IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.860 OF 2023

State Bank of India]
a Body Corporate under the]
State Bank of India Act, 1955]
having its Corporate Centre at]
Nariman Point, Madam Cama Road]
Mumbai and one of its branch at]
Stressed Assets Management Branch]
2nd Floor, Office Complex Building]
LHO Campus, No.65, St. Marks Road,]
Bengaluru, represented through its]
Asst. General Manager and]
Case Lead Officer] … Appellant

V/s.

1. State of Maharashtra]
Through Economic Offences]
Wing, Unit V, 1st Floor, STF Building]
Azad Maidan Police Station]
Mumbai – 400 001.]

2. The Competent Authority]
Appointed under the MPID Act]
Add. Collector, Old Custom House]
Fort, Mumbai – 400 001.]

3. M/s. National Spot Exchange Ltd.]
4th Floor, FT Tower,]
CTS No. 256 & 257,]
Suren Road, Chakala,]
Andheri (East),]
Mumbai – 400 093.]

4. Mynah Industries Ltd.]
1445, Vajras]
28 Main South End Cross,]
Jayanagar, 9th Block,]
East Bangalore – 560 069.]

SUMEDH NAMDEO SONAWANE Digitally signed by SUMEDH NAMDEO SONAWANE Date: 2026.05.08 15:30:39 +0530

5. M/s. Metkore Alloys & Industries Ltd.]
Plot No.18,]
Sagar Society, Road No.2,]
Banjara Hills, Hyderabad,]
AP – 500 034.]

6. Sathidham Syntex Ltd.]
Office No.406,]
Tandice,-69, Govind]
Nagar, Kurla Rd,]
Near Darpan Telephone]
Exchange Anderi (E),]
Mumbai, Maharashtra, India 400 059.]

7. Prashant Boorgu]
Age: approx 50 years.]

8. Saritha Prashant Boorgu]
Both having address at]
Villa No.85, Adarsh Palm]
Retreat, Devarabeesanhalli,]
Outer Ring Road, Sarjapur]
Road, Varthur Post,]
Bangaore 560 103]
And also at 1445, Vajras]
28 Main South End Cross]
Jayanagar, 9th Block,]
East Bangalore – 560 069.] … Respondents.

WITH
CRIMINAL APPEAL NO. 861 OF 2023

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Jayanagar, 9th Block,]
East Bangalore – 560 069.] … Respondents

Mr. Birendra Saraf, Senior Advocate, a/w Mr. Vinayak Chitale & Mr. Om Ajay Gupte i/by Parinam Law Associates for the Appellant.
Smt. Leena Patil, Spl. PP, a/w Smt. P.P. Shinde, APP, for the State.
Mr. Arvind Lakhawat a/w Mr. Nimeet Sharma i/by MZM Legal LLP for Respondent No.2 (NSEL).

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 30th March, 2026.
PRONOUNCED ON : 8th May, 2026.

Judgment (Per : Kamal Khata, J) :-

1) By this Appeal, the Appellant seeks to set aside the impugned Order dated 8th March, 2023 passed by the Special Judge assigned MPID matters at Bombay in Miscellaneous Application No.500 of 2019 in MPID Special Case No. 1 of 2014 in C.R. No. 89 of 2013.

2) By an Application, the Appellant had sought permission to auction

and sell the duly mortgage properties of the Respondent No. 4 as per the provisions of the SARFAESI Act. The said Application was rejected. The present Appeal arises from that rejection.

3) The Appellant had sanctioned certain credit facilities to the Respondent No.4 from time to time and to secure the same, certain documents were executed in favour of the Appellant including Mortgage Deeds dated 1st December, 2009, 3rd March, 2010, 12th March, 2010, 2nd July, 2010, 6th August, 2010, 17th January, 2011, 9th May, 2011, 10th May, 2012.

4) In view of the repeated defaults by Respondent No.4, it was classified as Non-Performing Asset (NPA) on 27th February, 2015 in terms of the RBI Prudential Guidelines on Income Recognition and Asset Classification. Pursuant to this classification, the Appellant issued a Demand Notice to the Respondent No.4 and its guarantors under Section 13(2) of the SARFAESI Act 2002, dated 4th March, 2015. Despite the receipt of the notice, the Respondent Nos. 4 to 8 failed to comply with the requisitions and discharge their liabilities within the stipulated period of 60 days. The Appellant Bank took symbolic possession of all the secured assets under Section 13(4) of the SARFAESI Act 2002.

5) The Respondent Nos.4 to 8 challenged the action of the Appellant before the Debt Recovery Tribunal, which came to be dismissed on 31st January 2017.

6) In the meantime, the Respondent No.1 had issued a notice dated 8th January, 2016, under reference OW 31/EOW/Unit-V/CR No. 89-13/2016 to the Appellant informing that, the EOW, Mumbai was investigating an offence in the NSEL Scam under Sections 465, 467, 468, 471, 474, 477(A), 120(B) IPC read with Sections 3 and 4 of the MPID Act 1999.

7) Meanwhile on 19th January 2016, the Respondent No. 3 filed Misc. Application No. 28 of 2016 in MPID Case No.1 of 2014 seeking a restraint order against the Appellant from taking physical possession of the properties and selling them under the provisions of the SARFAESI Act.

8) As a counter, on 16th February 2016, the Appellant preferred a Misc. Application bearing No. 66 of 2016 before the Trial Court for lifting attachment and permitting sale of the mortgaged properties, formally possessed by the Appellant.

9) Upon hearing both Applications, the Trial Court vide its order dated 15th September 2017, partly allowed the Misc. Application No. 66 of 2016 preferred by the Appellant and consequently the Misc. Application of the Respondent No. 3 stood disposed of.

