MPBALEKAR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 224 OF 2026

The Akola Janata Commercial Co-operative Bank Ltd., Akola, Malkapur Road Branch, through its Branch Manager, Satish Shashikant Bonte, aged about 54 years, Occ. Service, R/o. Akola, Tq. & Dist. Akola. .... **APPELLANT**

VERSUS

1) State of Maharashtra, Home Department, through its Secretary, Public Business Centre, Kuf Parade, Mumbai - 400005.

2) Sub Divisional Officer, (Competent Authority) Collector Office, Amravati. .... **RESPONDENTS**

Mr. Vidit Amit Lohia, Counsel for the appellant.
Ms. H. N. Jaipurkar, APP, for respondents - State.

CORAM : URMILA JOSHI-PHALKE &
NIVEDITA P. MEHTA, JJ.

DATED : 31-07-2026

ORAL JUDGMENT : (PER : URMILA JOSHI-PHALKE, J.)

1. Heard.

2. Admit.

3. Heard finally with the consent of learned Counsel for the respective parties.

4. By the present appeal, the appellant, the Akola Janta Commercial Co-operative Bank Ltd., Malkapur Road Branch, Akola, has challenged the Order dated 1 January 2026 passed by the learned Designated Court, Amravati, i.e, the Additional Sessions Judge Amravati below Exhibit 377 in Special M.P.I.D. Case No.1 of 2014 (State Vs. Sameer Sudhir Joshi and others).

5. As per contention of the appellant that the appellant is a multi-state scheduled bank carrying on the business of banking, as per the license granted by the Reserve Bank of India. On the application of one Mr. Mukund Ambadas Pitale, the appellant - bank has sanctioned and granted term loan of Rs.35,00,000/- to Mukund Ambadas Pitale. By way of security for the said loan amount, said Mukund Ambadas Pitale has mortgaged his immovable property situated at Gorakshan Road, Akola, bearing plot No. 9, area 6026 square feet along with flats constructed thereon by executing a registered mortgage deed dated 1 August 2012 which is registered at the office of Sub-Registrar, Akola. By the said mortgage, the borrower has created first charge of the appellant - bank over the said mortgage property. The said borrower, Mukund Pitale, had failed to repay the loan amount as per the agreed terms and conditions and, therefore, the loan account of Mukund became irregular. Therefore, on 29 August 2015, the same was declared as NPA as per the rules and guidelines laid down by the Reserve Bank of India. Thereafter, the appellant-bank had initiated action against the borrower as per the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act”).

6. The Police Inspector, Economic Offence Wing, Amravati issued one letter dated 6 May 2014 to the appellant – bank, thereby demanding the original sale deed in respect of the immovable property mortgaged by Mukund Pitale lying with the appellant - bank for investigation. Accordingly, the same was handed over by the appellant - bank to the investigating agency. Upon making enquiry, the appellant - bank got knowledge and information that said Mukund Pitale is one of the directors in Shri Surya Investments, and said Shri Surya Investments has failed to repay the deposited amount accepted from various depositors. Upon complaint made by the depositors with respondent no. 1, respondent no. 1 by exercising powers under the provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as the "MPID Act") has taken cognizance of the said complaints and in view of Section 4 (1) and Section 5 of the said Act, issued the Notification dated 24 February 2015. By the said notification, the properties standing in the name of all the directors of Shri Surya Investments, including the property mortgaged by Mukund Pitale with the appellant - bank, was attached. By the Order dated 23 February 2015, respondent no. 1 has appointed Sub-Division Officer, Amravati, i.e., respondent no. 2 to act as a Competent Authority as per Section 5 of the said Act.

7. It was further revealed to the appellant that a Crime No. 305 of 2013 has been registered at Rajapeth Police Station, Amravati against the said Shri Surya Investments and its directors under Section 406, 409, 420, 465, 467, 468, 471, 201, 120-B R/w 34 of Indian Penal Code, 1860 and Section 3 of the

MPID Act, Section 58(b) (5-a), 58 of E.R.B.I. Akola, 1934 and Section 71 of Information and Technology Act, 2000. The charge sheet also came to be filed in the Special Court on 7 February 2014 and Criminal Case, i.e., Special Case No. 1 of 2014 is pending before the Special Court.

