IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16294 OF 2025

Surendra Sadanand Kathole ... Petitioner
Versus
The State of Maharashtra & Ors. ... Respondents

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Mr. Roshil Nichani a/w Mr. Ansh Desai i/by Pythagoras Legal for the Petitioner.
Mrs. Ashwini A. Purav, AGP for Respondent Nos.1, 3 and 6.

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CORAM : MANISH PITALE AND
SHREERAM V. SHIRSAT, JJ.

DATE : 12th FEBRUARY 2026

P.C. :

. On 28th January 2026, while considering this petition, we recorded the fact that the petitioner specifically relies on full Bench judgment of this Court in the case of *Jalgaon Janta Sahakari Bank Ltd. & Anr. vs. Joint Commissioner of Sales Tax & Anr.*, **2022 SCC OnLine Bom 1767**. We found substance in the contention raised on behalf of the petitioner that the only issue arising in this petition is squarely covered in favour of the petitioner, as per the law laid down in the said full Bench judgment.

2. Time was granted to the respondents to file reply affidavit. Pursuant thereto, respondent No.3 has filed reply affidavit on behalf of the Sales Tax Department.

3. The basic contention raised on behalf of the petitioner in this petition is that since the respondent No.4-bank, being a secured creditor, had registered its security interest in the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) as far back as on 8th February2012, it had clear priority over the dues claimed by the respondent-Tax Authority. The petitioner being the auction purchaser is interested in relying upon the said position to claim that the steps taken by the respondent No.4-bank (secured creditor) for sale of the secured asset and purchase thereof by the petitioner in auction, all stand protected and hold priority over the dues claimed by respondent-Tax Authority.

4. The contesting respondent Nos.1, 2, 3 and 6 are unable to dispute the factual position on record that the CERSAI registration of the security interest of the secured creditor-respondent No.4-bank dates back to the year 2012. It is also an admitted position that the encumbrance of tax dues for the first time was recorded on 7th December 2020 by the respondent-Tax Authority, much later than the CERSAI registration noted hereinabove. It is also a matter of record that on the basis of the action taken by the respondent-Tax Authority, for the first time mutation entry with regard to the liability towards State Tax was recorded in the Revenue record (7/12 extract) on 15th December 2020, again much later than the CERSAI registration noted hereinabove.

5. We find substance in the contention raised by the learned

counsel for the petitioner that the position of law with regard to priority to be given to the secured creditor in such circumstances has been settled in terms of the aforesaid full Bench judgment of this Court in the case of *Jalgaon Janta Sahakari Bank Ltd. & Anr. vs. Joint Commissioner of Sales Tax & Anr.* (supra). We find that in paragraph 85 of the said judgment, the full Bench of 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, 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 31B 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."*

6. The judgment further records in paragraph 148 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."*

7. Thereupon, the full Bench in the aforesaid judgment recorded as follows :

> *"189. In the case at hand, we have seen that the secured creditor had registered the security interest with CERSAI on October 25, 2017. Post enforcement of Chapter IVA of the SARFAESI Act, under sub-section (4) of section 26B of the SARFAESI Act, the Department of the Government which professes to recover any tax or other Government dues, is enjoined to register such claim with CERSAI."*

8. The said position of law, in our opinion, completely covers the position in favour of the petitioner, who is the auction purchaser and who has approached this Court, seeking relief of quashing of attachment notice issued by respondent No.3 and a further direction to respondent No.6 to effect appropriate revenue entries in favour of the petitioner with regard to the subject property. We are of the opinion that the petitioner is entitled to such reliefs.

9. We have taken into account the stand taken on behalf of respondent No.3 in the affidavit in reply. Although, there is no denial on facts, but an attempt is made to resist the prayers made on behalf of the petitioner by relying upon orders of this Court passed in case of *Medineutrina Pvt. Ltd. vs. District Industries Centre (D.I.C.) & Ors.* (order dated 18th February 2021 passed in Writ Petition No. 7971 of 2019) and in case of *Shailesh K. Bothara & Ors. vs. State of Maharashtra* (order dated 12th July 2023 passed in Writ Petition No. 4365 of 2023).

10. It is to be noted that although, the aforesaid orders upon

which the respondent No.3 has placed reliance are orders passed by Division Benches of this Court, the said argument has been dealt with by another Division Bench of this Court in the case of *Canara Bank vs. Deputy Commissioner & Ors.* (judgment and order dated 2nd May 2025 passed in Writ Petition No. 10533 of 2023). In this context, the Division Bench of this Court made the following observations :

