

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 21301 OF 2024

M/s. Neon Laboratories, through its
authorised representative Rakesh Parmar ... Petitioner

Versus

The Deputy Commissioner of Sales Tax,
PAL-VAT- E-005, Palghar & Ors. ... Respondents

Mr. Sidharth Samantray for the Petitioner.

Ms. Rita Joshi (through V.C.), AGP for Respondent Nos.1 to 4.

Ms. Savita Nangare (through V.C.) a/w Mr. Vinod Sagula i/by Law
Focus for Respondent No.5.

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

DATE : 6th JULY 2026

Order (Per Manish Pitale, J.) :

- . Heard learned counsel for the parties.
2. The petitioner is an auction purchaser, aggrieved by the failure on the part of respondent No.4-Sub-Registrar to register the sale certificate dated 14th March 2019 executed in favour of the petitioner by respondent No.5-bank (secured creditor). The petitioner is also aggrieved by an encumbrance pertaining to the tax dues of respondent No.1 shown in the Revenue Record (7/12 extract) in furtherance of attachment order dated 10th January 2019.
3. The learned counsel for the petitioner relied upon judgment of full Bench of this Court in the case of *Jalgaon Janta Sahakari Bank Ltd. & Anr. vs. Joint Commissioner of Sales Tax & Anr.*,

2022 SCC OnLine Bom 1767, to contend that the question regarding priority of the secured creditor, in this case respondent No.5-bank, over the dues of the respondent No.1 towards Sales Tax has been answered conclusively to hold that the dues of the secured creditor under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act) shall have priority. It is submitted that since the petitioner has come into the picture as an auction purchaser in pursuance of steps taken by the respondent No.5-bank under the provisions of the Securitisation Act and sale certificate has been duly issued in its favour, there ought to be no impediment in registration of the sale certificate and further, that the encumbrance shown in the revenue record pertaining to the aforesaid tax dues, needs to be deleted as the attachment order dated 10th January 2019 can be of no effect in the light of the law laid down by this Court in the aforesaid full Bench judgment.

4. In a recent affidavit filed on behalf of respondent No.1 reliance is placed on an amendment in Section 37 of the Maharashtra Value Added Tax Act, 2002 (MVAT Act) to claim that in the light of the amendment, the ratio of the aforesaid full Bench judgment can no longer inure to the benefit of the petitioner or for that matter respondent No.5. The learned counsel for the petitioner in response submits that the said specific contention was considered and rejected by a Division Bench of this Court in the case *Bank of Baroda vs. Assistant Commissioner of Sales Tax &*

Anr., (judgment and order dated 11th September 2025 passed in Writ Petition (Lodging) No. 3959 of 2025). On this basis, it is submitted that the present writ petition deserves to be allowed.

5. On the other hand, the learned AGP appearing on behalf of State Authorities i.e. respondent Nos.1 to 4 submits that the aforesaid recent amendment in Section 37 of the MVAT Act has retrospective effect from the year 2005 and in the light of the amended provision, the petitioner cannot claim benefit of the aforesaid full Bench judgment of this Court. It is further brought to the notice of this Court that the respondent No.1 had approached the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) for registration of its charge, way back in the year 2018. But, the concerned department responded by stating that since the filing of attachment order with CERSAI was yet to be notified by the Central Government as per Section 26B(4) of the Securitisation Act, the request could not be processed. It was submitted that the aforesaid fact needs to be taken into consideration before passing any order in the present writ petition.

6. Before advertng to the rival submissions and considering the same, it would be appropriate that a brief reference is made to the chronology of events, which is not disputed. The documents on record show that the mortgage in favour of the respondent No.5-bank by deposit of title deeds was first created on 17th November 1995 and it was renewed periodically. Eventually, the security

interest created in favour of the respondent No.5-bank was registered with CERSAI on 8th December 2011. Copy of the certificate is on record.

7. The respondent No.5-bank issued notice under Section 13(2) of the Securitisation Act on 12th October 2015 for amount due to the tune of about Rs.2.69 crores plus interest. It is a matter of record that respondent No.5-bank was constrained to take further steps under the Securitisation Act and eventually, the physical possession of the secured asset was obtained on 21st July 2017. The auction sale was conducted on 17th February 2019, wherein the petitioner was the successful bidder and sale certificate dated 14th March 2019 was issued in favour of the petitioner. But, the registration of the said sale certificate remained stalled due to the attachment order dated 10th January 2019 issued by respondent No.1 in respect of its dues. An encumbrance in the revenue record was also recorded on the basis of the said attachment order. It is because of these reasons that the petitioner was constrained to approach this Court by filing the present writ petition.

