IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8842 OF 2023

Edelweiss Asset Reconstruction Company Limited & Anr. … Petitioners
Versus
The State of Maharashtra & Ors. … Respondents

WITH
INTERIM APPLICATION NO. 12221 OF 2025
IN
WRIT PETITION NO. 8842 OF 2023

******

Mr. Bhalchandra Palav a/w Mr. Aniket Dighe and Pinky Pawar i/by Bhal & Co. for the Petitioners.
Mr. N. C Walimbe, Addl. G. P., a/w Ms. Tanu N. Bhatia, AGP for Respondent No.1-State.
Mr. Harshad Inamdar (through V.C.) for Intervenor.

******

CORAM : MANISH PITALE AND SHREERAM V. SHIRSAT, JJ.
DATE : 18th APRIL 2026

P.C. :

. Heard learned counsel for the parties.

2. The petitioner No.1 is an assignee of the original secured creditor i.e. Kotak Mahindra Bank.

3. The petitioners have approached this court relying upon judgment of full Bench 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**. The petitioners pray for a direction for withdrawal of charge/encumbrance of respondent Nos.2 and 3 i.e. the State Authorities concerned with State Excise and Sales Tax from the revenue records pertaining to the subject

properties that form the secured assets in the facts and circumstances of the present case. It is the case of the petitioners that the law laid down by this Court in the aforementioned full Bench judgment inures to their benefit and that therefore, the encumbrance needs to be withdrawn, so that the petitioner No.1 (secured creditor) can proceed in accordance with law under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act) to deal with the secured assets. The petitioner No.1 is in symbolic possession of the secured assets.

4. In the aforementioned full Bench judgment in the case of *Jalgaon Janta Sahakari Bank Ltd. & Anr. vs. Joint Commissioner of Sales Tax & Anr.* (**supra**), this Court held in paragraph 85 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."*

5. It is authoritatively laid down that after amendment of the provisions of the Securitisation Act and addition of Section 26E

therein, as per amendment brought about on 24th January 2020, the secured creditor would have priority in enforcing its claim over all debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

6. In this context, the learned counsel appearing for the petitioners invited attention of this Court to the registration of the security interest of the petitioners with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) on 18th April 2018, as per the document at Exhibit 'H'. It is submitted that the subsequent recording of encumbrance/bhoja of respondent Nos.2 and 3 in the revenue record (7/12 extract) from 23rd September 2018 is inappropriate and it is in the teeth of the law laid down by this Court. It is submitted that even otherwise, the encumbrance on the said properties in favour of the predecessor of the petitioners was recorded prior in point of time in the revenue record.

7. It is further submitted that even if the respondent-State Authorities rely upon an order of attachment dated 16th September 2015, the same can be of no avail, in the light of the observations made by this Court in the aforementioned full Bench judgment in paragraphs 151 to 154. It is submitted that followup action in the form of proclamation of sale by public auction etc., was required to be undertaken by the respondent-State Authorities and in the absence thereof, mere issuance of an order of attachment could be of no avail.

8. It is further pointed out that the respondent Nos.5 and 6

(original borrowers) are in liquidation and therefore, the official liquidator of this Court has been joined as a party to the present writ petition. It is further brought to our notice that the liquidator is also a party before the Debts Recovery Tribunal (DRT) where the petitioner No.1 has initiated proceedings both under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act) and the Securitisation Act. On this basis, it is submitted that this Court may consider allowing the writ petition, so that the encumbrance/bhoja of the respondent-State Authorities in the revenue records, is deleted.

9. The learned AGP appearing on behalf of the respondent-State Authorities relied upon the said attachment order dated 16th September 2015. He further emphasized that dues of the excise department are also recoverable from the said borrowers. It was also brought to the notice of this Court that in the liquidation proceedings certain orders have been passed by this Court, which also need to be taken into consideration, while passing any order in this writ petition.

10. We have considered the rival submissions. The full Bench judgment of this Court in the case of *Jalgaon Janta Sahakari Bank Ltd. & Anr. vs. Joint Commissioner of Sales Tax & Anr.* (**supra**) authoritatively laid down the law with regard to *inter se* priority of claims between a secured creditor and the State Authorities, in paragraph 85 of the said judgment, as quoted hereinabove.

