IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3670 OF 2025

Abhyudaya Co. Operative Bank Limited …Petitioner
Versus
Union of India
Through its Department of Income Tax and Ors. …Respondents

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Mr. Ranjeev Carvalho a/w. Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi and Mr. Bhargav Samani i/b. Ms. Sabeena Mohadik, for the Petitioner.
Mr. Vikas Khanchandani, for Respondent Nos. 1 to 5- IT Dept.
Mr. V.G. Badgujar, AGP for the State- Respondent Nos. 6 to 8.

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

DATE : 28th JULY, 2026

ORDER *(Per Shreeram Shirsat, J.)*

1. By this Petition the Petitioner is approaching this Court for quashing and setting aside the order of attachment dated 17th December, 2018 issued by Respondent No. 5, the Tax Recovery Officer, Pune. The Petitioner has also prayed for directions to Respondent Nos. 6 to 8 to remove the encumbrances/ charge noted in the relevant record of the subject property.

2. At the outset, the learned counsel for the Petitioner submits that the 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[1] and therefore urged that the Petition deserves to be allowed.

3. Before adverting to the rival submissions, it would be appropriate to enumerate brief facts leading to the filing of this Petition.

4. The learned counsel for the Petitioner submitted that in the year 2019, the Petitioner had sanctioned a loan of Rs. 955 Lakhs and Rs. 495 Lakhs to proprietary firms namely Raj Earth-Movers and Transport and to M/s. Kshitij Enterprises respectively. The learned counsel further submitted that the loan amounts were disbursed by the Petitioner in the years 2017, 2019 and 2020 respectively. He further submitted that as a security one of the sureties by name Uday Bhausaheb Waghere, the owner of the subject property, created mortgage over the subject property in favour of the Petitioner on 20th November, 2019 and thereafter the Petitioner disbursed the loan amount to the said borrower. The learned counsel further submitted that the Petitioner by its letter dated 20th December, 2019, requested the Talathi i.e. Respondent No. 8 to note the mortgage charge of the Petitioner in the 7/12 extract of the subject property. He further submitted that accordingly, the charge of the Petitioner over the subject property was noted in the 7/12 extract in respect of the subject property.

1 2022 SCC OnLine Bom 1767.

5. The Ld. Counsel further submitted that as the borrowers failed to comply with the repayment terms, after declaring the respective accounts as Non-Performing Assets (NPA) on 30th April, 2021, the Petitioner initiated recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the Act, 2002) and after complying with the requirements under the Act, 2002, the possession of the subject property was taken on 8th February, 2022.

6. The learned counsel further submitted that after taking the physical possession of the subject property, the Petitioner initiated the process of selling the same towards the recovery of outstanding dues. However, the Petitioner learnt that the property could not be sold as there was an order of attachment issued by the Income Tax Department i.e. Respondent No. 3 over the subject property, as the borrowers had failed to pay the statutory income tax dues.

7. The Ld. Counsel submitted that the Petitioner made inquiries with respect to the said attachment and it was learnt that on 17th December, 2018, the Respondent No. 3 had issued the order of attachment to the said Uday Waghere for attaching the subject property, as he had failed to make the payment of income tax dues. The learned counsel further

submitted that the Respondent No. 5, by letter dated 23rd November, 2022, informed the Tahsildar, Pune that though the order dated 17th December, 2018 was forwarded, it was noticed that no charge of income tax department was noted in 7/12 extract of the subject property and therefore Respondent No. 5 had requested to enter the charge of Income Tax Department on the subject property and to forward the 7/12 extract after modification in the record. The learned counsel further submitted that Respondent No. 7 vide letter dated 12th December, 2022 directed Respondent No. 8 to comply with the request of the Income Tax Department and accordingly on 8th May, 2023, Respondent No. 8 forwarded the updated 7/12 extract in respect of the subject property, which reflected the charge of the Income Tax Department.

8. The learned counsel further submitted that the Petitioner addressed a letter on 23rd January, 2024 to Respondent No. 5 and accordingly pointed out 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 and also informed that any excessive amount after adjustment of its due would be deposited with the Respondent No 5 and accordingly requested Respondent No. 5 to

withdraw the order of attachment as it was creating obstruction in selling the subject property.

9. The learned counsel submitted that as the attachment of the Income Tax Department was not withdrawn, the Petitioner vide letter dated 16th January, 2025, once again requested Respondent No. 5 to withdraw the attachment before 31st January, 2025. He further submitted that the Petitioner proceeded to sell the subject property under the provisions of the Act, 2002, to one Mr. Vishnu Gaikwad, who has made payment of 25% and the Petitioner was in the process of collecting the balance amount of 75% of the consideration. The Ld. Counsel for the Petitioner submitted that even if the purchaser makes the entire payment, the Petitioner will not be in a position to complete the sale, till the time the order of attachment subsists.

