IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8543 OF 2026

Bank of Baroda **...Petitioner**

V/s.

1. Employees Provident Fund Organization, Vapi, Gujarat

2. Regional Provident Fund, Commissioner, Vapi Gujarat

3. Reserve Bank of India

4. M/s. Goldstar Polymers Ltd., Daman. **...Respondents**

Mr. Aseem Naphade *with Mr. Arsh Misra for the Petitioner.*

Mr. Gunjan Chaubey *for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

DATED: 13 JULY 2026.

JUDGMENT:

1) The issue for consideration in the present Petition is whether charge of a secured creditor would prevail over the charge of Provident Fund Organization in respect of assets of the establishment. The issue arises in the light of challenge raised by the Petitioner-Bank of Baroda to the impugned communication dated 6 February 2026 made by the Employees Provident Fund Organisation to the Reserve Bank of India calling it upon to remit an amount of Rs.44,95,976/- towards outstanding provident fund dues payable by Respondent No.4. The Petitioner has also

challenged letter dated 16 April 2026 of Regional Provident Fund Commissioner/ Recovery Officer rejecting its request for refund of the remitted amount with interest.

2) ***Rule***. Rule is made returnable forthwith. Since pleadings in the Petition are complete the same is taken up for final hearing with the consent of the learned counsel appearing for parties.

3) The Petitioner is a Nationalised Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 carrying on banking operations in the country. The Petitioner-Bank extended credit facilities to Respondent No.4-M/s. Goldstar Polymers Ltd. (***Goldstar***), who executed mortgage deed vide Memorandum of Entry dated 14 December 2007 mortgaging *inter alia* plot Nos.16 and 17, Premier Industrial Estate, Kachigam, Daman- 396 215 (**subject property**). The security interest *qua* the subject property was registered in favour of the Petitioner-Bank with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (**CERSAI Registry**). Respondent No.4 failed to repay its dues and accordingly, the Petitioner - Bank issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**). On 2 July 2021, the Petitioner-Bank issued possession notice under Section 13(12) of the SARFAESI Act and accordingly took over possession of the subject property. On 6 August 2021, the Petitioner-Bank issued statutory auction notice and issued Sale Certificate dated 27 September 2022 in favour of the auction purchaser after receipt of amount of Rs.4.55 crores.

4) It appears that Goldstar had failed to deposit the provident fund contributions in respect of its employees. Therefore, inquiry under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**EPF Act**) for the period from March-2017 to January-2019 was initiated. Order under Section 7-A was passed against Goldstar for recovery of amount of Rs. 28,17,630/-. Similarly separate orders were passed under Section 14-B and 7-Q of the EPF Act towards damages and interest of Rs. 16,78,346/-. Recovery certificates for total amount of Rs. Rs.44,95,976/- were issued. The Recovery Officer of Employees' Provident Fund Organization (**EPFO**) therefore sent communications dated 27 March 2024, 31 May 2024 and 8 July 2025 to the Petitioner-Bank calling it upon to remit the amount of Rs.44,95,976/- towards the dues. The Petitioner-Bank responded to the EPFO relying on provisions of Section 26-E of the SARFAESI Act claiming priority over all government dues. Thereafter correspondence took place between the Petitioner-Bank and the EPFO.

5) In the above background, the Recovery officer of the EPFO issued Garnishee Order under Section 8-F of the EPF Act calling upon the Reserve Bank of India (**RBI**) to release the amount of Rs.44,95,976/- from the account maintained by the Petitioner-Bank with the RBI. On 13 March 2026, the RBI remitted the amount of Rs.44,95,976/- to the EPFO from the Petitioner's account. The Petitioner-Bank sought return of recovered amount vide letter dated 30 March 2026. Request for refund of recovered amount was however rejected by the EPFO. Aggrieved by the action of the EPFO, in recovering amount of Rs.44,95,976/- from the bank account of the Petitioner maintained with the RBI as well as

refusing to refund the recovered amount, the Petitioner-Bank has filed the present Petition.

