IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10120 OF 2022
WITH
INTERIM APPLICATION NO. 427 OF 2026

Indian Overseas Bank
(Through its authorised officer)
5th Floor, Maker Tower-E,
Cuffe Parade, Mumbai- 400 005. …Petitioner
vs.
The State of Maharashtra and Others ..Respondents

Mr. Cyrus Ardheshir, Senior Advocate a/w. Ms. Nandita Bajpai, Mr. Babu i/b. Mr. Yogesh Pirthani, for petitioner.
Ms. Kavita Solunke, Addl.G.P. a/w. Smt. M.S. Bane, AGP for Respondent Nos. 1, 3 and 4.

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

RESERVED : 10th AUGUST, 2026
PRONOUNCED : 11th SEPTEMBER, 2026

JUDGMENT : *(Per Shreeram Shirsat, J.)*

1. By this petition, the petitioner, a secured creditor, is seeking to quash the auction sale dated 7th April 2018 conducted by respondent Nos. 3 and 4 with respect to the sale of the parcel of land bearing Survey No. 43/1/B. Inter alia, the petitioner is also seeking directions to respondent Nos. 3 and 4 to restore the rightful control and possession of the parcel of land bearing Survey No. 43/1/B in favour of the Petitioner.

2. Before adverting to the rival submissions, it would be apposite to narrate the description of the parties who have been arrayed as Respondents in the petition and then to enumerate brief facts leading to the filing of this Petition.

3. The Respondent no 1 is the State of Maharashtra. Respondent no 2 is the general manager, District Industries Centre functioning under the Directorate of Industries under the Government of Maharashtra. Respondent no 3 is the Tahsildar, Taluka Khalapur district Raigad, who conducted the auction of the subject land. Respondent no 4 is the Talati, Kumbhavali Village, Taluka, Khalapur, District Raigad and Respondent no 5 is the borrower, who had availed financial facility from the petitioner Bank and had also a mortgaged the subject land with the Petitioner Bank.

4. In the year 2007, the petitioner had sanctioned financial facilities to respondent No. 5, which were secured by way of equitable mortgage by deposit of title deeds of the immovable property. The original title deeds of the immovable properties were deposited with the petitioner, and the charge was registered before the Registrar of Companies on 31st January 2007 as and by way of public notice. As respondent No. 5 defaulted in making repayment of the financial facilities, the account of respondent No. 5 was classified as NPA on 31st December 2010.

Thereafter, the petitioner bank proceeded further under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) and issued notice under Section 13(2) of the Act on 28th September 2012.

5. Thereafter, notice of possession dated 20th December 2012 under Section 13(4) of the SARFAESI Act was also issued. In furtherance of the said measures, the petitioner sold the mortgaged property in favour of M/s. Kaushal Metal and Steel Private Limited and M/s. TGK Special Steel Private Limited by way of auction. The said auction was held on 26th November 2021, and the sale certificate was issued on 22nd February 2022 in respect of the entire parcel of land and the possession was handed over in respect of the same. However, the petitioner bank could not hand over the control with respect to the parcel of land bearing Survey No. 43/1/B.

6. The learned counsel for the petitioner submitted that while executing the documents after issuance of sale certificate in favour of the successful auction purchaser, the petitioner bank found that the survey numbers of the parcel of land were different in the records of the Talathi office (respondent No. 4) as compared with the original title deeds deposited with the petitioner bank. Further inquiry revealed that the new survey numbers were allotted in place of old survey numbers, and

hence the discrepancy was found in the records.

7. It was further submitted that when the petitioner carried out a detailed inspection in the office of the Talathi, Khalapur, it was revealed that the old Survey No. 46/1/2 has been allotted a new Survey No. as 43/1/B with no change in the area measurement, and the said property, of which the original title deed was with the petitioner, had been auctioned by the Tahsildar, Khalapur, and the name of respondent No. 5 was deleted and instead the name of the State of Maharashtra was mutated in that place under the heading of "Clan, Vol. and Other Rights". It was further submitted that the encumbrance was created in the name of respondent No. 2, i.e the Financial Corporation, District Industries Centre, Raigad, for an amount of Rs. 2,68,99,000/-. It was further noticed that respondent No. 3, had received a letter from the Collector's office, Raigad-Alibag, to recover an amount of Rs. 2,68,99,000/- owed by respondent No. 5 to respondent No. 2 as arrears of land revenue in terms of MLR Code, 1966.

8. It was further submitted that after taking an in-depth survey, the petitioner learnt that on 7/4/2018 the respondent No. 3, had held an auction in respect of the said land. However, as no bids were received at the said auction, the Talathi, as authorized by the State Government, caused to transfer the same to Respondent No. 2 for a nominal bid of Rs.

1/-, which was recovered by respondent No. 3.

9. The Ld. Counsel further submitted that the auction was held during the subsistence of enforcement measures under the SARFAESI Act, which were already initiated by the petitioner bank, especially when the possession in respect of the entire parcel of land was taken by way of notice of possession dated 20th December 2012.

