

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

WRIT PETITION (L) NO. 7964 OF 2021

Edelweiss Asset Reconstruction Co. Ltd.
Having its Registered office at
Edelweiss House, Off. CST Road, Kalina,
Mumbai-400098 acting in its capacity as
Trustee of EARC Trust SC 30 & SC Trust 256 ... Petitioner

Vs.

1. Tax Recovery Officer, Income-Tax Department
having office at Aayekar Bhawan, New Marine
Lines, Mumbai-400 020.

2. Prasad Chambers
having its registered office at Opera House,
Mumbai-400004.

3. The Official Liquidator, High Court, Bombay,
Liquidator of Classic Diamonds (India) Ltd.
Having office at Bank of India Building,
5th Floor, Mahatma Gandhi Road, Fort,
Mumbai-400 001. ...Respondents

Dr. Birendra Saraf, Senior Advocate with Mr. Vaibhav Charalwar, Mr.
Sachin Chandrana and Mr. V. Purohit i/b Manilal Kher Ambalal & Co.,
Advocates for the Petitioner.

Mr. Sham Walve, Advocate for the Respondents.

Mr. Jehangir Jejeebhoy, Advocate for Official Liquidator, Bombay High
Court.

**CORAM : SUNIL P. DESHMUKH &
ABHAY AHUJA, JJ.
RESERVED ON : 14TH JULY 2021
PRONOUNCED ON: 28TH JULY 2021**

(THROUGH VIDEO CONFERENCING)

Judgment :- (PER ABHAY AHUJA, J)

1. Petitioner is a company incorporated under the Companies Act, 1956 and registered as a Securitization and Asset Reconstruction Company pursuant to Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act/Securitisation Act”).

2. Petitioner, as assignee of right, title and interest of the credit facilities to one Classic Diamonds (India) Ltd. (the “Borrower”) (now in liquidation) purporting to have a superior secured and prior charge in time over the attached properties, having commenced proceedings under the SARFAESI/Securitisation Act by issue of notices under Sections 13(2) and 13(4) and having taken possession of one of the attached properties (as will be described hereinafter), is aggrieved by the order of attachment dated 17th January 2013 passed by the Respondent No.1 Tax Recovery Officer (“TRO”), seeking recovery of Income Tax dues of the Borrower.

3. Submissions on behalf of the Petitioner in brief are that earlier in the year 2003, the assignor viz. State Bank of India (“SBI”) amongst other banks and financial institutions had sanctioned facilities to the Borrower to the tune of 105 Crores and to secure the same, the

Borrower had executed facility and security documents in favour of SBI. Similarly, in the year 2011, IndusInd bank had sanctioned facilities to the Borrower to the tune of Rs. 35 Crores and to secure the same facility and security documents were executed by Borrower in favour of IndusInd Bank.

4. On 17th January 2013 the Respondent No.1 Tax Recovery Officer, vide order of attachment dated 17th January 2013, levied attachment prohibiting and restraining the Borrower from transferring or charging Office No. 1004, Prasad Chambers, Opera House, Mumbai-400 004 (the “said premises”). It is submitted that, it is only in December 2019, when Petitioner’s representative visited the said premises, that Petitioner learnt of the order of attachment by Respondent No.1.

5. In the meanwhile, by a deed of assignment dated 19th March 2014, Petitioner acquired all rights, title and interest in the facilities granted by SBI to the Borrower. On 29th March 2017, Petitioner acquired similar rights to the facilities granted by IndusInd Bank to the Borrower. The aforesaid assignments were alongwith the benefits of security of equitable mortgages created by way of deposit of title deeds in respect of various immovable properties including the said premises, which were created in favour of State Bank of India/IndusInd Bank earlier.

6. However, in view of defaults committed by the Borrower in repayment of debts to SBI and IndusInd bank, assignors SBI and IndusInd bank filed separate proceedings before the Debts Recovery Tribunals-II, Mumbai being: (i) Original Application no. 205 of 2013 filed by SBI and (ii) Original Application no. 189 of 2012 filed by IndusInd Bank. It is submitted that in both the original applications, Petitioner has been substituted as original applicant being the assignee, vide orders dated 17th November 2014 and 7th December 2017 respectively.

7. On 25th May 2017, Petitioner issued a notice under Section 13(2) of the SARFAESI Act, recording defaults and calling upon the Borrower to pay the balance outstanding amounts. On 28th September 2017, this Court in Company Petition No. 317 of 2012 filed by ICICI Bank Ltd. against the Borrower appointed Official Liquidator, High Court Bombay as liquidator of the Borrower by allowing the said Company Petition. The Petitioner took possession of the said premises and issued possession notice under Section 13 (4) of the SARFAESI Act and Rule 8(1) of the Securitisation Rules on 8th November 2017. On 9th November 2017, the authorised officer of Petitioner informed Respondent No.3 about possession of all the secured assets under Section 13(4) of the SARFAESI Act including the said premises and also

published the necessary public notices in respect of the possession notice.

