IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 86 OF 2022

Seema Sharma]
Age : 45 years, Occ: Business]
Resident of House No.1155]
Sector 34C, Chandigarh.]
… Appellant

V/s.

1. The State of Maharashtra]
(Through EOW, Unit-V)]

2. Competent Authority]
NSEL.]

3. The Punjab National Bank]
Having its head office at 7]
Bhikaji Cama Place]
New Delhi-110 607 and interalia]
Branch at Sector-17-B]
Chandigarh.]
… Respondents

WITH
INTERIM APPLICATION NO.145 OF 2026
IN
CRIMINAL APPEAL NO.86 OF 2022

National Spot Exchange Limited]

A Company incorporated under the]
Companies Act, 1956, Having its]
office at Malkani Chambers]
1st Floor, Off. Nehru Road, Near Hotel]
Orchid, Vile Parle (East)]
Mumbai – 400 099.]
...Applicant/Intervener

In the matter between
Seema Sharma]
Age : 45 years, Occ: Business]
Resident of House No.1155]

Sector 34C, Chandigarh.] ... Appellant

V/s.

1. The State of Maharashtra]
(Through EOW, Unit-V)]

2. Competent Authority]
NSEL, 2nd Floor, D.D.Building]
Old Custom House, Fort, Mumbai.]

3. The Punjab National Bank]
Having its head office at 7]
Bhikaji Cama Place]
New Delhi-110 607 and interalia]
Branch at Sector-17-B]
Chandigarh.] ... Respondents

Mr. Vinay Bhanushali for the Petitioner.

Ms. Leena Patil, SPP a/w Smt. P. P. Shinde, APP, for the Respondent Nos.1 & 2- State.

Ms. Anjali Kondvilkar i/by Ms. Payal Upadhyay, ANP Chamber for the Respondent Nos.3.

Mr. Arvind Lakhawat a/w Ms. Jalpa Shah i/by MZM Legal LLP for the Intervener in IA/145/2026.

CORAM : A. S. GADKARI AND KAMAL KHATA, JJ.

RESERVED ON : 29th April, 2026.

PRONOUNCED ON : 21st July, 2026.

Judgment (Per : Kamal Khata, J) :-

1) By this Appeal, the Appellant challenges the impugned Order dated 25th November, 2021 passed by the learned Special Judge under the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ("MPID Act"), at Mumbai, rejecting her application for release of her property from attachment. The attachment

was effected pursuant to Notifications dated 17th April, 2014, 28th August, 2014 and 22nd June, 2014 issued in MPI 2014/CR-541/Pol-11 and in connection with Special MPID Case No.1 of 2014. The property in question is a residential house bearing No.421, situated in Sector 35-A, Chandigarh, admeasuring 525.75 square yards ("the subject property").

2) The Appellant states that, she learnt that the subject property had been attached on the premise that it belonged to M/s. Lotus Refineries Private Limited, which was allegedly a borrower-company of the National Spot Exchange Limited ("NSEL"). Upon learning of the attachment, the Appellant filed Miscellaneous Application No.1950 of 2019 before the learned Special Judge under the MPID Act, seeking release of the subject property from attachment.

3) The Appellant contends that, although her husband is associated with M/s. Lotus Refineries Private Limited, which is a borrower and an accused in Special MPID Case No.1 of 2014, neither she nor any of her businesses have any concern with the management or affairs of the said company. According to her, she had an independent source of income from which the subject property was purchased. She further contends that no part of the consideration for its purchase was paid either by M/s. Lotus Refineries Private Limited or by her husband, Mr. Arun Sharma.

4) In support of her claim, the Appellant relies upon the registered Sale Deed dated 18th July, 2013. She contends that she is not an accused in

the underlying criminal proceedings and that the subject property was not purchased out of the proceeds of the alleged crime. According to her, the property was erroneously attached under the mistaken belief that it belonged either to M/s. Lotus Refineries Private Limited or to her husband, who is associated with the said company. She further contends that the attachment was effected merely on the basis of the statement of an accused, without due application of mind or proper verification. The attachment, therefore, infringes her fundamental rights.