8. It further came to the knowledge of the appellant - bank that the properties of said Mukund Pitale also attached, and therefore, the appellant - bank has raised an objection before the Special Court in the said proceedings. In the meantime, Mukund Pitale reported to be dead on 25 May 2022. While considering the application for attachment, the Special Judge has not considered the objections raised by the appellant. It is contented by the appellant that the property was attached and action was taken long back under the SARFAESI Act. This fact was also not considered by the Special Judge while passing the Order. Therefore, the appellant approached to this Court.

9. The present petition is strongly opposed by the respondents - State. It is the contention of the respondents - State that the appellant has filed the appeal under the provisions of Section 11 of the MPID Act before this Court against the order dated 1 January 2026 passed by the Learned Additional Sessions Judge, Amravati below Exhibit 377 in Special M.P.I.D. Case No. 1 of 2014. It is further contended that with an ulterior motive this appeal came to be filed. After receiving the complaints from the investors and the depositors against the financial institution, i.e., M/s. Shri Surya Investments, the criminal action was taken against the directors of the said financial institution. On satisfaction of the fact that the depositors are duped by various directors, the order of attachment came to be passed. The special judge has also considered the objection raised by the petition and, therefore, petition being devoid of merits liable to be dismissed.

10. Heard learned counsel for the appellant who reiterated the said contentions and inverted our attention towards the objection raised by him before the Special Court. The specific objection raised by the appellant before the Special Court was that one Mr. Mukund Pitale had approached the objector bank for obtaining the loan and the property was already mortgaged with the appellant - bank. As said Mukund Pitale failed to deposit the amount, therefore, the action under SARFAESI Act was taken and the entire property was attached. Thereafter the objector bank came to know that the Home Department of State of Maharashtra by exercising powers under Section 4(1) and Section 5 of the provisions of MPID Act had issued a Notification dated 24 February 2015 and thereby attached the properties. Thus, he submitted that detailed objection was raised by the appellant, but in the impugned order whereas the Special Judge in paragraph 13 only considered that the objector bank has placed reliance on the ruling laid down in the case of ***Kulbir Singh Dhaliwal and Ors. Vs. Union Territory of Chandigarh and Ors.,*** AIR 2019 Punjab & Haryana 151, and observed that objector bank can certainly approach the competent authority of Sub-Division Officer, Amravati to claim priority over the sale proceeds of the above-described attached property, i.e., Plot No. 9. The Special Court also held that it would be appropriate to state that in the case in hand, the sale proceeds of the attached property are to be disposed to the victims in this crime who had deposited huge amounts with Shri Surya Investments and thereby they rejected the objections.

11. The main contention of the learned counsel for the appellant is that the learned Special Judge requires to consider the objections raised by the present appellant in view of Section 7(3) of the MPID Act. Section 7 deals with the powers of Designated Court regarding attachment which is reproduced as under :-

> *"**7. Powers of Designated Court regarding attachment***
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> *(1) Upon receipt of an application under section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under section 4, a notice accompanied by the application and affidavits and of the evidence, if any, recorder, calling upon the said Establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute.*
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> *(2) The Designated Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notice is issued under sub-section (1), calling upon all such persons to appear on the same date as that specified in the notice and make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have interest in such property or portion thereof.*
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> *(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under sub-section (4) or sub-section (6).*
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> *(4) The Designated Court shall, if no cause is shown and no objections are made under sub-section (3), on or before the specified date, forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realization of the assets attached and for the equitable distribution among the depositors of the money realised from out of the property attached.*
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> *(5) If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and*

in all other respects, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 1908 and exercise all the powers of a court in hearing a suit under the said Code any person making an objection shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Designated Court shall pass an order either making the order of attachment passed under sub-section (1) of section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment:

***Provided** that the Designated Court shall not release from attachment any interest, which it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has in the property, unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for repayment to the depositors of such Financial Establishment."*