10) Notably, the Government of Maharashtra, Home Department had vide its Notifications dated 22nd June 2015, 17th March 2016 and 6th April 2017, provisionally attached the properties mortgaged to the Appellant.

11) Despite being fully aware that the said properties were mortgaged

to the Appellant the Respondent No. 2 failed to make the Appellant a party to its Application.

12) Upon such publication, the Respondent No. 2 – the Competent Authority moved Misc. Application No. 1512 of 2017 to confirm the said attachment in respect of the aforesaid properties.

13) The trial Court rejected the Application by the Appellant, as well as the Review preferred therefrom on the ground that the MPID Act (which is a State Statute) would prevail over the SARFAESI Act (which is the Union Statute). Consequently, the present Appeal came to be preferred.

14) Dr. Saraf representing the Appellants submits that, the learned Judge of trial Court has committed a serious error of law in rejecting the Appellants Application. He submitted that the trial Court erred in observing that, the Appellant had failed to obey the Order dated 15th September, 2017, which directed the Appellant to deposit the money in Court. It also erred in arriving at a finding that, the Appellant failed to disclose the compliances done by it apropos the Order dated 15th September, 2017.

14.1) He submitted that, the trial Court could not have ignored the Appellant's rights created by virtue of mortgage of the properties, which were secured for the financial assistance extended by the Bank to the Respondent No.4 to 8. In light of the right of the Appellant, the learned trial Court ought to have entertained the Application of the Appellant raising objections as provided under Section 7(5) of the MPID Act. According to

him, the trial Court ought not to have rejected the Application on technical reasons or on the ground that it was ambiguous and vague.

14.2) According to him, the trial Court erred in holding that, the Application was an omnibus one and that it could not be termed as an objection under Section 7(3) of the MPID Act. He submitted that the trial Court failed to appreciate the provisions particularly Section 26-E of the SARFAESI Act 2002.

14.3) He submitted that, the trial Court could not have held that Section 26-E of the SARFAESI Act is not applicable to the facts and circumstances of the present case because the subject of attachment was in the nature of deposits and investments and not relating to taxes or debts. In any event, according to him, the properties which were attached could not have been classified as attachments for unsecured creditors. He asserted that the Appellant is a secured creditor and that their rights in law have priority over the dues of unsecured creditors.

14.4) According to him, the trial Court has failed to consider the Order dated 15th September, 2017 whereby the Appellant was permitted to sell the properties under the provisions of the SARFAESI Act 2002. Further, the class of depositors who have deposited the money with the Appellant have priority over the class of depositors and investors who have indulged in trading activities with the National Spot Exchange Ltd. (NSEL). He submitted that, the interest of public money stands on a higher pedestal

than that of the depositors of NSEL. Therefore, the Appellant who is a deemed custodian of the public money has a higher right than that of the investors with the NSEL. He submitted that as on 30th April, 2023 the Respondent Nos.4 to 8 owed an amount of Rs.183.38 crores to the Appellant and non-realization thereof for such a continued period was causing great prejudice to the Appellant.

14.5) Relying upon the decision of the Hon'ble Punjab and Haryana High Court in *Kulbir Singh Dhaliwal and others vs. Union Territory, Chandigarh and others* reported in *2019(1) I.L.R. Punjab & Haryana 902*, he contended that the impugned Order was contrary thereto. He further contended that as per the provisions of Section 34 of the SARFAESI Act 2002, the trial Court had no authority to pass an order to stop the rightful SARFAESI action initiated by the appellant. For all the reasons stated above he submitted that the Appeal deserves to be allowed.

15) Mr. Arvind Lakhawat representing the Respondent No.2 vehemently opposed the said Appeal primarily on the ground that, the Appellant had failed to deposit the amounts directed by the Order dated 15th September, 2017.

15.1) He submitted that a party who has breached the Orders of the Court was not entitled to claim any reliefs.

16) We have heard both the learned counsel and have also perused the record.

17) Upon hearing the Advocates, a pointed query was put to the Advocate for Respondent No.2 as to whether it could be seriously contended that the Appellant, being a leading nationalized Bank, was not in a position to account for the monies realized upon sale of the secured assets, or that any failure to deposit at this stage would render the claims of the depositors unsecured. The query was met, as expected, with a candid response in the negative.

18) In our considered view, the mere failure on the part of the Appellant to deposit the amount, as directed by the Order dated 15th September 2017, cannot in the facts of the present case, operate to non-suit the Appellant or deprive it of the right to be heard. Such a consequence would be wholly disproportionate and contrary to settled principles governing adjudication of rights.

19) It is not in dispute that the subject properties were mortgaged in favour of the Appellant much prior in point of time and constitute secured assets in respect of the financial assistance extended to Respondent Nos. 4 to 8. The Appellant therefore occupies the position of a secured creditor, whose rights cannot be lightly defeated.

20) In that view of the matter, we are of the opinion that the Appellant would be entitled to proceed against the secured assets in accordance with the SARFAESI Act, 2002 and recover the monies. No prejudice would be caused to any party, by permitting such course of action,

for the reason that, in the event it is ultimately held that the sale proceeds are required to be appropriated towards the claims of the depositors of NSEL under the MPID proceedings, the Appellant, having unquestioned financial capacity, can be directed to account for and deposit the requisite amounts without delay. At this stage, therefore, there is no justification to interdict the Appellant's statutory remedy. The Appeal accordingly deserves to be allowed.

21) Impugned Order dated 8th March, 2023 is set aside

22) In view of the aforesaid, the Criminal Appeal No.860 of 2023 and Criminal Appeal No.861 of 2023 are allowed in terms of prayer clause (b).

(KAMAL KHATA, J.) (A.S. GADKARI, J.).