8. The respondent No.1 filed its reply affidavit along with documents to oppose the present writ petition. The respondent No.5-bank filed its reply affidavit, supporting the contentions raised on behalf of the petitioner. Thereafter, recently, the respondent No.1 filed a further affidavit dated 22nd June 2026, specifically relying upon the amendment in Section 37 of the

MVAT Act, to claim that the ratio of the aforesaid full Bench judgment of this Court would no longer come to the rescue of the petitioner.

9. In the light of the said chronology of events, we have considered the rival submissions. The full Bench of this Court in the aforementioned judgment in the case of *Jalgaon Janta Sahakari Bank Ltd. & Anr. vs. Joint Commissioner of Sales Tax & Anr.* (supra) categorically held that the dues of a secured creditor shall have priority over all other dues, including dues of revenues, taxes, cesses and other rates payable to the Central Government or State Government or local Authorities. The full Bench considered the amendment brought about in the Securitisation Act w.e.f. 24th January 2020 and thereupon, reached the aforesaid conclusion.

10. As regards cases where the CERSAI registration of the secured creditor as well as the attachment orders and dues claimed by the State Authorities, were prior to the said amendment coming into effect, it was held that only issuing attachment orders would not suffice. But, the said Authorities were required to follow the procedure contained in the Maharashtra Land Revenue Code, 1966 (MLRC), which included proclamation of sale by public auction, entailing the proclamation to be made public, specifically as per the procedure prescribed in the Rules framed under the MLRC.

11. In paragraph 81 of the said full Bench judgment, this Court referred to multiple legislations in the State of Maharashtra using

the words 'first charge' with regard to the Government dues. Thereupon, the full Bench judgment contains the following observations :

“82. Each of the aforesaid several legislations operate in their particular field. Pertinently, wherever the Legislature of the State intended the particular provision to be the dominant legislation or subordinate or subservient to any other legislation, it has expressed such an intention in no uncertain terms. Section 169(1) of the MLR Code is the dominant legislation providing that the arrears of land revenue due on account of land shall be a paramount charge on the land and on every part thereof and shall have precedence over any other debt, demand or claim whatsoever, whether in respect of mortgage, judgment-decree, execution or attachment, or otherwise howsoever, against any land for the holder thereof. The municipal laws and the MRTP Act, however, despite creation of first charge on property taxes due to the Corporations and sums due to a planning authority, respectively, are expressly made subordinate to the paramount charge on a land if in respect of such land, land revenue is in arrears. Viewed from this angle, there is no magic in the words “first charge”. Even a “first charge”, by express statutory intendment, can be made subordinate or subservient to a paramount charge such as arrears of land revenue. We, therefore, are unable to accept the argument of the State/respondents that since neither the SARFAESI Act nor the RDDB Act uses the words “first charge” but the word “priority”, such “priority” cannot have precedence over “first charge” created by the State legislations.

83. However, notwithstanding that section 169(1) of the MLR Code is the dominant legislation and does not expressly say that it would be subordinate or subservient to any Central Act creating “first charge”, nothing really turns on it. The express language of section 26E of the SARFAESI Act and section 31B of the RDDB Act, wherever applicable, is sufficient to off- set the “paramount charge” created by sub-section (1) of section 169. Similarly, even if there were no express intendment in the relevant provisions of the BST Act (section 38C) and the MVAT Act (section 37) to the effect

that such provisions would be subordinate to any Central Act creating “first charge”, the same would obviously have to be read, invoked and exercised subject to section 26E of the SARFAESI Act and section 31B of the RDDB Act, wherever applicable.

84. *The fact that the BST Act and the MVAT Act, which are under consideration, expressly make it subordinate or subservient to any Central legislation creating first charge cannot be ignored. The 2016 Amending Act being of recent origin, the first query that arises in this regard is : did Parliament not know that there is a plethora of legislation in the country, both Central and State, that speaks of creation of “first charge” in favour of a Department of the Central/State Government ? The reply cannot but be in the affirmative. The next query that would obviously follow is : whether the word “priority” appearing in section 26E of the SARFAESI Act, i. e., “... 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” (italics for emphasis by us), was used without a purpose ? This reply has to be in the negative.*

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, 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 31B 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.”*

12. As regards the aforementioned aspect of necessity to follow the procedure laid down in the MLRC and the Rules framed thereunder, the following observations were made in the said

judgment :

“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.”