6) Mr. Naphade, the learned counsel appearing for the Petitioner-Bank submits that the Petitioner is a secured creditor and therefore under the provisions of Section 26-E of the SARFAESI Act, the debt due to it needs to be paid on priority over all other revenue, taxes, cesses and other rates payable to the Central Government, State Government or local authority. He submits that both, SARFAESI Act and EPFO are central legislations. That the SARFAESI Act has been enacted in the year 2002 and Section 26-E has been incorporated on 24 January 2020 (Act 44 of 2016) whereas EPF Act is enacted in the year 1952. Though Section 26-E of the SARFAESI Act being a latter law, the same must prevail over Section 11 of the EPF Act. That it must be presumed that the Legislature was aware of provisions of Section 11(2) of the EPF Act when Section 26-E was incorporated in the SARFAESI Act on 21 January 2020. He relies on judgment of this Court in ***Central Board of Trustees, Employees Provident Fund V/s. IndusInd Bank Ltd. and Ors.***[1]. He also relies on judgment of Full Bench of this Court in ***Jalgaon Janta Sahakari Bank Ltd. & Anr. V/s. Joint Commissioner of Sales Tax Nodal 9, Mumbai***[2] in support of his contention that the debt due to secured creditor has priority over the dues of tax /revenue departments of Central/ State Government.

7) Mr. Naphade further submits that the judgment of the Apex Court in ***Jalgaon District Central Coop. Bank Ltd. V/s. State of Maharashtra and others***[3] has been interpreted by this Court in ***Central Board of Trustees***

1 Writ Petition (st) No.33333 of 2023, decided on 17 December 2025.
2 Writ Petition No.2935 of 2018 decided on 30 August 2022
3 2025 SCC OnLine SC 2513

V/s. IndusInd Bank (supra). He further submits that though operative part of the judgment in ***Central Board of Trustees V/s. IndusInd Bank*** is stayed by the Apex Court on 13 April 2026, grant of such interim order does not wipe out existence of judgment rendered by this Court. In support, he relies on judgment of Calcutta High Court in ***Deific Abode LLP and others Vs. Union of India and others*** [4]. Mr. Naphade would therefore submit that ratio of the judgement of coordinate Bench in ***Central Board of Trustees V/s. IndusInd Bank*** (supra) would bind this Court. He accordingly, prays for setting aside impugned communications and seeks refund of recovered amount from the Respondent-EPFO.

8) *Per contra,* Mr. Chaubey, the learned counsel appearing for Respondent Nos.1 and 2-EPFO opposes the Petition and submits that EPFO has first charge on the assets of the establishment under Section 11 (2) of the EPF Act. That the first charge of EPFO would prevail over the charge of the Petitioner-Bank. He relies on judgment of the Apex Court in ***Jalgaon District Central Coop Bank*** (supra) submitting that the issue is conclusively decided by the Apex Court holding that since a clear first charge is created under Section 11(2) of the EPF Act, same would override priority under Section 26-E of SARFAESI Act. The judgment of this Court in ***Central Board of Trustees V/s. IndusInd Bank*** (supra) is rendered in ignorance of ratio of the judgment of the Apex Court in ***Jalgaon District Central Coop Bank*** (supra). That the judgment in ***Central Board of Trustees V/s. IndusInd Bank*** is stayed by the Apex Court by order dated 13 April 2026. He accordingly, prays for dismissal of the Petition.

4 (2021) 437 ITR 397

9) Rival contentions urged on behalf of the parties now fall for my consideration.

10) The Petitioner-Bank is a secured creditor by virtue of mortgage deed executed by Goldstar for repayment of credit facilities disbursed by the Petitioner-Bank. Accordingly, the Petitioner-Bank initiated proceedings under Section 13 of the SARFAESI Act against Goldstar and in respect of the mortgaged property. Petitioner has sold the mortgaged asset by issuance of Sale Certificate in favour of the auction purchaser on 27 September 2022. By way of sale of Goldstar's subject property, the Petitioner-Bank has apparently recovered an amount of Rs.4.55 crores.

