

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2107 OF 2026

Axis Bank Limited through its Power of Attorney
Holder Vishal Yadav ... Petitioner
Vs.
Deputy Commissioner of CGST & Central Excise
and another ... Respondents

Mr. Charles D'souza a/w. Ms. Juilee Modak i/b. Mr. Alok Mishra for Petitioner.
Mr. J. B. Mishra a/w. Mr. Abhishek R. Mishra for Respondents.

**CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.
DATE : OCTOBER 06, 2026**

P.C. :

- . Heard learned counsel for the parties.
2. The petitioner (secured creditor) is constrained to approach this Court in the light of a letter issued by the respondent No.1 authority to the respondent No.2 i.e. the society in which the subject flats (secured assets) are located. As per the said letter, the society has been directed not to issue No Objection Certificate (NOC) in respect of the subject flats until further instructions by the respondent No.1.
3. Mr. D'souza, learned counsel for the petitioner relies upon the law laid down by this Court in the Full Bench judgement in the case of *Jalgaon Janta Sahakari Bank Limited Vs. Joint Commissioner of Sales Tax*, **2022 SCC OnLine Bom 1767**, to contend that the dues of the petitioner bank as the secured creditor have priority over any charge or statutory dues that may be claimed by respondent No.1. The learned counsel for the petitioner bank specifically relies on registration of the security interest of the petitioner with the Central Registry of

Securitisation Asset Reconstruction and Security Interest of India (CERSAI) dated 20.12.2020, to claim that with the aforesaid CERSAI registration and the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act), being amended with effect from 24.01.2020, the dues of the petitioner bank have first priority.

4. It is further submitted that even if the contents of the reply affidavit filed on behalf of the respondent No.1 are taken into consideration, it is evident that the charge, if any, of the respondent No.1 is not registered with CERSAI and therefore, in terms of the aforesaid position of law, the writ petition ought to be allowed and the impugned letter issued by respondent No.1 deserves to be quashed.

5. Mr. Mishra, learned counsel appearing for respondent No.1 relies upon the contents of the reply affidavit and he submits that the subject property was provisionally attached under Section 83 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) as per order issued on 15.02.2022 and subsequently renewed, after the impugned letter was already issued to the respondent No.2 society. It is submitted that in such a situation, this Court may consider passing appropriate orders in the present writ petition.

6. We find that the position of law is in favour of the petitioner bank (secured creditor), for the reason that in terms of the amendment of the Securitisation Act, with effect from 24.01.2020 and introduction of Section 26E therein, upon the security interest of the petitioner bank being registered with CERSAI, the dues of the petitioner bank have first priority.

7. The Full Bench judgement of this Court in the case of **Jalgaon Janta Sahakari Bank Limited Vs. Joint Commissioner of Sales Tax**

(*supra*) considered the effect of the said statutory amendment and 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, 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.”

8. Therefore, it is clear that the dues of the petitioner bank as a secured creditor have priority over all other dues, including all revenue taxes, cesses and other rates payable to the Central Government or State Government or local authority. The said Full Bench judgement in other paragraphs reiterates the said position, including in paragraph 150 thereof, which reads as follows:-

“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.”

9. In view of the said position of law specifically clarified by the Full Bench judgement of this Court and in the light of the aforesaid amendments brought about in the Securitisation Act, we find that the dues of the petitioner bank as the secured creditor have priority over the dues of respondent No.1, if any. There is no dispute that the security interest of the petitioner bank is registered with CERSAI with effect from 20.12.2020. Respondent No.1 has not been able to show that its charge has been registered with CERSAI and therefore, by operation of statutory provision i.e. Section 26E of the Securitisation Act, the present writ petition deserves to be allowed.

10. Although respondent No.2 society was served, there is no appearance on its behalf. We find that there is no legal basis for the respondent No.1 to have issued the impugned letter dated 10.02.2022 to the respondent No.2 society, directing that NOC could not be issued for the subject flats, which are the secured assets of the petitioner bank. The impugned letter deserves to be quashed.

11. In view of the above, writ petition is allowed in terms of prayer clause (a), which reads as follows:-

“(a) This Hon’ble Court be pleased to issue writ of Mandamus and / or Certiorari and / or any writ in the nature of Mandamus and / or Certiorari and / or any appropriate writ, order or direction, to Respondent No.1 to remove its lien / charges, on the said flat recorded with the Respondent No.2 or any other authority.”

12. Pending applications, if any, stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)