13. A perusal of the above quoted findings rendered in the full Bench judgment of this Court would show that the case of the petitioner is fully covered and that the respondent-State Authorities cannot claim priority as regards their dues. As noted hereinabove, the respondent No.5-bank had registration of its security interest with the CERSAI dating back to 8th December 2011. Admittedly, the charge of the respondent No.1 is not registered with the CERSAI. Even if the email placed on record showing the exchange of correspondence between respondent No.1 and the concerned department, is taken into consideration, the attempts on the part of respondent No.1 to have its charge registered with CERSAI, were initiated in the year 2018, much after the security interest of the respondent No.5-bank was duly

registered with CERSAI on 8th December 2011.

14. The reply affidavits placed on record on behalf of respondent-State Authorities are bereft of any details about steps that could have been taken by and on behalf of said Authorities to satisfy the procedural requirements under the MLRC and the Rules framed thereunder. In the absence of such procedure being complied with, in terms of the observations made in the above quoted paragraphs of full Bench judgment, the respondent-State Authorities cannot resist the priority of the dues of the respondent No.5-bank over the dues towards sales tax. Hence, the position of law is clearly in favour of the petitioner.

15. As regards the stand taken in the latest affidavit filed on behalf of respondent No.1, by relying upon the amendment in Section 37 of the MVAT Act, we find that an identical contention raised before this Court in the case of *Bank of Baroda vs. Assistant Commissioner of Sales Tax & Anr.* (supra) was rejected. A perusal of the latest affidavit filed on behalf of respondent No.1 shows that in paragraphs 2 to 11, a specific stand is taken that in the light of the amended Section 37 of the MVAT Act, the charge of the respondent No.1 would have overriding effect over the dues of the respondent No.5-bank. Such a stand was indeed taken before this Court in the said case of *Bank of Baroda vs. Assistant Commissioner of Sales Tax & Anr.* (supra). While dealing with the said contention, it was held in the said case as follows :

“13. Relevant in the context of the present case and as is the

emphasis of the learned AGP in support of his contention that the State dues will have priority over other dues, it will be advantageous to extract amended Section 37 of the MVAT Act for convenience. Section 37 reads thus :-

“37. Liability under this Act to be the first charge -

(1) Notwithstanding anything contained in any law for the time being in force, or any contract to the contrary, any amount of tax, penalty, interest, sum forfeited, fine or any other sum, payable by a dealer or any other person under this Act, shall be first charge on the property of the dealer or, as the case may be, person.

(2) The first charge as mentioned in sub-section (1) shall be deemed to have been created on the expiry of the period specified in sub-section (4) of section 32 for the payment of tax, penalty, interest, sum forfeited, fine or any other amount.

14. In our opinion, the issue involved in the present case is squarely covered by the decision of the Full Bench of this Court in Jalgaon Janta Sahakari Bank Ltd. & Anr. (supra). The Full Bench has conclusively settled the legal position regarding priority of claims between secured creditors and State revenue authorities. It has been authoritatively held that “In view of the introduction of Section 26E of the SARFAESI Act and Section 31B of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (“RDDDB Act”, for short), secured creditors have statutory priority in realization of dues from the sale of secured assets, over and above all other debts including government revenues, taxes, cesses and rates, subject only to compliance with the statutory conditions, such as registration under the SARFAESI Act.

15. The Full Bench rejected the contention that the phrase “priority in payment” under Section 26E falls short of creating a first charge. It ruled that, “Statutory priority given to secured creditors under the SARFAESI and RDDDB Acts shall override any charge created under State laws, including Sections 37 and 38C of the MVAT Act and Bombay Sales Tax Act (“BST Act”, for short) respectively, in view of their express subordination to Central enactments.