11) It appears that provident fund dues in respect of the period from March-2017 to January-2019 are ascertained by the EPFO by passing order under Section 7-A of the EPF Act. Additionally damages under Section 14-B and interest under Section 7-Q of the EPF Act is also levied against Respondent No.4. The total outstanding dues payable to EPFO by Respondent No.4 were to the tune of Rs.44,95,976/-. Since the Petitioner failed to remit the PF dues to the EPFO, a Garnishee order under Section 8-F of the EPF Act was passed calling upon RBI to transmit the amount of Rs.44,95,976/- from the account of the Petitioner with RBI. Petitioner is required to maintain a account with the RBI. Accordingly, RBI has debited the amount of Rs.44,95,976/- and has transmitted the same to the EPFO. Petitioner-Bank is aggrieved by the said action and has filed the present Petition for refund of recovered amount of Rs.44,95,976/-.

12) In the light of the above position, the short issue that arises for consideration is whether Respondent- EPFO would have priority over

assets of Goldstar for recovery of PF dues over the charge of the Petitioner-Bank under the provisions of SARFAESI Act.

13) Section 11 of the EPF Act provides for priority of payment of contribution over other debts and the same reads thus:

> **11. Priority of payment of contributions over other debts.**
>
> (1) Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due—
>
> (a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under section 14-B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or
>
> (b) from the employer in relation to an exempted establishment] in respect of any contribution to the Provident Fund or any Insurance Fund] (in so far it relates to exempted employees), under the the rules of the Provident Fund or any Insurance Fund, any contribution payable by him towards the Family Pension Fund under sub-section (6) of section 17, damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17,
>
> shall, where the liability thereof has accrued before the order of adjudication or winding up is made, be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909 (3 of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under section 530 of the Companies Act, 1956 (1 of 1956)], are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.
>
> [Explanation.—In this sub-section and in section 17, “insurance fund” means any fund established by an employer under any Scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in Provident Fund or not, without payment by the employees of any separate contribution or premium in that behalf.

> **(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer, whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the <u>first charge</u> on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.**

(emphasis and underlining supplied)

14) On the other hand, Section 26-E of SARFAESI Act provides for priority of the secured creditors over all other debts and all revenues, taxes, cesses and other rates payable to Central /State Government or local authority. Section 26-E of the SARFAESI Act provides thus:

> **26-E. Priority to secured creditors.**
>
> Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.
>
> *Explanation.*--For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.

15) It is contended on behalf of the Petitioner that Section 26-E of the SARFAESI Act begins with a non-obstante clause and specifically provides for priority of charge of the secured creditor over all other debits, revenues, taxes, etc., of governments. It is Petitioner's contention that Section 26-E of SARFAESI Act is incorporated with the knowledge of existence of provision of Section 11(2) of the EPF Act and that therefore, the charge of the Petitioner would prevail over the charge of EPFO.

16) Mr. Naphade has strenuously relied upon judgment of this Court in ***Central Board of Trustees V/s. IndusInd Bank*** (supra), in which according to him, this Court has answered the very issue, which is involved for consideration in the present Petition. After taking note of provision of Section 11 (2) of the EPF Act and Section 26-E of the SARFAESI Act, this Court has held in paragraph 16 of the judgment as under:

> 16. Section 11 EPF Act 1952 and Section 26E SARFAESI Act, 2002 both contain non – obstante clauses with regard to payment of dues. Section 11(2) of EPF Act, 1952 states that when money is due from any employer which may be deducted from employees' salary or employers contribution this amount shall have first charge over assets of employer and shall be paid prior to all debts notwithstanding any law for the time being in force. It is seen that on the basis of the above provision, dues of employer towards Provident Fund are to be paid in priority to other dues owed to other entities / financial institutions and the wording of the provision is mandatory and not directory. Section 26E of SARFAESI, Act 2002 states that after secured creditor registers debt / security interest then debts due to such secured creditor shall be paid to him over all other debts payable to Central Government and / or State Government entities notwithstanding any law for the time being in force. Further Section 35 SARFAESI Act, 2002 states that it shall have effect over other laws for the time being in force. Hence it seen that not only does Section 11(2) EPF Act, 1952 clash with Section 26E SARFAESI Act, 2002 but both provisions form part of Central legislation and contain identical non obstante clauses. **It is trite law that where there are two Central Laws which contain provisions with non obstante clauses which conflict and both provisions are not repugnant to each other, then the later law must prevail over the earlier law on the ground that it was enacted later and while enacting the later law, legislature was fully aware of the earlier law and** intended provisions of the later law are therefore to prevail over the provisions of the earlier law. It the legislative had intended otherwise, then in the later law, appropriate provision would have been enacted.