> *"18. So far as the argument about application of ratio in* ***Medinutrina (supra)*** *is concerned, we note that in a recent judgment of* ***Indian Overseas Bank (supra)****, a co-ordinate bench of this Court has considered the same in detail and has held as under :*
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> > *"31. We also find that Mrs. Vyas' reliance on Medineutrina is totally misplaced. First, Medineutrina was rendered by a two-judge Division Bench prior to Jalgaon Janta Sahakari Bank, which was rendered by a Full Bench. Second, the Full Bench indeed noticed Medineutrina and analysed its contents while declaring the law emphatically, also taking note of the fact that Paragraph 41 of Medineutrina (the paragraph that summarises all the findings and consequential directions) had been stayed by the Hon'ble Supreme Court.*
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> > *32. That apart, with the deepest respect, we do note that Medineutrina had not noticed that Section 26-E of the SARFAESI Act, although legislated, had not been brought into force. Paragraph 28 thereof had proceeded on the footing that the provision had been brought into force on 1st September, 2016. Parliament had given the Central Government the authority to notify the date from which Section 26-E would take effect. Evidently, the legislature gave the executive time to take a considered policy decision on when to bring such an important, nuanced and significant legislative intervention, into force. It must follow that since it took over three years to bring this significant and fundamental piece of reform*

into effect, deliberations among the various arms of the government would have been involved, before the provision was brought into force on 24th January, 2020.

33. <u>In any case, the combined effect of the stay of the operative part of Medineutrina by the Hon'ble Supreme Court, and the emphatic declaration of the law by the Full Bench, would mean that Medineutrina stands completely overtaken, and is of no assistance to the MVAT Authorities in persisting with their reading of the law in a manner that is diametrically contrary to Jalgaon Janta Sahakari Bank</u>.

34. After 24th January, 2020, Section 26-E would give a security interest of a secured creditor registered prior in time, priority over even a proclamation for recovery of land revenue. Since in the facts of this case, the attachment orders came to be passed well after 24th January, 2020, and no registration was effected in CERSAI, and indeed no proclamation for recovery of revenue had been made, we refrain from delving further into whether an attachment would suffice or a proclamation would be necessary in respect of tax recovery proceedings.

35. As a last ditch-effort, Mrs. Vyas presented us with a unique proposition. <u>It was her contention that notwithstanding the fact that the secured creditor has the first charge and priority for recovery of dues from the sale of the secured asset, the MVAT Authorities can once again chase the very same asset in the hands of the purchaser and put it up for sale towards recovery of their dues</u>.

36. Such a proposition has only to be stated to be rejected. The creation of the mortgage over the asset would mean that the charge is over the asset. <u>Once the security interest is enforced, the asset would no longer be available for further enforcement. The proposition canvassed by Mrs. Vyas would render Section 26-E meaningless</u>, because if that were the legal position, the creation of priority in favour of the secured creditor would have no meaning. Put differently, according to the

> *proposition suggested, the secured creditor would first enforce its charge against the asset and thereafter the MVAT Authorities would yet again enforce their charge against the very same asset to recover their dues. Thereafter if there are other security interests with an inferior priority, every single beneficiary of every such security interest would keep enforcing their security interest against the very same asset. <u>Such an absurd proposition turns on its head, the very meaning of having a security interest over an asset in priority over others. Needless to say, no person in his right mind would ever bid for an asset against which enforcement of multiple charges is contemplated. This because he would have to face the endless queue of subsequent enforcement actions against the very same asset</u>. To underline the absurdity, for example, if the secured asset were being sold when its market value is Rs. 5 Crores and the dues of the MVAT Authorities are Rs. 10 Crores, a potential purchaser of the property would effectively have to be ready to pay Rs. 15 Crores for the property worth Rs. 5 Crores. This would indeed be absurd to say the least. We therefore have no hesitation in rejecting this argument canvassed by Mrs. Vyas."*
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> *[Emphasis supplied]"*

11. We are in complete agreement with the above quoted portion of the judgment and order passed in the case of *Canara Bank vs. Deputy Commissioner & Ors.* (supra) and hence, we do not find any substance in the contention raised on behalf of respondent No.3 by relying upon the orders of Division Benches in the cases of *Medineutrina Pvt. Ltd. vs. District Industries Centre (D.I.C.) & Ors.* (supra) and *Shailesh K. Bothara & Ors. vs. State of Maharashtra* (supra).

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

(b) that this Hon’ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction calling for the records of the present case and after going through the legality and validity thereof, quash and set aside the attachment notice dated 07.12.2020 issued by Respondent No. 3, attaching the Factory Land admeasuring 11,700 square meters situated at Plot No. 1, Gut No. 439 (Part), located at Village Biloshi, behind Accord Engineering Industry, Off Palsaiphata-Khaniwali Road, Taluka Wada, District Palghar, Maharashtra (‘said property’), on the ground of recovery of dues under the MVAT Act.

(e) this Hon’ble Court be pleased to issue a writ of mandamus or order or directions in the nature of mandamus or any other writ, directing the Respondent No. 6 and/or his subordinates to affect mutation entries in favour of the Petitioner in the land records of the Factory Land admeasuring 11,700 square meters situated at Plot No. 1, Gut No. 439 (Part), located at Village Biloshi, behind Accord Engineering Industry, Off Palsaiphata-Khaniwali Road, Taluka Wada, Distrcit Palghar, Maharashtra.

13. Respondent No.6 shall take consequential steps in terms of relief granted as per prayer clause (e), within a period of four weeks from today.

14. Pending applications, if any, also stand disposed of.

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

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