

MHCC020025812018



**IN THE COURT OF SPECIAL JUDGE, MPID FOR GR.BOMBAY**  
**AT BOMBAY**

**Misc Application No. 260 of 2018**

(CNR NO.MHCC02-002581-2018)

**In**

**MPID Case No. 1 of 2014**

**Bank of Maharashtra**

A Bank constituted under  
The Banking Companies (Acquisition &  
Transfer of Under-takings) Act 1970  
Having its Head Office at  
1501, Lokmangal, Shivaji Nagar, Pune,  
Maharashtra-411005  
and Branch Office at  
S.C.O.88-89, Sector 17-C,  
Chandigarh, U.T. - 160017  
Through its Authorized Officers  
Atul Joshi, AGM, Zonal Office, Mumbai.

... **Applicant**

Versus

**(1) The State of Maharashtra(EOW)**

At the instance of Senior Inspector in Charge,  
EOW, Unit-VII, DCB, CID, Mumbai to be served  
Through Public Prosecutor, High Court, Mumbai

**(2) The Competent Authority,**

Administrative Building,  
(Consumer Court), 10<sup>th</sup> Floor,  
Government Colony,  
Mumbai-400051.

**(3) M/S. White Water Foods Pvt. Ltd.**

A Private Limited Company registered and  
Incorporated under the provisions of

Companies Act, 1956 having its address at  
SCO 2437, Sector 22-C, Chandigarh-160022

Also at:

House No.564, Sector 8-B,  
Chandigarh-160009

... **Respondents**

**Appearances:**

Ld. Adv. Shri. Sandep Kumar Singh for applicant.

Ld. S.P.P. Shri. Sunil Gonsalves for the State/EOW/Respondent Nos.1 &  
2.

Ld. Adv. Shri. Vinay Bhanushali for Respondent No.3.

**CORAM : HIS HONOUR SPECIAL JUDGE  
SHRI A.S. SAYYAD  
SPECIAL COURT (C.R.No.52)  
DATE : DECEMBER 3, 2022.**

**(DICTATED AND PRONOUNCED IN OPEN COURT)  
:ORAL ORDER:**

This application is filed by Bank of Maharashtra/applicant for lifting attachment of property under notification issued by Govt. of Maharashtra.

Background facts:

2. The applicant Bank of Maharashtra, by way of this application made the following prayer:

(a) That this court may be pleased to direct the Assistant Commissioner of Police, EOW, SIT, Mumbai to release the property from attachment in favour of the applicant bank or cancel the order of attachment so that the said property may be disposed of according to the SARFAESI Act 2002.

(b) Such further other orders may be passed as this court may deem fit and proper.

3. The applicant is a bank constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act 1970 having its head office at Shivaji Nagar, Pune, Maharashtra. Respondent no.3 is a borrower of the applicant, who availed huge cash credit facility from the applicant on several times. Respondent no.3 is a registered company under the provisions of Companies Act. Its directors are Mr. Kamal Dewan and Mr. Mohit Dewan. The said company is named and styled as M/s. White Water Foods Pvt. Ltd. who is an accused in Special MPID Case No.1 of 2014.

4. According to applicant, respondent/borrower approached to bank from time to time for grant of credit facilities. Accordingly, the applicant after due verification and satisfaction on execution of necessary documents granted loan time to time to the respondent no.3 to the tune of Rs.4.40 crores. The respondent/borrower ought to have repay loan in time, however, respondent no.3 became defaulter. Later on, an account of respondent/borrower went in category of Non Performing Assets (NPA) on 31.03.2016. The respondent failed to repay the taken loan from the applicant. Thus, the applicant in order to secure the said loan credit facilities, initiated legal action under SARFAESI Act 2002 by issuing demand notice under section 13(2) of SARFAESI Act on 12.04.2016. That seeing no scope of recovery, the applicant bank thereafter took symbolic possession of the said secured assets on 02.12.2016 and a public notice to that effect was published in the local newspaper on 03.12.2016.

5. It so happened that the respondent/borrower later on arraigned as accused by virtue of crime no.89 of 2013 registered by EOW. In order to recover the huge amount which allegedly misappropriated by the respondent, bank has taken symbolic possession of the subject property which was mortgaged to bank. According to bank, it has taken legal

action against the respondent under SARFAESI Act which is a Central Legislature. Instead, the fact as above, the State Government of Maharashtra has attached property of respondent vide notification dated 17.03.2016.