(*Emphasis added*)

17) However, shortly before this Court delivered judgment in ***Central Board of Trustees V/s. IndusInd Bank*** on 17 December 2025, the Hon'ble Supreme Court had already rendered judgment in ***Jalgaon District Central Coop. Bank*** on 20 November 2025. After taking note of the

provisions of Section 11(2) of the EPF Act and Section 26-E of the SARFAESI Act, the Apex Court has held that Section 11(2) creates a statutory first charge on the assets of the establishment for any amount due from an employer, and that the said first charge would override the priority under Section 26E of SARFAESI Act. It is held in paragraphs 25 and 27 of the judgment as under:

> 25. Hence, when there are two enactments conferring priority in satisfaction of a debt coming under the respective enactments, by virtue of a non-obstante clause overriding the provisions of any law in force at that time, the time in which the statute was enacted or the provision was incorporated, assumes significance and the provision latter in time would prevail. **However, if there is a first charge statutorily created, validly, dehors the non obstante clause conferring priority over other debts, the statutory charge would prevail**. With these principles in mind, when we look at the provisions under the SARFAESI Act and the EPF&MP Act, the former with the incorporation of Section 26-E, we are of the opinion that there has to be found a first charge to the EPF&MP Act dues, under Section 11(2) of that Act.
>
> xxx
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> 27. **Undisputedly, SARFAESI Act is the latter act and if the question was solely of the non-obstante clause giving it overriding effect from any law for the time being in force, the SARFAESI Act would prevail. However, in the EPF&MP Act, Section 11(2) creates a statutory first charge on the assets of the establishment for any amount due from an employer**, be it the employers' or employees' contribution, which would include any interest or damages also as has been held in Maharashtra State Co-operative Bank Limited. In that circumstance, the effect of the non obstante clause giving precedence over any other law for the time being in force pales into insignificance, as held in Central Bank of India. **There being a clear first charge created under the EPF&MP Act, it overrides the priority under Section 35 and Section 13 as also that conferred under Section 26-E since a priority cannot be equated with a first charge and cannot be given prevalence over the first charge statutorily created.**
>
> *(emphasis added)*

18) Thus, in ***Jalgaon District Central Coop. Bank*** the Apex Court has authoritatively held that the Section 11(2) of the EPF Act creates

statutory first charge and that therefore the same overrides the priority under Section 26-E of SARFAESI Act. The Apex Court has noted that both, Section 11(2) of the EPF Act and Section 26-E of the SARFAESI Act contain non-obstante clauses and that SARFAESI Act is the latter legislation. However, it is held that the usual principle of latter legislation prevailing over earlier legislation does not apply in the light of Section 11(2) of the EPF Act providing for statutory first charge in respect of the provident fund dues. In my view, therefore, the issue involved in the Petition is squarely covered by judgment of the Apex Court in ***Jalgaon District Central Coop. Bank*** (supra). Therefore, Respondent-EPFO would have the first charge over the assets of Respondent No.4 notwithstanding the provision for priority of Petitioner's charge under Section 26-E of the SARFAESI Act.

19) Mr. Naphade contends that judgment of ***Jalgaon District Central Coop. Bank*** (supra) is considered and interpreted by this Court in ***Central Board of Trustees, EPF V/s. IndusInd Bank*** (supra) and that the interpretation would bind the Bench of co-equal strength. There can be no dispute about the position that ordinarily when High Court interprets judgment of the Apex Court, such interpretation would bind the coordinate Bench of the High Court. However, it is equally well settled that circumstantial flexibility, one additional or different fact may make a world of difference in two cases [***SEE***: ***Union of India and Another V/s. Major Bahadur Singh***][5]. It appears that the judgment of the Apex Court is noted by the co-ordinate Bench of this Court in paragraphs 4.7 and 18 of the judgment. However, this Court has apparently noted observations made by the Apex Court in paragraph 25 of the judgment in ***Jalgaon***