5) It is further the case of the Appellant that, M/s. Lotus Refineries Private Limited became a member of NSEL only on 15th March, 2012. At the relevant time, the Appellant was neither a Director of nor otherwise concerned with the said company. She, therefore, had no connection with the allegedly tainted transactions. According to her, no nexus has been established between the subject property and the funds of the investors or the transactions forming the subject matter of the criminal proceedings. She consequently contends that the property does not fall within the ambit of Section 4 of the MPID Act.

6) The Appellant claims that she had an independent source of income and purchased the subject property by availing a loan from Punjab National Bank. Merely because her husband, Arun Sharma, was a co-borrower under the loan transaction, the character of her ownership over the subject property would not change.

7) Mr. Vinay Bhanushali, learned Advocate appearing for the Appellant, reiterated the aforesaid facts in support of the Appeal. Relying upon the decision of the Supreme Court in *P. P. Abdulla and Others v. Competent Authority*, reported in *(2007) 2 SCC 510*, particularly paragraphs 4, 6 and 7, he submitted that the Authority effecting confiscation or attachment must record in writing the basis for such action, particularly since an Order of attachment has stringent consequences.

7.1) He submitted that property gifted to a wife, even by an accused husband, would constitute her *stridhan* and would not be liable to attachment. According to him, the present case stands on a stronger footing since the subject property was purchased by the Appellant from her independent source of income. He submitted that, even assuming that a part of the consideration was received by the Appellant from her husband, the subject property would constitute her *stridhan* and could not have been attached.

7.2) Mr. Bhanushali further submitted that the investigation has been completed and even thereafter, no role has been attributed to the Appellant in the alleged offences. The Appellant is neither an accused nor is she alleged to have any connection with the financial establishments involved in the alleged crime.

7.3) He submitted that, the record indicates that an amount of Rs.55,00,000/- was transferred by the Appellant's husband, accused Arun

Kumar Sharma, to the Appellant. However, an amount of Rs.68,80,955/- has already been transferred to the account of the Economic Offences Wing ("EOW"), which is substantially more than the amount found by the investigating agencies and reflected in the Forensic Audit Report. On this ground also, according to him, the subject property deserves to be released from attachment.

7.4) Mr. Bhanushali submitted that the earlier Miscellaneous Application No.865 of 2018 was rejected on 21st September, 2018 on the ground that Miscellaneous Application No.259 of 2018 had been filed under Section 457 of the Code of Criminal Procedure, 1973 and was not maintainable, since an application for lifting the attachment ought to have been filed under Section 7 of the MPID Act.

7.5) He further submitted that Miscellaneous Application No.259 of 2018 was rejected on the erroneous factual premise that, the amount had been transferred by M/s. Lotus Refineries Private Limited to the Appellant. The EOW Report, however, clarifies that the amount of Rs.55,00,000/- was transferred by the Appellant's husband, accused Arun Kumar Sharma, and not by M/s. Lotus Refineries Private Limited. According to him, Miscellaneous Application No.259 of 2018 was decided without the benefit of the Forensic Audit Report. Its rejection would, therefore, have no bearing on the present proceedings.

7.6) It was additionally submitted that Miscellaneous Application

No.259 of 2018 sought de-freezing of a bank account, whereas the present Application seeks release of the subject property from attachment. The nature and subject matter of the two applications are therefore distinct.

7.7) In support of his submissions, Mr. Bhanushali also relied upon the following decisions:

(1) *Chimanlal Thakreshi Modi and other vs. State of Maharashtra* reported *in 2004 SCC OnLine Bom 1465 (particularly paragraphs 6 and 7)*

(2) Ashok Savalkar vs. Aruna Ramkrishna Bhatkar reported in MANU/MH/0962/2004 (particularly paragraphs 2, 3, 6 and 7; and

(3) Motilal Hastimal Bothara vs. State of Maharashtra reported in 2003 SCC OnLine Bom 1409 (particularly paragraphs 2 and 6 in addition to Rupal Shah (supra).

7.8) Mr. Bhanushali, thereafter, referred to Section 26E of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) and Section 31B of the Recovery of Debts and Bankruptcy Act (RDB) Act and submitted that the two provisions are *pari materia*. Referring to Section 35 of the SARFAESI Act and Section 34 of the RDB Act, he submitted that both provisions contain overriding clauses which give the respective enactments precedence over other laws.

