



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 ORDINARY ORIGINAL CIVIL JURISDICTION
 WRIT PETITION (L) NO. 172 OF 2026

Bharat Co Operative Bank Mumbai .. Petitioner
 Ltd

V/s.

Deputy Commissioner Of State Tax .. Respondent
 Mulund

WITH
 WRIT PETITION (L) NO. 446 OF 2026

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Bharat Co Operative Bank Mumbai .. Petitioner
 Ltd

V/s.

Deputy Commissioner Of State Tax .. Respondent

 Ms.Namita Shetty with L.S. Shetty, for the Petitioner.

Mr. Himanshu Takke, AGP, for Respondent Nos. 1 and 2.

Mr. Dilip Shinde with Moham Kumbhar and Mukund Mone, for Respondent Nos. 7 and 8 in WPL/172/2026.

Mr. Dhruv Bhinde i/by Shreyash Chaturvedi, for Respondent Nos. 3 and 4 in WPL/446/2026.

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

DATE : 27TH JANUARY 2026.

PC:

1. In both these Petitions notices were issued on 19/01/2026 for final disposal and it was directed that the Petitions shall be taken up today.

2. While issuing notices for final disposal, this Court took note of the contention of the Petitioner-Bharat Co Operative Bank Mumbai Ltd in both these petitions that the Writ Petitions deserve to be allowed in the light of law laid down by the full bench of this Court in the case of **“Jalgaon Janta Sahakari Bank Ltd. & Anr. vs. Joint Commissioner of Sales Tax Nodal 9, Mumbai, & Anr.”¹**

3. Considering the prayers made in the Writ Petitions, we find that the contesting respondents are only Respondent Nos. 1 to 3 in both the petitions. These are State Authorities and the relief sought in the Writ Petitions is a direction to quash and set aside impugned demand notices and communications/ orders issued by the respondent-State authorities, which according to the Petitioner – Bank, are in violation of law laid in the aforesaid judgment of the full bench of this Court.

4. In that light we find that since the contesting Respondent- State Authorities in both the petitions are represented by learned AGP, the petitions can be disposed of after granting hearing to the learned counsel for the petitioner-bank and the learned AGP.

5. As a matter of record, Respondent Nos. 7 and 8 in Writ Petition (L) No. 172 of 2026 i.e. auction purchasers are represented by a counsel who has instructions to support the prayers made in the Writ Petitions. Insofar as the Writ Petition (L) No. 446 of 2026 is concerned, the Respondent No. 4 – borrower is represented by counsel who is seeking time to respond to the petition. But, considering the reliefs sought in the said Writ Petition, which concern only the contesting respondent Nos. 1 to 3, who are already represented by the learned

¹ (2022) SCC online Bom 1767

AGP we decline the request for adjournment.

6. Learned counsel for the Petitioner-Bank in both these Petitions submits that the security interests concerning the subject properties were all registered much prior to the demand notices, prohibitory order and impugned communications issued by the Respondent – State Authorities.

7. It was submitted that the security interests concerning the subject properties insofar as Writ Petition (L) No. 172 of 2026 is concerned, were all duly registered with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) on 03/10/2016 and 06/11/2018. The record shows that the said assertion made on behalf of the Petition-Bank cannot be disputed. The demand notices in Writ Petition (L) No. 172 of 2026 were issued on 13/02/2025 and 25/03/2026 at Exhibits 'A' and 'B' and a letter dated 14/07/2025 was issued (Exhibit-C) by Respondent No. 2 i.e. Assistant Commissioner of State Tax (Mulund) to the society where the immovable property is located, instructing the office bearer of the housing society not to issue NOC in respect of the said property. The contesting Respondent Nos. 1 to 3 are seeking to enforce their demand notices and also the instructions issued to the housing society, obviously claiming priority over the dues payable to the Petitioner-Bank.

8. Similarly, in Writ Petition (L) No. 446 of 2026 the respondent no. 1 has issued prohibitory order dated 27/02/2020 seeking to restrain the Petitioner – Bank from dealing with subject immovable property and also a demand notice dated 27/02/2020 concerning the subject

immovable property, again claiming priority over the dues of the Petitioner- Bank. In the said case also the security interests were duly registered on 18/12/2015 with CERSAI and it is the case of the Petitioner – Bank that in the light of the prior registration with CERSAI, in terms of the law laid down by the aforesaid full bench judgment of this Court, the writ petitions deserve to be allowed and the impugned notices, prohibitory order and communications all deserve to be quashed and set aside.