10. The learned counsel for the Petitioner further submitted that the Petitioner had registered its charge with Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) on 15th October, 2019. The learned counsel also submitted that as per Section 35 of the Act, 2002, it shall have overriding effect over any other laws, which include the Income Tax Act. He submitted that in view of the above, necessary directions be issued to the Respondents to withdraw the order

of attachment with immediate effect.

11. The learned counsel for the Petitioner *inter alia* invited the attention of the court to paragraphs 151 to 154 and 297 to 300 of the Full Bench judgment of this Court in the case of ***Jalgaon Janata Sahakari Bank*** *(supra),* to assert that even if the orders of attachment issued by the Respondent- State Authorities were prior to 24th January, 2020 the requirement of issuing proclamation in accordance with law as specified in the above paragraphs of the Full Bench judgment was not satisfied and therefore, the Respondent- State cannot resist the prayers made in the present Petition.

12. Per contra, the Respondent No. 3 has filed affidavit in reply. It is the contention of Respondent No. 3 that the Petitioner's claim of being a secured creditor is one aspect, but its charge is registered with CERSAI on 15th October, 2019, which is subsequent to the income tax attachment of 17th December, 2018. He further submitted that Section 26E of the Act, 2002, which grants priority to secured creditors, applies only after the registration of security interest and does not override a prior statutory attachment under Section 222 of the Income Tax Act and that the validity of attachment is unaffected by Petitioner's subsequent charge and their inability to sell the property stems from their failure to ascertain prior

encumbrances. It is further stated in the affidavit and also argued by the learned AGP that the mortgage created by Uday Waghere on 20th November, 2019, is subsequent to the income tax attachment on 17th December, 2018 and under Section 281 of the Income Tax Act, a subsequent encumbrance is void against the revenue if created to defraud tax recovery especially during pendency of proceedings. The learned AGP further submitted that the Petitioner's request on 20th December, 2019 to note it's mortgage in the 7/12 extract came after the income tax attachment on 17th December, 2018, which was already communicated to the State Revenue Authorities and that subsequent noting of the mortgage does not negate the prior tax lien which takes precedence under Section 222 of the Income Tax Act. The learned AGP submitted that in the reply affidavit, although reference has been made to the attachment orders issued by the Income Tax Department on the basis of which the entries have been made in the revenue records, but specific reference to the proclamation has not been made.

13. 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."*

14. 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.*

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***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."*

15. In the present case, as noted hereinabove, there is no averment in the affidavit in reply as to whether any further action beyond issuing orders of attachment for attaching the property was taken, 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. The affidavit in reply is also conspicuously silent about compliance of specific steps noted in paragraphs 152 and 153 of the Full Bench judgement. Therefore, in our view, in the facts of the present case, by simply ordering attachment of 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, even if the order of attachment was prior to the date of registration of the security interest of the Petitioner with CERSAI.

16. 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 and the demand / attachment order issued by the respondent No.5

in respect of the said property ought not to prevail over the charge of the petitioner as a secured creditor. Therefore, we are inclined to allow the writ petition.

17. It is made clear that the writ petition being allowed does not mean that this Court has held that respondent Nos.2 to 5 are otherwise not entitled to recover their dues. Respondent Nos.2 to 5 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.

18. Apart from the above, from the affidavit in reply, we do not find that Respondent No 2 to 5 have registered their claim/attachment order with CERSAI and therefore taking overall conspectus, we do not find that Respondent No 2 to 5 can claim priority over the dues of the Petitioner.

19. Needless to mention that the Petitioner bank having sold the secured asset to one Mr. Vishnu Gaikwad, subject to the other compliances under the SARFAESI Act, will get a clear title free from encumbrances claimed by the Respondent Nos 2 to 5.

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

" a] This court be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ order or direction calling for the papers and proceedings leading to issuance of order of attachment by respondent No. 5 [Exhibit D] and after considering the legal position this court be pleased quash and set aside the order of attachment dated 17th December 2018 issued by respondent No. 5 [Exhibit D].

b] This Court pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction ordering and directing respondent Nos. 6 to 8 to remove the encumbrance noted by them in the relevant records of the subject property viz. the attachment levied by respondent Nos. 1 to 5.

c] This Court pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction ordering and directing respondent Nos. 6 to 8 to complete the sale of the subject property to either Mr. Vishnu Maruti Gaikwad or any other person/s and/or entity/ies identified by the petitioner by making relevant entries of the subject property without demanding the withdrawal of the order of attachment dated 17 December 2018 [Exhibit D].

21. All consequential steps shall be taken by the Respondent No 6 to 8 within 4 weeks from the date of the order.

22. If the petitioner finds that after its dues are satisfied there is any surplus amount remaining, it shall notify Respondent Nos 2 to 5

accordingly and the Respondent Nos 2 to 5 shall be entitled to residual proceeds from the sale of the secured asset, if any. Needless to mention that the Respondent No 2 to 5 i.e the Income Tax Authorities are free to enforce action in accordance with law against any other assets or the properties of the borrower as may be permissible under law.

23. 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.)**