6. According to applicant, the said property is mortgaged with it, prior to attachment by the State Government of Maharashtra. The applicant has first preferential right over the property in question than the State of Maharashtra. The State of Maharashtra has no right to attach the said property as it was already mortgaged with it. The applicant has every right to recover its dues outstanding with the respondent by selling the property attached by the State of Maharashtra. The said attachment is illegal and wrong which needs to be released forthwith in favour of the applicant. The applicant for the grounds as above and other, prayed for allow the application.

7. This application strongly opposed by the competent authority and investigating officer on behalf of State of Maharashtra and investors of the Special MPID Case No.1 of 2014 vide their reply Exhs.2 and 32 respectively. According to them, directors of the company though taken loan from the applicant, they are the accused, against whom serious allegations are there. The huge amount has been misappropriated by the respondent no.3. Therefore, to recover the said amount and to distribute the same to investors and depositors, in view of section 7(4) of the MPID Act, the said property was attached under notification of State of Maharashtra on 17.03.2016. The property was attached, way back in the year 2016. The applicant has initiated action under relevant provision of MPID Act later attaching the property by State of Maharashtra. The subject property was attached under notification prior to legal action taken by the applicant under the relevant provision of SARFAESI Act. The MPID Act in Maharashtra is prevailed over the

SARFAESI Act. The respondent/borrower has committed fraud in huge crores of rupees. The said amount was belongs to small and big investors and depositors. Now to repay the said amount, competent authority does not have sufficient funds. Therefore, the respondent is a defaulter who still now not paid single penny. In order to release the amount in favour of the investors and depositors, the State of Maharashtra has attached the property of respondent. There is huge amount which needs to be paid. Therefore, the State of Maharashtra vide notification dated 17.03.2016, attached the wealth of respondent/borrower. If the application is allowed, serious prejudice will be caused to investors and depositors. For the reasons as above and others, the respondent prayed for rejection of the application.

8. Heard Ld. Advocate Shri. Sandeep Kumar Singh for the applicant, Ld. SPP Shri. Sunil Gonsavles for the State/Respondent Nos.1 & 2 and Ld. Adv. Shri. Vinay Bhanushali for Respondent No.3/borrower at the length of considerable time. I have given my anxious consideration to their respectful submissions.

9. Basing on the submissions and pleadings of both the sides, the following points arise for consideration.

<b>SR. NOS.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether applicant has made out case for de-attachment of property under notification dated 17.03.2016 as sought for ?	No
2.	Whether applicant is entitled so as to relief as sought for ?	No
3.	What order ?	As per final order.

## REASONS

### As to all points together :

10. The applicant made this application under section 7(4) of MPID Act for lifting attachment of property made by respondent no.1 under notification dated 17.03.2016. On careful perusal of pleadings and documents of both the sides, it indicates that the applicant itself come up with the specific case that the respondent no.1 i.e State of Maharashtra in pursuant to registration of crime against respondent no.3/borrower has attached its property by notification dated 17.03.2016. Meaning thereby, parties are not disputed the fact that way back in the year 2016, State of Maharashtra has attached the subject property. The fact also not disputed that after attachment of property by the respondent no.1, the applicant Bank of Maharashtra initiated legal action on 12.04.2016 under the provision of SARFAESI Act 2002.

11. According to applicant, it being a secured creditor, the applicant has first right over the said property and attachment by the State of Maharashtra under MPID Act is illegal and liable to be declared invalid. According to the applicant, its legal right and interest will be seriously prejudiced, if the property will not be released. In the entire application, nowhere it is pleaded that as to why and on which specific ground, subject property is liable to be released. On the contrary, the applicant itself pleaded that owner of the said property was a director of M/s. White Water Foods Pvt. Ltd. who availed huge loan from it and thereafter, became defaulter. As per averements of applicant, on executing all the necessary documents from respondent no.3, it has sanctioned loan. It is also case of the applicant that it has initiated legal

action on 12.04.2016 and thereafter, taken symbolic possession of the subject property on 02.12.2016.

12. At the very outset, while deciding the present application, it is important to see, whether subject property under notification is illegally and wrongly attached by the State of Maharashtra. If the specific averments as above, pleaded by the applicant in its application taken into consideration in its entirety, it is clear that State of Maharashtra by notification 17.03.2016 has attached property of the respondent in pursuant to registration of crime no. 89 of 2013. Thus, as per the provision of MPID Act, once the property is attached, it completely vests with the competent authority. The attached property under MPID Act can not be re-attached by other institution or authority without following due procedure of law. The applicant has failed to show the wrongs as to what committed by the State of Maharashtra while attaching property under notification. The State of Maharashtra if found insufficient funds to pay the investors and depositors, it can attach any property of any Financial Establishment or any other defaulter, who has direct concern with the alleged crime. Thus, in the above circumstances, this court is unable to find out any illegality at the instance of State of Maharashtra while attaching the subject property.