5 2005 SCC OnLine SC 1669

District Central Coop. Bank and it is held in paragraph 18 of the judgment of this Court as under:

> 18 .... **Even the Supreme Court's recent decision relied upon by Mr. Rattesar in paragraph No. 25 hold that the time in which the statute was enacted or the provision was incorporated assumes significance and the provision later in time would prevail.** It further holds that only if there is a first charge statutorily created validly, dehors the non-obstante clause conferring priority over other debts, the statutory charge would prevail. **Such is not the present case of the parties.**
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> (*emphasis and underlining added)*

20) Thus, this Court has observed that the case before it did not involve existence of first charge statutorily created. The judgment therefore can be distinguished on facts. In the present case, the EPFO has taken a specific stand before me that it has first charge statutorily created validly over the assets of Goldstar. Also, this Court took note of only observations in paragraph 25 of the judgment of the Apex Court in ***Jalgaon District Central Coop. Bank*** and it appears that in facts of that case, it was felt unnecessary to take note the ratio of the judgment in paragraph 27. No doubt, in paragraph 25 of the judgment of the Apex Court has observed that the time in which the statute is enacted or provision so incorporated assumes significance and the provision latter in time would prevail. However, even if in paragraph 25 Apex Court has held that if there is a first charge statutorily created validly, *dehors the* non obstante clause, conferring priority over other debts, the statutory charge would prevail. Thus, even in paragraph 25 of the judgment in ***Jalgaon District Central Coop. Bank*** the Apex Court has held that the first charge created under Section 11(2) of the EPF Act would prevail over priority of charge created under Section 26-E of the SARFAESI Act. In paragraphs 27 of the judgment the Apex Court has gone ahead and held that since first charge is created under the EPF Act, it overrides the

priority under Section 26-E of SARFAESI Act and that a priority cannot be equated with a first charge and cannot be given prevalence over the first charge statutorily created. In my view the ratio of the judgment of the Apex Court in ***Jalgaon District Central Coop. Bank*** comes close to the facts the present case and therefore I deem it appropriate to follow the same.

21) It also appears that the order of this Court in ***Central Board of Trustees V/s. IndusInd Bank*** has been stayed by the Apex Court in SLP (Civil) Diary No.19222 of 2026 vide order dated 13 April 2026. Since the order is stayed by the Apex Court, it is contended by Mr. Chaubey that the same need not be followed. On the other hand, Mr. Naphade contends that mere grant of stay does nto mean that the ratio of the judgment gets wiped out.Since I have held that the ratio of judgment in ***Jalgaon District Central Coop. Bank,*** is directly applicable to the facts of the present case, it is not necessary to consider application of the principle of grant of stay by the Apex Court not wiping out existence of the judgment. It is therefore considered unnecessary to discuss the ration of judgment of the Apex Court in ***Shree Chamundi Mopeds Ltd. V/s. Church of South India Trust Assn. CSI Cinodsecretariat, Madr.***[6] or the interim order passed by Calcutta High Court in ***Deific Abode LLP*** (supra).

22) Reliance by Mr. Naphade on judgment of Full Bench of this Court in ***Jalgaon Janta Sahakari Bank Ltd. & Anr. V/s. Joint Commissioner of Sales*** (supra) is inapposite since the judgment is an authority on the principle that registration of charge /debt with CERSAI Registry gives priority to payment of dues over other debtors. The Full Bench was not

6 1992 (3) SCC 1

concerned with the competing provisions of Section 11(2) of the EPF Act vis-a-vis Section 26-E of the SAFAESI Act. On the other hand, the judgment of the Apex Court in ***Jalgaon District Central Coop. Bank*** is a direct authority on the proposition involved in the present Petition.

23) I am therefore of the view that first charge created in favour of the Respondent -EPFO under Section 11(2) of the EPF Act would prevail over the charge in favour of Petitioner-Bank under Section 26-E of the SARFAESI Act. The Petitioner-Bank is therefore not entitled for refund of the recovered amount towards PF dues, interest and damages.

24) Writ Petition is devoid of merits. It is accordingly, dismissed. *Rule* is discharged. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]