7.9) He further submitted that Section 37 of the SARFAESI Act provides that the provisions of that Act are in addition to and not in derogation of the other laws for the time being in force. Section 14 of the MPID Act also gives the provisions of that Act overriding effect. According to him, the provisions of all three enactments must, therefore, be construed harmoniously so as to further their respective legislative objects.

7.10) He submitted that, unlike Section 31B of the RDB Act and Section 26E of the SARFAESI Act, the MPID Act contains no provision granting priority to the claims of depositors or the Competent Authority over the claims of secured creditors in respect of secured assets. The Court is required to do substantial justice and cannot mechanically prioritize the claims of the Competent Authority or the investors over those of secured creditors proceeding under the RDB Act and SARFAESI Act. Such an approach would adversely affect the recovery of public funds and the larger public interest, particularly when the legislature has expressly granted priority to secured creditors. He accordingly submitted that Appeal be allowed and the attachment be quashed and set aside.

8) Ms. Kondvilkar, learned Advocate appearing for Respondent No.3-Bank, submitted that the Bank had sanctioned a housing loan of Rs.3.63 crores, of which Rs.2.43 crores was towards the purchase of the subject property and Rs.1.20 crores was towards construction. The terms and

conditions of the loan were recorded in the Housing Loan Agreement dated 29th March, 2013. The loan was, inter alia, secured by an equitable mortgage of the subject property.

8.1) That, the Appellant acquired the subject property under a registered Sale Deed dated 18th July, 2013. In accordance with the terms of the Housing Loan Agreement, the Appellant deposited the Sale Deed and the registration receipt with the Respondent-Bank, upon which the loan was disbursed. On account of default in repayment, the Respondent-Bank initiated proceedings under the SARFAESI Act. It took symbolic possession of the subject property on 18th March, 2016 and physical possession thereof on 15th September, 2016. The Debts Recovery Tribunal-I, Chandigarh, has also issued a Recovery Certificate recording an outstanding amount of Rs.2,53,63,194/- as on 29th January, 2016.

8.2) Ms. Kondvilkar submitted that, the subject property was purchased out of the loan advanced by the Respondent-Bank and therefore, the provisions of the MPID Act would not apply to it. She submitted that the provisions of the SARFAESI Act would prevail over those of the MPID Act, particularly because the subject property does not belong to a financial establishment or to any promoter, director, partner or member thereof whose property may be proceeded against under the MPID Act.

8.3) According to her, the learned Special Judge erred in rejecting the application for release of the subject property from attachment by the impugned Order dated 25th November, 2021. She however disputed the Appellant's assertion that, the entire dues of the Respondent-Bank had been repaid and that no amount remained outstanding. She accordingly supported the prayer for release of the subject property from attachment, subject to the rights and security interest of the Respondent-Bank.

9) Mr. Lakhawat, learned Advocate appearing for the Intervenor, emphasised that, the Appellant was merely a housewife and had no independent source of income. He submitted that there was no material on record to controvert this position and on this ground alone, the Appeal deserved to be dismissed.

10) We have heard the learned Advocates appearing for the respective parties and perused the entire record.

11) We find merit in the submissions of Mr. Bhanushali. The record indicates that, the subject property was purchased substantially out of a housing loan advanced by Punjab National Bank. It is undisputed that the Bank sanctioned an aggregate amount of Rs.3.63 crores to the Appellant, comprising of Rs.2.43 crores towards the purchase of the subject property and Rs.1.20 crores towards construction thereon The said property consequently mortgaged in favour of the Bank as security for repayment of the loan.

12) For non-payment of dues, the Punjab National Bank initiated

recovery proceedings and obtained a Recovery Certificate for an amount of Rs.2,53,63,194/- being the outstanding amount as on 29th January, 2016.

13) We cannot, therefore, overlook that a substantial part of the consideration for the purchase and development of the subject property was funded by the Bank. At the same time the assertion that, the source of the amount contributed by the Appellant towards the purchase of the property being investors funds assumes significance, particularly in view of the assertion that she was a housewife without any independent source of income.

