IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6086 OF 2025

Eskimo Ice Mfg. Co. Pvt. Ltd. through its Director … Petitioner
Vs.
Deputy Commissioner of Sales Tax and others … Respondents

Ms. Aparajita Chandra for Petitioner.
Mr. N. C. Walimbe, Additional GP a/w. Mr. S. P. Kamble, AGP for Respondent Nos.1 and 4 - State.
Ms. Nukshinarao i/b. M. V. Kini & Co. for Respondent No.2.
Ms. Shraddha Dube Patil a/w. Jay & Co. for Respondent No.3.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.
DATE : FEBRUARY 04, 2026

P.C. :

. Heard Ms. Chandra, learned counsel for the petitioner; Mr. Walimbe, learned AGP for respondent Nos.1 and 4 i.e. State authorities, as also Ms. Nukshinarao, learned counsel appearing for respondent No.2 Bank and Ms. Patil, learned counsel appearing for respondent No.3 - Maharashtra Industrial Development Corporation (MIDC).

2. Respondent No.5 is the original borrower and respondent Nos.6 to 9 are the directors of respondent No.5 company.

3. Considering the grievance raised in the petition and the reliefs sought against respondent Nos.1 to 4, we find that service of notice upon respondent Nos.5 to 9 i.e. the original borrower and its directors is not necessary. Hence, service of notice on respondent Nos.5 to 9 is dispensed with.

4. The grievance of the petitioner is that despite being an auction purchaser of a secured asset put to auction by the respondent No.2 bank

by invoking provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act) and having deposited the entire amount, it is still deprived of enjoyment of the subject property. The property is a plot with a structure in a scheme of the respondent No.3 - MIDC at Navi Mumbai.

5. The respondent No.3 addressed a communication dated 13.11.2024 to the petitioner in respect of transferring the subject property, asking for certain compliances to be made. These included no objection certificates from the office of the Labour Commissioner and the MIDC, as also an appropriate order from the Competent Court, cancelling an order of attachment dated 18.08.2023 issued by respondent No.1 - Deputy Commissioner of Sales Tax with regard to sales tax dues.

6. As regards the attachment order dated 18.08.2023, the learned counsel for the petitioner relies upon Full Bench of this Court in the case of *Jalgaon Janta Sahakari Bank Limited Vs. Joint Commissioner of Sales Tax*, **2022 SCC OnLine Bom 1767**, to contend that since the security interest concerning the secured asset in question of the respondent No.2 Bank was duly registered as far back as on 19.10.2015 with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI), it would have priority over the attachment order issued much later on 18.08.2023 by the respondent No.1. It is submitted that, therefore, the impugned order of attachment and the impugned demand notice deserve to be quashed.

7. It is further submitted that therefore, one of the requirements insisted upon by the respondent No.3 - MIDC in its letter dated 13.11.2024 would not survive and as regards the other requirements, learned counsel for the petitioner has instructions to state that necessary steps would be taken to satisfy the respondent No.3 on those counts so

that prayer clause (c) pertaining to directions to the MIDC to transfer the subject property in favour of the petitioner can be granted.

8. The learned AGP appearing for respondent Nos.1 and 4 is unable to distinguish the facts of this case from the facts, on the basis of which, specific issues were decided in the aforementioned Full Bench judgment of this Court.

9. The learned counsel appearing for respondent No.2 - Bank also relies upon the aforesaid Full Bench judgement of this Court to submit that the attachment order ought to go.

10. The learned counsel appearing for respondent No.3 - MIDC submits that if this Court is inclined to grant relief in terms of prayer clauses (a) and (b), one of the objections raised by the MIDC would no longer survive. But, it can be kept open for the petitioner to approach the respondent No.3 - MIDC with regard to the other requirements so as to facilitate transfer of the property in favour of the petitioner (auction purchaser).

11. We have perused the Full Bench judgement of this Court in the case of **Jalgaon Janta Sahakari Bank Limited Vs. Joint Commissioner of Sales Tax** (*supra*). In paragraph 85 of the said judgement, this Court held as follows:-

> "85. Priority means precedence or going before (Black's Law Dictionary). In the present context, it would mean the right to enforce a claim in preference to others. In view of the splurge of 'first charge' used in multiple legislation, the Parliament advisedly used the word 'priority over all other dues' in the SARFAESI Act to obviate any confusion as to inter-se distribution of proceeds received from sale of properties of the borrower/dealer. If a secured asset has been disposed of by sale by taking recourse to the Security Interest (Enforcement) Rules, 2002 it would appear to be reasonable to hold, particularly having regard to the non-obstante clauses in sections 31 B and section 26E, that the dues of the secured creditor shall have

> ‘priority’ over all other including all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.”