9. On the other hand, the learned AGP appearing for the State-Authorities in both the petitions specifically submits that the insofar as Writ Petition (L) No. 172 of 2026 is concerned, since the demand notices have been issued in the context of Goods and Services Tax (GST), the law laid down in the aforesaid full bench judgment does not apply. It is submitted that since the tax dues pertaining to the demand notices concern central legislation, while the full bench judgment emanated from the question of priority between the dues of a bank and dues under MVAT, which is concerned with a state legislation, the ratio would not apply and the aforesaid Writ Petition bearing (L) 172 of 2026 ought not to be entertained by this Court.

10. Insofar as Writ Petition (L) No. 446 of 2026 is concerned, it was submitted that since the dues concern MVAT, the full bench judgment would obviously apply and that appropriate orders can be passed by this Court.

11. In order to appreciate the specific contention of the learned AGP concerning Writ Petition (L) No. 172 of 2026, it would be necessary to refer to the relevant portion of the full bench judgment in the case of

“Jalgaon Janta Sahakari Bank Ltd. & Anr. vs. Joint Commissioner of Sales Tax Nodal 9, Mumbai, & Anr (supra).

12. It is correctly pointed out by the learned counsel appearing for the Petitioner-Bank that the full bench of this Court comprehensively considered rival submissions, with the focal point being on the expression “priority” used in the relevant provisions of the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 and the Rules framed thereunder.

13. Specific attention of this Court was invited to Paragraphs 74, 78 and 85 of the full bench judgment of this Court. The said paragraphs read as under:

74. Section 26B enables creditors [apart from secured creditors as defined in section 2(1)(zd)] to file the particulars of creation, modification or satisfaction of any security interest in their favour with the Central Registry, while making it explicit that such creditors shall not be entitled to exercise any right of enforcement of securities under the SARFAESI Act. The provisions therein also enable any person who has obtained an order for attachment of property, to file particulars of such attachment orders with the CERSAI in the form and manner as may be prescribed.

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78. Section 26E, also beginning with a non-obstante clause, is unambiguous in terms of language, effect, scope and import. A 'priority' in payment over all other dues is accorded to a secured creditor in enforcement of the security interest, if it has a CERSAI registration, except in cases where proceedings are pending under the provisions of the Insolvency and Bankruptcy Code, 2016.

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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. A perusal of the above quoted paragraph 85 of the full bench judgment makes it amply clear that the ratio of the said judgment clearly indicates that dues of a secured creditor, like the petitioner-bank herein, shall have priority over all other dues including all revenue, taxes, cesses and other rates payable to the Central Government or State Government or Local Authority.

15. We are of the opinion that in the light of the aforesaid sweeping observations made by the full bench of this Court while clarifying the position of law as regards the priority of dues of secured creditors, the artificial distinction now sought to be made by the learned AGP cannot be accepted. Thus, according to us, the ratio of the full bench judgment applies on all fours to the facts concerning Writ Petition (L) No. 172 of 2026 also.

16. As regards the Writ Petition (L) No. 446 of 2026, the said contention cannot be raised, as admittedly the dues concerning revenue are under MVAT. Therefore, we are of the opinion that in the light of the law clarified by the aforesaid full bench judgment of this

Court, the petitioner-bank has made out the case in its favour in both the Writ Petitions.

17. As noted hereinabove, the CERSAI registration of the security interests concerning the subject immovable properties were of the years 2015, 2016 and 2018, while the impugned notices, prohibitory order and impugned letter were all issued in the year 2025.

18. The dues of the Petitioner-Bank clearly have priority over the claims made by the Respondent-State Authorities, in the facts and circumstances of both the Writ Petitions.

19. In view of the above, Writ Petition (L) No. 172 of 2026 is allowed in terms of prayer clauses (a) (b) and (c).

20. Writ Petition (L) No. 446 of 2026 is allowed in terms of prayer clauses (a) and (b).

21. Pending applications, if any, shall also stand disposed of.

22. Considering the fact that such Writ Petitions are being filed in large numbers in this Court wherein the case of the Petitioners is covered by the law laid down in the aforesaid full bench of this Court, it would be advisable that the concerned departments issue a Standard Operating Procedure (SOP), so that demand notices are not issued where the secured creditors / banks already have CERSAI registration of their security interest much prior in point of time and where demand notices have been issued, they are withdrawn forthwith.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)