10. The learned counsel for the petitioner, by way of an additional affidavit, has placed on record the CERSAI registration certificate wherein the date of registration is shown as 14th February 2015 and submitted that case of the Petitioner is fully covered by the judgment of the Full Bench in the case of ***Jalgaon Janta Sahakari Bank Limited vs. Joint Commissioner of Sales Tax.***

11. Respondent No. 3 has filed an affidavit-in-reply. It is contended that respondent No. 2 had requested the Collector, Raigad, vide letter dated 23rd October 2012, about the recovery of government dues of Rs. 2,68,99,000/- from respondent No. 5, and accordingly the Collector, Raigad, vide letter dated 3rd November 2012, directed respondent No. 3, (Tahsildar, Khalapur), to recover the said government dues from respondent No. 5. It is further contended that respondent No. 3, vide letter dated 16th November 2012, directed the Talathi, Saza Madap, Taluka Khalapur, to serve the notice to respondent No. 5 with respect to

the recovery of the government dues. After the service of notice, respondent No. 5 failed to deposit the amount as mentioned in the notice, and therefore the Tahsildar (respondent No. 3), vide letter dated 8th February 2013, directed the Circle Officer, Vavoshi, to seize properties of respondent No. 5 as per Rule 11 of the Maharashtra Realisation of Land Revenue Rules, 1967, and to record encumbrance of the said amount of Rs. 2,68,99,000/- in the other rights column of 7/12 extract of the said lands.

12. It is further contended that the Circle Officer, Vavoshi, accordingly seized the said lands and recorded encumbrance of the said amount of Rs. 2,68,99,000/- in the other rights column of 7/12 extracts of the said lands and submitted a report to the Tahsildar, Khalapur. It is further contended that thereafter auction of the said lands was scheduled on 7th April 2018. As no other person except Circle Officer, Vavoshi, and Talathi, Madap, were present, who on behalf of the government, took part in the said auction scheduled on 7th April 2018, the Talathi, Madap, purchased the lands on behalf of the government for a nominal price of Re. 1/-, and the Respondent No 3 issued purchase certificate dated 7th April 2018 in the name of Government of Maharashtra as per Rule 14-B of the Maharashtra Realisation of Land Revenue Rules, 1967. Thereafter, respondent No. 3, vide mutation entry No. 1959 dated 16th April 2018,

recorded the name of Government of Maharashtra in the occupant's column of the said 7/12 extract of the said land bearing Survey No. 46/1/B. It was therefore contended that in the facts and circumstances of the case, the petitioner is not entitled to claim any relief and prayed that the petition be dismissed.

13. The petitioner has also filed an affidavit-in-rejoinder and has contended that the petitioner bank holds the first and prior charge over the mortgaged property, and the sale of mortgaged property conducted by respondent No. 3 is *void ab initio* and not in conformity with the provisions of the SARFAESI Act.

14. The learned counsel for the petitioner also submitted that in the present case, the schedule property Old Survey No 46/1/2 (new number 43/1/B) has not been attached, as in the panchanama dated 08/02/2013 relied upon by respondent No. 3, there is no description of the property 46/1/2(old) as having been attached.

15. The Ld. Counsel submitted that as per Section 26E of the Act, 2002, the Petitioner, who is a secured creditor, has priority over all other debts and all revenues, taxes and cesses and other rates to be payable to the Central or State Government or local authority.

16. We have considered the rival submissions and before we proceed to consider the same and dispose of the writ petition, it would be

necessary to refer to the relevant paragraphs of the Full Bench judgment of this Court in the case of **Jalgaon Janta Sahakari Bank** (supra). In paragraph 85 of the said judgment, 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."*

17. In the facts of the this case it will be pertinent to refer to Paragraphs 151 to 154 as also paragraphs 297 to 300 of the said Full Bench judgment, which read 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.*

……. ……………

***297.** A question that comes to the fore is whether the petitioner would be deprived of the right of priority in payment on account of the measures initiated by the respondents before the registration of the security interest with* *the CERSAI ?*

298. *Two affidavits in reply are filed on behalf of the respondents. In the first affidavit filed by Mr. Pradeep G. Kadu, Joint Commissioner of State Tax, the claim of the petitioner is resisted on the ground that the Department had lodged its claim with the petitioner-bank before the 2016 Amending Act. In the affidavit in reply filed by Mr. Prasad Joshi, Joint Commissioner of State Tax, it is contended that a demand notice was issued to K. K. Steel on February 29, 2016, levying a demand of Rs. 1,08,91746 for the period April 1, 2010 to March 31, 2011. When it was noticed that the auction sale notice was published by the petitioner on June 6, 2016, the Department apprised the petitioner by a letter dated July 7, 2016 that K. K. Steel owed sales tax dues to the tune of Rs. 1,62,58,945 plus interest thereon. The petitioner was directed to take note of the "first charge" and make a full disclosure to the prospective purchasers. It was further affirmed that on June 30, 2016, the Department had informed the Chairman of the Heritage Co- op. Housing Society Ltd. as well to take note of the first charge and to not permit transfer of the secured asset, without NOC from the Department.*