12. Paragraphs 148 to 150 of the said Full Bench judgement read as follows:-

> “148. Sub-section (4) of section 20B of the SARFAESI Act, which we have noticed above, ordains that every authority or officer of the Central Government or any State Government or local authority, entrusted with the function of recovery of tax or other Government dues and for issuing any order for attachment of any property of any person liable to pay the tax or Government dues, shall file with the Central Registry such attachment order with particulars of the assessee and details of tax or other Government dues from such date as may be notified by the Central Government, in such form and manner as may be prescribed.
>
> 149. Although the said provision demands compliance by the Central Government, any State Government and any local authority entrusted with recovery of tax to file with the Central Registry any attachment order issued by it, avoidance of such compliance was attempted by referring to the fact that the form and manner of filing attachment orders have not yet been prescribed by rules framed under the SARFAESI Act and, therefore, sub-section (4) has still not been made operative.
>
> 150. The contention that rules are yet to be framed for making sub-section (4) of section 20B operational is wholly incorrect. By a notification dated 24th January 2020 issued by the Department of Financial Services in the Ministry of Finance, Govt. of India, published in the Gazette of India of even date, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) (Amendment) Rules, 2020 were duly notified whereby amendments were incorporated in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011 (hereafter ‘2011 Rules’, for short). In view of the amendments that have now been incorporated in the 2011 Rules with effect from the date Chapter IV-A of the SARFAESI Act was made effective and enforceable, the relevant department of the State Government despite attachment orders being issued by the competent authority can only avoid compliance of sub-section (4) of section 26B at its own peril. We hold that attachment orders issued post 24th January 2020, if not filed with the

> Central Registry, any department of the Government to whom a person owes money on account of unpaid tax has to wait till the secured creditor by sale of the immovable property being the secured asset mops up its secured dues."

13. A perusal of the above-quoted portion of the Full Bench judgement shows that once the secured creditor, in this case the respondent No.2-Bank, has CERSAI registration prior to any such order of attachment issued by the respondent State authorities for dues such as sales tax etc., the secured creditor shall have priority. The Full Bench judgement also lays down the manner in which such attachment orders are required to be registered with the Central Registry, failing which it would not be proper to allow such attachment orders to be acted upon.

14. Applying the said position of law to the facts of the present case, we find that the CERSAI registration of the secured interest of the respondent No.2 Bank was in existence since 19.10.2015. Admittedly, the impugned attachment order was issued much later on 18.08.2023, and therefore, the position of law is clearly covered in favour of the petitioner being the auction purchaser in an auction conducted by the respondent No.2 Bank (secured creditor) under the provisions of the Securitization Act. Therefore, there is no impediment in allowing prayer clauses (a) and (b).

15. Upon reliefs being granted in terms of prayer clauses (a) and (b), one of the objections raised by the respondent No.3 - MIDC on the basis of the impugned attachment order obviously cannot exist. Insofar as other requirements pointed out by the respondent No.3 - MIDC, it would be open for the petitioner to take appropriate steps to satisfy such requirements to facilitate transfer of the subject property in its favour.

16. In view of the above, the writ petition is allowed in terms of prayer clauses (a) and (b), which read as follows:-

> "(a) issue a Writ of Certiorari or any other appropriate Writ, Order or Direction under Articles 226 and 227 of the Constitution of India calling for the records and proceedings pertaining to the issuance of impugned attachment dated 18th August 2023 and impugned demand notice dated 31st August 2023 levied by respondent No.1 in respect of secured asset and after examining the validity, legality and propriety thereof, the same may be quashed and set aside and attachment be raised;
>
> (b) issue a Writ of Mandamus or a Writ in the nature of any other appropriate Writ, order or direction directing Respondent No.1 to forthwith remove the impugned attachment and impugned notice in respect of the secured asset;"

17. As regards prayer clauses (c) and (d), the petitioner shall approach the respondent No.3 for satisfying other requirements as may be pointed out by the said respondent MIDC. We expect the respondent No.3 - MIDC to consider the case of the petitioner and to take appropriate steps in the matter expeditiously.

18. During the course of hearing, it was pointed out that the affidavit in reply was e-filed on behalf of the respondent No.2.

19. Registry to verify.

20. In any case, the original affidavit in reply in physical form is tendered before this Court, which is taken on record.

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

Minal Parab