt with those case law by observing in paragraph Nos. 3, 4 and 5, as under:-

> *3. Ld. Advocate for the intervener has relied upon the judgment in the matter of Ashish Ramesh Mahendrakar Vs. M/s. Kunal Impex and Ors. in Criminal Appeal No.393 of 2024 and has submitted that as opportunity is requited to be given of hearing to the intervener prior to passing any order of the restoration of properties.*
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> *4. Ld. SPP during arguments has relied upon the judgment in the matter of The Deputy Director, Directorate of Enforcement Delhi Vs.Axis Bank & Ors. in Cri.A. 143/2018 and Cri.MA 2262/2018 and*

> *submitted that the PMLA, by virtue of section 71 of the PMLA, 2002, has the overriding effect over other existing laws in the matter of dealing with 'money laundering' and 'proceeds of crime. I do agree that section 71 of the PMLA, 2002 is having overriding effect over other existing laws. The para 171 (xi) of the same judgment i.e.* ***The Deputy Director, Directorate of Enforcement Delhi*** *referred supra deals with a bonafide third party purchaser and it has been held that,*
> ***"A party in order to be considered as a "bonafide third party claimant" for its claim in a property being subjected to attachment under PMLA to be entertained must show, by cogent evidence, that it had acquired interest in such property lawfully and for adequate consideration, the party itself not being privy to, or complicit in, the offence of money-laundering and that it has made all compliances with the existing law including, if so required, by having said security interest registered."***
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> *5. Considering the fact that if the bonafide third party claimant on proving that it had acquired interest in such property lawfully and for adequate consideration, then he will be entitled for restoration of the property. As such, considering the fact that the intervener is creditor of M/s Birla Surya Limited. Therefore, he has to be heard before any order of the restoration of the property in favour of the accused or other applicants. As such, at this juncture, I am only deciding, as to whether the intervener is entitle to intervene or not. No prejudice would be cause to the complainant or the accused persons if the intervener is allowed to intervene in the matter and application Exh.33 for further proceeding be treated as the objection of the intervener for proceeding to restore the properties.”*

8. Though this matter was heard yesterday and today, the Petitioner is unable to point out any reported judgment which lays down the law that in such cases, an intervention application, needs to be thrown out at the threshold and should not be entertained at all. The Petitioner has relied upon **City Co-op Credit and Capital Limited** (supra), wherein the question before the learned

Single Judge was whether the applicant is an unsecured creditor or a secured creditor. It was then concluded in paragraph No. 46, as a part of the conclusion in the Judgment, that only if a creditor has realized the proceeds of sale of asset of the Company prior to the winding up order, can such a creditor claim to have prior rights over such asset/ its sale proceeds. This Judgment is on totally different facts and lays down a law applicable to the facts of that case.

9. Application Exhibit 33 was filed by the intervener on 3rd May, 2019. The reply to Exhibit 33 was filed by the ED on 23rd July 2019, which was recorded as Exhibit 33-A. The Petitioner before us did not file any reply to the application and admittedly did not even participate in the hearing on Exhibit 33.

10. We find from the interlocutory Order impugned herein that the concerned Court has allowed the intervener to enter the proceedings. It goes without saying that eventually the Court would decide the claims, strictly on their merits. Whether the intervener has any legal right or not would be considered by the Court by recording oral and documentary evidence and on the merits of the matter.

11. What needs consideration is, as to what would be the situation if the intervener is disallowed to enter the proceedings and his intervention application is thrown out. The resultant effect would be that the intervener would never get the opportunity to participate in the pending proceedings. The opposite would be that, if the intervener is permitted to participate in the proceedings and if the Court comes to a conclusion on merits that the intervener has no rights under the law before the said Court, it would negate the claim of the intervener. So also, if the application is thrown out at the threshold and eventually, if it is noticed that the intervener has some claim or rights, disallowing the intervener to participate in the proceedings, would result in a travesty of justice.

12. The Special Court has already concluded in paragraph 5 that no prejudice would be caused to the complainant or the accused persons, if the intervener is allowed to intervene in this matter and application Exhibit 33, could be treated as the objections of the intervener in the proceeding in which restoration of the property is sought.

13. In ***Sayed Yakoob Vs. K.S.Radhakrishnan, AIR 1964 SC 477 and in Surya Dev Rai Vs Ram Chander Rai, AIR 2003 SC 3044: 2003 (6) SCC 682,*** the Hon'ble Supreme Court has concluded that merely because a second

view is possible, would not be sufficient for a Court to brand the impugned order as being illegal and perverse.

14. In view of the above, **this Petition is dismissed**.

[GAUTAM A. ANKHAD, J.] **[RAVINDRA V. GHUGE, J.]**