299*.* *The aforesaid correspondence emanating from the Department, at best, shows that the Department had levied a demand of the sales tax dues on the proprietor of K. K. Steel, the borrower, and asserted that under section 37 of the MVAT Act, the State had first charge on the asset of the assessee. In the two affidavits filed on behalf of the respondents, what is conspicuous by its absence is the assertion that the respondents had ordered attachment of the secured asset in conformity with the provisions of MLR Code and the MRLR Rules. No endeavour was made by the respondents to show that the warrant of attachment and order of attachment were issued and there was a proclamation of the attachment order.*

300. *Likewise, the Sales Tax Commissioners did not claim that they registered the claim with the CERSAI to adhere to the mandate contained in section 26B(4) of the SARFAESI Act. Non-registration of the claim and/or order of attachment entails the consequences envisaged by sub-section (2) of section 26C of the SARFAESI Act. Thus, dual disability sets in. First, in the absence of material to show that the first charge under section 37 of MVAT Act was enforced by a valid attachment order before the registration of security interest by the petitioner with the CERSAI, the petitioner cannot be deprived of the right of priority under section 26E of the SARFAESI Act. Secondly, with the registration of the security interest with the CERSAI on July 9, 2020, coupled with the*

> *absence of registration of the Department's demand and/or order of attachment, the claim of the respondents becomes subservient to the right of the secured creditor."*

18. In the present case, as noted hereinabove, there is no averment in the affidavit in reply as to whether the Respondent No 3 had at any point of time registered with CERSAI. The affidavit is conspicuously silent about any CERSAI registration. The affidavit in reply also does not indicate any further action taken beyond the attachment of the property, like beating of drum or other customary mode or its copy being affixed on some conspicuous part of the secured asset and also on the notice board of the concerned Talathi office as noted in paragraphs 152 and 153 of the Full Bench judgment. Therefore, in our view, in the facts of the present case, by simply attaching the property and taking no steps towards proclamation in the manner as required, for recovery of dues, would not give priority to the said dues over the dues of the secured creditor like the petitioner under the provisions of the Securitisation Act.

19. We, therefore, see no reason to deny the benefit of the said judgement to the petitioner herein, which is admittedly a secured creditor and is seeking to recover its dues under the provisions of the Securitisation Act in accordance with law. In such a situation, the encumbrance / charge shown on the said property by the respondent No.3 ought not to prevail over the charge of the petitioner as a secured

creditor. Therefore, we are inclined to allow the writ petition.

20. It is made clear that the writ petition being allowed does not mean that this Court has held that respondent Nos.2 to 4 are otherwise not entitled to recover their dues. Respondent Nos.2 to 4 can proceed in accordance with law, but so far as priority is concerned as per the position of law, noted hereinabove, the dues of the petitioner as secured creditor clearly have priority over those of the said respondents.

21. Needless to mention that the Petitioner bank having sold the secured asset to M/s. Kaushal Metal and Steel Private Limited and M/s. TGK Special Steel Private Limited, subject to the other compliance under the SARFAESI Act, will get a clear title free from encumbrances claimed by the Respondent Nos 2 to 4.

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

> a] This Hon'ble court be pleased to call for the Records and proceedings in respect of the auction proceedings conducted by the Respondent No.3 and 4 on 07/04/2018 for sale of the said parcel of land bearing as survey No.43/1/B and after examining the legality and propriety of the same be pleased to quash and set aside the said auction sale dated

07/04/2018 thereby declaring the transfer of the said land to the Respondent No.2 as Null and void.

b] This Hon'ble Court be pleased to issue appropriate writ in the nature of mandamus, certiorari or such other writ and or direction or order under Article 226 of the Constitution of India, directing the Respondent No.3 and 4to restore the rightful control and possession of the parcel of land bearing Old survey no. 46/1/2 which is now renumbered as new survey no as 43/1/B/in favour of the petitioner who is a secured creditor and has original title deed of the said land and has a rightful charge over the said lad by way of the equitable mortgage.

23. All consequential steps like deleting the Mutation Entry No 1959 dated 16th April, 2018 having the name of Government of Maharashtra in the occupant's column of 7/12 extract of the land bearing Survey No 43/1/B shall be taken by the Respondent No 2 to 4 within 4 weeks from the date of the order.

24. If the petitioner finds that after its dues are satisfied there is any surplus amount remaining, it shall notify Respondent Nos 2 to 4 accordingly and the Respondent Nos. 2 to 4 shall be entitled to residual

proceeds from the sale of the secured asset, if any. Needless to mention that the Respondent Nos. 2 to 4 or the Collector's Office Raigad-Alibaug are free to enforce action in accordance with law against any other assets or the properties of the Respondent No 5, as may be permissible under law.

25. The Writ petition stands disposed of accordingly and all other pending applications, if any, also stand disposed of.

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