Salgaonkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1142 OF 2025

Kashinath Nagu More & Ors. .. Appellants

Versus

Central Bank of India & Ors. .. Respondents

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Mr.Anjani Kumar Singh i/b Mr.Govind G. Ghogre for the Appellants.

Mr.Shyam Kapadia with Mr.Ojas Gole for the Respondent No.1 (Central Bank of India).

Ms.Supriya Kak, Addl.P.P. for the State/Respondent.

Ms.Priyanka Gupta for the Respondent No.4 (Radheshyam Gupta).

Mr.Prince Kumar Upadhyay with Mr.Gitesh Sawant and Mr.Patrick Gomes for the Respondent No.5 (Sharad Shyamlal Gupta)

API Vinayak Desure, Unit 8, MPID, EOW, Mumbai.

CORAM: BHARATI DANGRE &
SHYAM C. CHANDAK, JJ.
DATE : 24th NOVEMBER, 2025

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P.C:-

1. The Appeal raise a challenge to the order dated 04/03/2025 passed by the Designated Court under MPID Act, deciding an application filed by Central Bank of India, praying for raising of attachment of the properties notified under Section 4 of MPID Act, on the ground that they are mortgaged

with the applicant/bank, for securing a loan which was advanced to Radheshyam Shyamlal Gupta and his company.

2. The impugned order, taking into consideration Section 14 of MPID Act, contain a non-obstante clause by providing that "it shall have effect notwithstanding anything inconsistent therewith contain in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law".

Recording that SARFAESI Act, being a central legislation, will have an overriding effect over MPID Act, which is a state legislation, the application filed by the bank is allowed by raising the attachment and permitting the bank to deal with the attached properties though notified under Section 4 of MPID Act to realize the loan of borrowers as per the provisions of SARFAESI Act.

3. Raising a challenge to the impugned order, the learned counsel for the Appellant has invited our attention to the decision of the Hon'ble Supreme Court in the case ***National Spot Exchange Limited Vs. Union of India & Ors.***[1], where the conundrum about the supremacy of the Central legislation over the State legislation i.e. the MPID Act has been put to rest, by specifically declaring thus:-

> "66. In that view of the matter, it is held that no priority of interest can be claimed by the secured creditors against the properties attached under the MPID Act and that the provisions of the MPID Act would override any claim for priority of interest by the secured creditors in respect of the properties which have been attached under the MPID Act."

1 (2025) 8 SCC 393

Apart from this, what shall be the impact upon the said declaration is also clearly carved in the said law report, leaving no scope for us to determine the rights of the Bank.

In the light of this, we find that the overriding effect given to the SARFAESI Act over the provisions of the MPID Act is no longer available in the wake of the decision of the Apex Court in ***National Spot Exchange Limited*** (supra).

For this reason, we quash and set aside the impugned order dated 04/03/2025.

4. We are also informed that till date, the said property is not yet auctioned and the learned counsel for the Bank would submit that the property is now in the hands of the Liquidator.

Learned A.P.P. informs that the auction of the property was scheduled today, and it is not yet concluded. But the learned counsel for the Applicant would submit that the competent authority is not kept in the loophole, while conducting the auction by the liquidator.

We do not deem it necessary to consider the said contention, as if the impugned order is looked into, it is merely based on the supremacy of the SARFAESI Act and the secured creditors therein as against the provisions of the MPID Act. Therefore, we leave it open to raise all the contentions before the competent court, which shall include the contention that the company is under liquidation and is subjected to Insolvency and Bankruptcy Code (IBC), 2016.

5. With the aforesaid, the Appeal stands disposed of.

(SHYAM C. CHANDAK, J.) **(BHARATI DANGRE, J.)**