IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11158 OF 2016

The Nashik District Central Co-Operative Bank Limited … Petitioner

**Versus**

State of Maharashtra and another … Respondents

WITH

INTERIM APPLICATION NO. 1961 OF 2025

IN

WRIT PETITION NO. 11158 OF 2016

SWEETY RAJU BHALERAO

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Date: 2026.10.23 12:17:00 +0530

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Mr. Rameshwar Totala, a/w Adv. I. Qureshi, for Petitioner.

Ms. Smita Thakur, for Respondent No. 2.

Mr. Vivekanand Vinod Krishnan (through VC), a/w Mr. Abhijeet Dixit, and Adv. Chaitali Bhogle, for Respondent No. 3/Applicant.

Ms. G.R. Raghuwanshi, AGP for Respondent/State.

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**CORAM : MANISH PITALE & SHREERAM V. SHIRSAT, JJ.**

**DATE : 22nd OCTOBER 2026.**

**PC:**

1. Heard learned counsel for the parties.

2. By this petition, the petitioner - Co-operative Bank has approached this Court challenging a communication dated 16/09/2016 issued by Respondent No. 2, i.e, the Recovery Officer and Assistant Provident Fund Commissioner, Nashik, whereby the said respondent called upon the petitioner to hand over machinery, which was put to auction by Respondent

No. 2 to recover Provident Fund dues of M/s. Nashik Sahakari Sakhar Karkhana Limited.

3. It was the case of the petitioner that the said machinery of the karkhana was its secured asset in the context of a loan advanced to the Sakhar Karkhana and that the petitioner - Bank was entitled to proceed against the said machinery as a secured asset under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). Since Respondent No. 2 had conducted the auction and called upon the petitioner to hand over the machinery, in order to further hand over the same to the auction purchaser, i.e., Respondent No. 3, the petitioner - Bank prayed for urgent interim relief in the present writ petition.

4. By an order dated 27/09/2016, while issuing notice in the writ petition, this Court granted ad-interim relief, as a consequence of which the subject machinery continued to remain in the possession of the petitioner - Bank. The said ad-interim order continued to operate during the pendency of this petition.

5. The Respondent No. 3 filed Interim Application No. 1961 of 2025, seeking a direction against Respondent Nos. 1 and 2 for refunding the bid amount, along with expenses and interest at the rate of 15% per annum from

May 2016, in the light of the fact that while he was the successful bidder in the auction conducted by Respondent No. 2 and had deposited the entire bid amount, he was deprived of possession of the said machinery due to pendency of litigation. When the said application came up for consideration, Respondent No. 2 appeared through counsel before this Court and directions were issued for listing the application along with the writ petition for consideration.

6. While doing so, in the order dated 23/09/2026, this Court recorded a submission made on behalf of the Respondent No. 2 that the position of law stood clarified during the pendency of this writ petition and that in terms of the judgment of the Supreme Court in the case of ***Jalgaon District Central Co-operative Bank Limited vs. State of Maharashtra***,[1] the writ petition ought to be dismissed.

7. In view of the above, the writ petition along with the interim application were taken up for consideration today. The learned counsel for the petitioner - Bank tendered certain documents to claim that Respondent No. 2 had already recovered an amount of Rs. 3,84,97,103/- from the account of the petitioner Bank and that therefore, since no further dues were to be recovered by Respondent No. 2, the same ought to inure to the benefit of the petitioner in this writ petition. On the position of law, as argued on

1 [(2025) SCC OnLine SC 2513]

behalf of the petitioner - Bank, it was conceded that the aforesaid judgment of the Supreme Court had declared the position of law in favor of Respondent No. 2.

8. The learned counsel appearing for Respondent No. 2 submitted that the recovery of the aforesaid amount from the account of the petitioner - Bank has no concern or implication for the present writ petition. It was submitted that a separate set of litigation is already pending before a learned Single Judge of this Court and the same can have no concern with the present writ petition. It was submitted that the amount realised through auction of the machinery in the year 2016 was already utilised towards payments made to the employees and in the light of the position of law clarified by the Supreme Court in the aforementioned judgment, the present writ petition ought to be dismissed and consequential directions may be issued for handing over of the machinery to Respondent No. 3.