11. The full Bench judgment of this Court also took into consideration situations where the authorities proceeded in the form

of issuing orders of attachment, etc., prior to 24th January 2020 i.e. the date on which the Securitisation Act was amended to add Section 26E and other such provisions. In that context, the full Bench judgment of this Court observed as follows :

> *"151. However, there could be attachments orders which might have been issued much prior to giving effect to the 2011 Rules, as amended. In respect of such orders of attachment, we consider it appropriate to express our views.*
>
> *152. The procedure to be followed in terms of the CPC when an immovable property is put up for auction sale to satisfy a decree of the court is to be found in Order 21, rules 54 and 66 of the CPC. It is mandatory for the court executing the decree, to comply with the following stages before such property is sold in execution of a particular decree :*
>
> *(a) attachment of the immovable property;*
>
> *(b) proclamation of sale by public auction;*
>
> *(c) sale by public auction.*
>
> *At each stage of the execution of the decree, when a property is sold, it is mandatory that notice shall be served upon the person whose property is being sold in execution of the decree, and any property which is sold, without notice to the person whose property is being sold, is a nullity and all actions pursuant thereto are liable to be struck down/quashed. However, the proceedings before us do not concern execution of any decree.*
>
> *153. In these proceedings we are as much concerned with proclamation itself as much with attachment. Insofar as recovery pursuant to the MLR Code is concerned, not only the provisions contained therein but also the provisions contained in the 1967 Rules are to be complied with. Simply ordering an attachment is not enough; a proclamation has to be issued in the prescribed form and such proclamation must be made public by beating of drum and such other mode as specified in section 192 of the MLR Code and rule 11(2) of the 1967 Rules before the property attached is sold.*

> *154. We are of the considered opinion, on facts and in the circumstances, that unless attachment of the defaulter's immovable property is ordered in the manner ordained by the MLR Code and as prescribed by the MRLR Rules and due proclamation thereof is made, even the creation of charge on such immovable property may not be of any real significance, not to speak of demonstrating with reference to evidence that the transferee had actual or constructive notice of such charge. If there has been an attachment and a proclamation thereof has been made according to law prior to January 24, 2020 or September 1, 2016, i. e., the dates on which Chapter IV-A of the SARFAESI Act and section 31B of the RDDB Act, respectively, were enforced, the Department may claim that its dues be paid first notwithstanding the secured dues of the secured creditors; but in the absence of an order of attachment being made public in a manner known to law, i. e., by a proclamation, once Chapter IVA of the SARFAESI Act or section 31B, as the case may be, has been enforced, the dues of the secured creditor surely would have "priority". In other words, if the immovable property of the defaulter is shown to have been attached in accordance with law prior to Chapter IVA of the SARFAESI Act, or for that matter section 31B of the RDDB Act, being enforced, and such attachment is followed by a proclamation according to law, the "priority" accorded by section 26E of the former and section 31B of the latter would not get attracted."*

12. We find that the above quoted observations in the full Bench judgment of this Court are a complete answer to the objections being raised on behalf of the respondent-State Authorities, *inter ailia*, by relying upon the attachment order dated 16th September 2015. The documents on record show that the petitioner No.1 indeed has CERSAI registration of its security interest dating back to 18th April 2018. The recording of encumbrance/bhoja of the respondent-State Authorities in the revenue records (7/12 extract) from 23rd September 2018, in any case, is after the date of CERSAI registration. In the light of the position of law clarified by the full

Bench of this Court in the aforementioned judgment, we find that the petitioner No.1 has made out a case for granting relief in terms of the prayers made in the present petition, particularly because the State failed to demonstrate any followup action in the form of proclamation etc.

13. As regards respondent-borrowers being in liquidation, the liquidator is very much a party before this Court and the petitioner No.1 has also ensured that the liquidator is a party in the proceedings pending before the DRT. The petitioner No.1 shall be proceeding under the provisions of the Securitisation Act, obviously in accordance with law and taking into consideration the orders passed by this Court in the liquidation proceedings, as also orders that may be passed by the DRT in the pending proceedings.

14. There is no basis for the encumbrance/bhoja in the revenue record (7/12 extract) continuing in the face of the said position of law and therefore, the writ petition deserves to be allowed.

15. In view of the above, the writ petition is allowed in terms of prayer clauses (a) and (b).

16. Pending applications also stand disposed of.

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