14) The Forensic Audit Report indicates that an amount of Rs.55,00,000/- was transferred to the Appellant by her husband, accused-Arun Kumar Sharma. To that extent, the amount was liable to be secured for the benefit of the investors. The record further indicates that, an amount of Rs.68,80,995/- has already been recovered from the Appellant and deposited in the account of EOW. Further, it would just and equitable to deposit such amounts recovered in excess of the amount claimed under the Recovery Certificate to be deposited with the EOW, considering that the difference between the borrowed amount of Rs.3.63 crores and the outstanding of approximately Rs.2.53 crores may have been monies of the depositors.

15) The record also indicates that, the investigation of the said crime has been completed. Neither the investigation nor the Forensic Audit Report

attributes any role to the Appellant in the alleged offence. No direct nexus has been established between the purchase of the subject property and the investors funds forming subject matter of the criminal proceedings. Nor does the investigation or the Forensic Audit Report disclose any flow of funds from M/s Lotus Refineries Private Limited to the Appellant.

16) We are unable to accept the contention of Mr. Lakhawat that, the attachment must be sustained merely because the Appellant's husband, Arun Sharma, was a co-borrower under the loan obtained from the Punjab National Bank. The uncontroverted fact that the Appellant was a housewife with no independent source of income would also not, by itself, justify the attachment of the entire property, when a substantial part of the consideration was admittedly funded by the Bank and the amount shown to have been received from her husband has already been adequately secured by way of attachment/seizure.

17) The contention of Mr. Lakhawat that, a previous Miscellaneous Application No.865 of 2018 was rejected on 21st September, 2018 will have no bearing on the present proceedings. The said Application was rejected on the ground that an Application seeking lifting of attachment ought to have been filed under Section 7(1) of the MPID Act and not under Section 457 of the Cr.P.C.

18) Similarly, the rejection of Miscellaneous Application No.259 of 2018 would not affect the present Appeal, as that Application sought de-

freezing of a bank account, whereas the present proceedings concern release of the subject property from attachment. The nature and subject matter of the two proceedings are thus distinct.

19) The impugned order has placed undue emphasis on the fact that the Appellant's husband was a co-borrower under the loan transaction. In our view, the mere inclusion of the Appellant's husband as a co-borrower would not alter the nature or character of the loan advanced by the Bank to the Appellant as the principal borrower.

20) It was within the banks commercial discretion to grant the loan against the security of the subject property and to join the Appellant's husband as a co-borrower so as to additionally secure repayment and enable the Bank to proceed against both borrowers in the event of default. The Appellant's failure to disclose that her husband was a co-borrower cannot, in the facts of the present case, be regarded as suppression of such a material fact as would disentitle her to any relief.

21) In our view, undisputedly, the subject property was substantially purchased and constructed out of a loan advanced by a nationalized Bank which means public funds. The Bank has already obtained a Recovery Certificate for recovery of the outstanding sum of Rs.2,53,63,194/-. These facts remain uncontroverted. Further, the amount shown by the Forensic Audit Report to have been transferred by the accused husband to the Appellant has already been adequately secured by the amount deposited

with the EOW, as noted above. In absence of any material establishing a nexus between the subject property and the investor's funds, the attachment of the entire property cannot be sustained.

22) In our view, the facts of the present case are peculiar for the reasons set out hereinabove and therefore we do not find it necessary to delve into the applicability of the provisions of the MPID Act and the SARFAESI Act. In our view, therefore, the Appeal deserves to be allowed.

23) Accordingly, the following order is passed:

a) The Order dated 25th November, 2021 passed by the learned Special Judge, Mumbai, is quashed and set aside.

b) The Notifications dated 28th August, 2014, 22nd June, 2014 and 17th April, 2014 bearing MPI No.2014-CR-541-Poll 11 dated 22nd June, 2015 issued in connection with Special MIPD Case No. 1-14 arising out of CR 89-2013 registered with EOW, Unit-V, qua the subject property herein are quashed and set aside and the subject property stands released from the attachment under the MPID Act.

c) No Order as to costs.

d) In view of disposal of Appeal, Interim Application filed therein does not survive and is accordingly disposed off.

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