16. *The Bank has registered its security interest with CERSAI on 30th June 2012, which is very much prior to the attachment order dated 18th March 2020 of the department. Therefore, in view of the legal position settled by the Full Bench, the Bank has priority to realize its dues.*

17. *The unamended Section 37 of the MVAT Act made the MVAT Act expressly subordinate or subservient to any central legislation creating first charge and by way of amendment, the State of Maharashtra has in essence only removed such subordination or subservience to the central legislation. The Full Bench discussed and dealt with similar provisions and scenario at length in paragraphs 81 to 92. The Full Bench in paragraph 82 and 83 observed thus :-*

“82. Each of the aforesaid several legislations operate in their particular field. Pertinently, wherever the legislature of the State intended the particular provision to be the dominant legislation or subordinate or subservient to any other legislation, it has expressed such an intention in no uncertain terms. Section 169(1) of the MLR Code is the dominant legislation providing that the arrears of land revenue due on account of land shall be a paramount charge on the land and on every part thereof and shall have precedence over any other debt, demand or claim whatsoever, whether in respect of mortgage, judgment-decree, execution or attachment, or otherwise howsoever, against any land for the holder thereof. The municipal laws and the MRTP Act, however, despite creation of first charge on property taxes due to the Corporations and sums due to a planning authority, respectively, are expressly made subordinate to the paramount charge on a land if in respect of such land, land revenue is in arrears. Viewed from this angle, there is no magic in the words ‘first charge’. Even a ‘first charge’, by express statutory intendment, can be made subordinate or subservient to a paramount charge such as arrears of land revenue. We, therefore, are unable to accept the argument of the State/respondents that since neither the SARFAESI Act nor the RDDB Act uses the words ‘first charge’ but the word ‘priority’, such ‘priority’ cannot have precedence

over 'first charge' created by the State legislations.

83. *However, notwithstanding that section 169(1) of the MLR Code is the dominant legislation and does not expressly say that it would be subordinate or subservient to any Central Act creating 'first charge', nothing really turns on it. The express language of section 26E of the SARFAESI Act and section 31B of the RDDB Act, wherever applicable, is sufficient to offset the 'paramount charge' created by sub-section (1) of section 169. Similarly, even if there were no express intendment in the relevant provisions of the BST Act (section 38C) and the MVAT Act (section 37) to the effect that such provisions would be subordinate to any Central Act creating 'first charge', the same would obviously have to be read, invoked and exercised subject to section 26E of the SARFAESI Act and section 31B of the RDDB Act, wherever applicable."*

18. *We are therefore in agreement with the contention of learned counsel for the Petitioner that where a secured creditor has registered its security interest under the SARFAESI Act, the claim of such secured creditor must prevail. We have no hesitation in holding that the Bank has priority in realization of dues over the dues of the department. The department having even failed to register its charge with CERSAI cannot claim any first charge over the said secured asset."*

16. We find that since an identical contention raised on behalf of the respondent-State Authorities was considered and rejected by a co-ordinate Bench of this Court, the said contention cannot be accepted.

17. Once the contentions raised on behalf of the respondent-State Authorities are rejected, we find that the reliefs claimed in the present writ petition deserve to be granted.

18. In view of the above, the writ petition is allowed in terms of

prayer clauses (a) and (b), which read as follows :

(a) this Hon'ble Court be pleased to issue writ of Mandamus and/or Certiorari and/or any writ in the nature of Mandamus and/or Certiorari and /or any appropriate writ, order or direction, to quash and set aside attachment order dated 10th January 2019/ Impugned Order [Exhibit-A] issued by the Respondent No. 1 and to quash/set aside/remove encumbrance/ mutation entry/lien/charge marked on 7/12 extract [Exhibit-B] registered by the Respondent No.1 with Respondent Nos.2 and 3 in respect of the said Property;

(b) this Hon'ble Court be pleased to issue writ of Mandamus and/or Certiorari and/or any writ in the nature of Mandamus and/or Certiorari and/or any appropriate writ, order or direction, directing the Respondent No.4 to register the Sale Certificate/ document of Sale of the said Property under the Registration Act, 1908 as free from any encumbrances without requiring the NO OBJECTION of the Respondent No.1.

19. The consequential steps shall be taken by the respondent Nos. 2 and 3 i.e. the Tahsildar, Palghar and Talathi of Mahim, Palghar, as regards the entries in the revenue record, within four weeks from today and within the same time period, the respondent No.4 shall register the sale certificate executed in favour of the petitioner.

20. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)