13. The applicant by its prayer claimed de-attach the property under notification, so that it will dispose of in accordance with SARFAESI Act. Meaning thereby, applicant wanted to dispose of the attached property under notification. The applicant raised law point contending that the applicant bank has initiated legal action against respondent no.3 under SARFAESI Act. The subject property is attached under notification, i.e. under State Law (MPID Act). According to applicant, the SARFAESI Act being a Central Legislature would prevail over the State Legislature

(MPID Act). On the sole ground as above, the subject property declared to be illegal attachment, and the same deserves to be released.

14. With regard to point raised by the applicant as above, it would profitable to make reference of the decision of the Hon'ble Apex Court in the matter of *M/S New Horizon Sugar Mill V/S State of Pondicheerry* (Civil Appeal No. 6673-6674-of 2009) wherein Hon'ble Apex Court has held that as per clause (2) of Article 254 of Constitution, in a given situation where a law of State is in conflict with the law made by parliament, the law so made by the State Legislature shall, give it has received the ascent of the President, prevailed in that State. Thus, in view of Law as above, the MPID Act will prevail over the SARFAESI Act in Maharashtra.

15. The Ld. Advocate for the applicant while supporting his claim relied upon the following case laws:

1. 2016 ALL MR (Cri) 1322 Vishal N. Kalsaria V/s. Bank of India.
2. Civil Application No.12995/2018 Bank of Baroda V/s. State of Gujarat.
3. 2017 (6) CPMH 27 Official Liquidator High Court V/s. City Limousines (India)
4. Criminal Appeal No.1371/2019 SCC Bajrang Shyamsunder Agarwal V/s. Central Bank of India & Anr.
5. Bombay High Court Civil Writ Petition No. 1039/2017 Asree(India) Ltd. Company V/s. The State of Maharashtra
6. 2020 SCC Online Bom 4190 State Bank of India through its Chief Manager V/s. State of Maharashtra through Finance Department & Ors.
7. 2020 (2) SCC 310 Maharashtra State Co-op Bank Ltd. V/s. Babulal Lade & Ors.



8. 2020 (6) SCC 411 Managing Director Chattisgarh State Co-op Bank Maryadit V/s. Zila Sahakari Kendriya Bank Maryadit & Ors.
9. C.W. No. 12188/2018 Punjab & Haryana High Court Kulbir Singh Dhaliwal & Ors. V/s. UT of Chandigarsh & Ors.
10. Writ Petition No. 12038/2017 Karnataka High Court, Bank of India V/s. Secretary to the Government, Revenue Department.
11. Writ Petition No.11018/2018 Punjab National Bank Bandra V/s. Maa Banbhorl Steel Industry Ltd. & Ors.
12. 2020 (5) SCC 421 Union of India & Ors. V/s. M.V. Mohanan Nair.
13. 2021 (2) SCC 1 Vidya Drolia V/s. Durga Trading Corporation.

I have minutely gone through the cited case laws as above, however, with due respect, I would like to mention here that all these case laws are distinguishable on the facts of the present case.

16. In view of the facts and circumstances as above, if the subject property will be released from attachment, certainly it would cause serious hardship in repaying amounts to small and big investors/depositors. The applicant miserably failed to show that it has prima-facie case for lifting attachment of property under notification 17.03.2016. This application therefore, devoid of merit and deserves to be rejected. I answered the above points accordingly, and the following order would meet the end of justice:

**ORDER**

1. Misc Application No. 260 of 2018 in MPID Special Case No. 1 of 2014 is rejected.
2. The attached subject property under notification dated 17.03.2016 under MPID Act ordered to be made absolute forthwith.

3. The Competent Authority is directed to take an appropriate step in compliance of order.
4. Misc Application is disposed of accordingly.



**(A.S. Sayyad)**  
Special Judge (MPID)  
MPID, Special Court,  
City Civil & Sessions Court,  
Gr. Bombay.

Date: 03.12.2022

Dictated on :02 & 03.12.2022  
Transcribed on :02 & 03.12.2022  
Signed by HHJ on :03.12.2022

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

UPLOAD DATE AND TIME	NAME OF STENOGRAPHER
03.12.2022 (5.21 p.m.)	MRS. K.Y. INAMDAR

Name of the Judge (with Court Room No.)	Shri A.S. Sayyad C.R. No.52
Date of Pronouncement of JUDGMENT/ ORDER	03.12.2022
JUDGMENT/ORDER signed by P. O. on	03.12.2022
JUDGMENT/ORDER uploaded on	03.12.2022