12. In view of sub-section 3, any person claiming an interest in the property attached or any portion thereof may, withstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under sub-section (4) or sub-section (6). The sub-section 5 deals with the situation where an objection is raised and speaks about if cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 1908 and exercise all the powers of a Court in hearing a suit under the said Code any person making an objection shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

13. The learned counsel for the appellant submitted that in view of the sub-section 5, the Special Judge ought to have decided the application by adopting a summary procedure and the opportunity of hearing was required to be granted as well as the opportunity of leading evidence was also required to be granted. He submitted that, moreover, the learned Special Judge ought to have apply the mind towards all the objections raised by the appellant which were not considered. The aspect of the initiation of action under the SARFAESI Act was also not considered by the Special Court. In support of his contention, he placed reliance on the judgment of the Hon'ble High Court of Bombay in the case of ***Suresh Raju Shetty Vs. State of Maharashtra and Anr.***, (2017) SCC OnLine Bom 9668, wherein in paragraph 25, it is observed by this Court that the learned Judge has ignored the scheme of the SARFAESI Act. If this property was constituting a security interest of a bank, then all these matters and several issues in relation to the transaction between the bank and the debtor - appellant are expressly relevant for the purpose of this adjudication. Then, whether the attachment by the bank so as to enforce its security precedes the attachment under the MPID Act, whether there was no attachment but still there was a prior mortgage of the same property with the bank, there was a failure to discharge the liability of the bank, the bank was, therefore, in a position to deal with and dispose of the property in terms of the SARFAESI Act without the intervention of the Court and whether the deals and transactions of the bank would prevail in terms of the SARFAESI Act over the attachment in terms of the MPID Act were equally important, relevant underlying issues. We see no discussion in that regard, but for the two lines in paragraph 13 of the impugned order. We have, therefore, no hesitation in holding that the learned Judge of the Designated Court has failed to carry out his duty in law. He has completely ignored the scheme of the MPID Act.

14. In the present case also, after going through the impugned order, admittedly, the objection was raised by the appellant - bank stating that as one of the directors, i.e., Mukund Pitale was the defaulter and, therefore, the action under the SARFAESI Act was already initiated. However, while passing the order, the Special Judge has not considered this aspect and not dealt with the aspect regarding the disposal of the property in terms of the SARFAESI Act, without the intervention of the Court, and whether the deals and transactions of the bank would prevail in terms of the SARFAESI Act over the attachment in terms of the MPID Act. If there is an attachment under Section 4 of the Act, then whether there was a satisfaction by the Government and which is the principal requisite, whether that satisfaction was reached by applying relevant materials and whether in terms of sub-section 3 of Section 5 of the Act, was it necessary for the Designated Court to render any assistance to the Competent Authority is also not clarified at all. If the other property is what is sought to be attached under notification referred to that property, then it was incumbent on the Designated Court to have satisfied itself as to whether there is nothing available with the authority except this property for repayment of the money of the investors.

15. The Special Judge also has not taken into consideration the sub-section 1 of Section 4 of the Act ends with the satisfaction of the Government that if money or other properties are not available for attachment, or not sufficient for repayment of the depositors then other properties of the financial establishment or promoter etc. can be attached. Thus, there is substance in the contention of the learned counsel for the appellant that his objections are not considered by the Special Court in proper perspective. Therefore, the matter requires to be relegated back to the Special Judge, Amravati to decide it afresh. In view of that, we allow this petition and proceed to pass following order :-

ORDER

i. The Criminal Appeal is allowed.

ii. The impugned order dated 1 January 2026 passed by the learned Designated Court, Amravati, below Exhibit 377 in Special M.P.I.D. Case No.1 of 2014 is hereby quashed and set aside.

iii. Exhibit 377 is relegated back to the Special Judge, Amravati to decide it afresh.

iv. By taking into consideration all the objections raised by the appellant and by considering the judgment of the Hon'ble High Court of Bombay in the case of *Suresh Raju Shetty Vs. State of Maharashtra*, (2017) SCC OnLine Bom 9668, the Criminal Appeal stands disposed of.

(Nivedita P. Mehta, J.) **(Urmila Joshi-Phalke, J.)**