9. The learned counsel for Respondent No. 3 submitted that this Court may consider the prayer made in the interim application, as the said respondent would no longer be interested in the machinery, which has not come to his possession for all these years and therefore, this Court may consider directing Respondent No. 2 to refund the bid amount.

10. Having considered the rival submissions, we are of the opinion that

the position of law with regard to priority claimed by the petitioner - Bank exercising its rights under the SARFAESI Act on the one hand and Respondent No. 2 claiming first charge under Section 11(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has been clarified and it has been categorically held that the right of Respondent No. 2, while recovering Provident Fund dues, overrides the priority of the petitioner Bank claiming rights under the SARFAESI Act, as such a priority cannot be equated with a first charge and cannot be given prevalence over the first charge statutorily created. The relevant portion of the said judgment reads as follows:

> *"27. Undisputedly, SARFAESI Act is the latter act and if the question was solely of the non-obstante clause giving it overriding effect from any law for the time being in force, the SARFAESI Act would prevail. However, in the EPF&MP Act, Section 11(2) creates a statutory first charge on the assets of the establishment for any amount due from an employer, be it the employers' or employees' contribution, which would Include any interest or damages also as has been held in Maharashtra State Co-operative Bank Limited. In that circumstance, the effect of the non obstante clause giving precedence over any other law for the time being in force pales into insignificance, as held in Central Bank of India. There being a clear first charge created under the EPF&MP Act, It overrides the priority under Section 35 and Section 13 as also that conferred under Section 26-E since a priority cannot be equated with a first charge and cannot be given prevalence over the first charge statutorily created.*
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> *28. On the above reasoning, we find that the workmen's dues which also has not been quantified as of now cannot have any priority over the claim raised by the secured*

> *creditor, the Bank, which is conferred a priority under Section 26-E of the SARFAESI Act. However, from the proceeds of the sale of the assets, the first charge would be for the dues under the EPF&MP Act which includes not only the contribution payable but also the interest, penalty and damages if any imposed. Hence, the sale proceeds have to be first applied in satisfaction of the dues under the EPF&MP Act and then in satisfaction of the secured debt of the appellant-bank."*

11. In view of the above, we are of the opinion that the present petition deserves to be dismissed, simply for the reason that no fault can be found with Respondent No. 2 having proceeded to auction the subject machinery of the karkhana, which was admittedly an asset thereof, in pursuance of recovering Provident Fund dues. Therefore, the impugned communication cannot be interfered with, and the machinery ought to have been handed over to Respondent No. 2, which in turn needs to be handed over to the auction purchaser, i.e., Respondent No. 3.

12. As regards the amount recovered by Respondent No. 2 from the bank account of the petitioner, suffice it to say that the same pertains to distinct transactions which are already subject matter of proceedings before a learned Single Judge of this Court and therefore, it would not be appropriate to comment on the same.

13. As regards the grievance of Respondent No. 3, we are of the opinion that in a writ petition filed by the petitioner Bank, Respondent No. 3 cannot

claim relief of the nature sought in the interim application against Respondent No. 2. The dismissal of the present writ petition would clear the way for the possession of the machinery being handed over to Respondent No.2, who in turn would be able to hand over the same to Respondent No. 3. Therefore, we are of the opinion that no relief can be granted in the interim application filed by Respondent No. 3. It is to be noted that the auction sale was conducted in May 2016 and the amount deposited by the auction purchaser, i.e., Rs. 26,04,459/- was utilized by Respondent No. 2 for making appropriate payments to the employees.

14. In view of the above, the writ petition is dismissed. Interim Application No. 1961 of 2025 filed by Respondent No. 3 is also dismissed.

15. The petitioner – Bank is directed to handover possession of the machinery to the Respondent No. 2 within four weeks from today. Thereupon, the Respondent No. 2 will then take necessary steps to handover the machinery to Respondent No. 3. If the Respondent No. 3 has any grievance with regard to the issues raised in Interim Application No. 1961 of 2025 against Respondent No. 2, the Respondent No. 3 is at liberty to proceed in accordance with law.

**(SHREERAM V. SHIRSAT, J.)** **(MANISH PITALE, J.)**