8. It is also submitted on behalf of Petitioner that pursuant to order dated 15th October, 2019 passed by this Court in Writ Peition No. 2580 of 2019, the Respondent-Tax Recovery Officer had vide communication dated 8th November, 2019 lifted the attachment in respect of other properties secured in favour of Petitioner viz. office No. BC 8013 and BC 8014 at Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East), Mumbai-400051. The said order dated 15th October 2019 is set forth as under:-

“This Petition under Article 226 of the Constitution of India seeks to set aside a notices/orders of attachment dated 22 January 2013 passed by Respondent No.1-Tax Recovery Officer in respect of two office premises bearing Nos. BC-8013 and BC-8014, Bharat Diamond Bourse, Mumbai. The basic contention of the Petitioner is that the Petitioner being a secured creditor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 has priority in recovery of its debts over the dues of the State.

2. We note that the Petitioner has made various representations to Respondent No. 1, the last being dated 30 August 2019 emphasizing its priority over the security. In spite of the above, the Respondent No.1-Tax Recovery Officer has not disposed of the same.

3. Mr. Mohanty, learned counsel appearing for Respondent No.1-Tax Recovery Officer, on instruction, states that the representation of the Petitioner dated 30 August 2019 would be disposed by Respondent No.1 within a period of four weeks from today after granting personal hearing to the Petitioner. We accept the above statement.

4. Needless to state that in case the Petitioner is aggrieved by the order passed by the Tax Recovery Officer on its representation, it would be open for the Petitioner to challenge the same in accordance with law.

5. Therefore, the petition is disposed of in the above terms. All contentions are kept open.”

9. When Petitioner’s representative visited the said premises in December, 2019, Petitioner learnt of the attachment order dated 17th January 2013 passed by Respondent No.1, which Petitioner intends to sell, in respect of which notice under Section 13(4) of the SARFAESI Act and Rule 8(1) of the Securitization Rules was pasted.

10. Vide letter dated 16th January 2020, Petitioner informed Respondent No.1-Tax Recovery Officer of the action adopted by Petitioner under SARFAESI Act for recovery of its dues and also requested that the attachment in respect of the said premises be lifted in view of the order passed by this Court in Writ Petition No. 2580 of 2019 and the subsequent order passed by the Tax Recovery Officer lifting the attachment in respect of the other properties secured in favour of Petitioner.

11. On 14th February 2020, Tax Recovery Officer was reminded by Petitioner to vacate/lift the attachment on the said premises. The same was reiterated by letter dated 1st March 2021 from Petitioner’s advocate.

12. It is submitted that since Respondent No. 1-Tax Recovery Officer neither responded to the requests nor granted No Objection Certificate (“NOC”) to Petitioner as requested, Petitioner has filed this Writ Petition under Article 226 of the Constitution of India, 1950 *inter alia* seeking order and direction to Respondent No. 1 to raise the said attachment levied pursuant to the order of attachment dated 17th January 2013 on the said premises and to issue No Objection Certificate permitting Petitioner to sell the said premises.

13. Dr. Saraf, Learned Senior Counsel appearing on behalf of Petitioner submits that Respondent No. 1 has erred in not appreciating that the information furnished by Petitioner vide its letters dated 16th January 2020 and 14th February 2020 and 1st March 2021 respectively, reveal that Petitioner is a secured creditor with valid prior charge and an equitable mortgage in its favour and thus has prior and superior charge over the properties of the Borrower. He would submit that as a result of the equitable mortgage in favour of Petitioner with effect from the year 2005, Petitioner has prior and superior charge which cannot be disturbed in any manner whatsoever. That provisions of 26-E of the Securitisation Act accord priority to the dues of the secured creditor viz. dues of Petitioner over the dues of Respondent No.1. He further submits that the priority of the charge of Petitioner over the dues of the

Income Tax Department stands clarified by the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 whereof, introduces Section 31-B under the Recovery of Debts Due to Banks and Financial Institutions Act, 2002 (the "RDDB Act"). Section 26-E of the Securitisation Act is equivalent to Section 31-B of the RDDB Act.

14. Learned Senior Counsel submits that, there is a statutory recognition of the priority of claim of secured creditor in view of the amendment brought into effect by virtue of Section 26-E of the Securitisation Act providing priority for secured creditors over all other debts and all taxes, cess and other rates payable to Central Government or State Government or local authority.

15. It is submitted that Petitioner, under the provisions of the Securitisation Act, is empowered to sell the assets of the Borrower and recover its dues over and above the alleged attachment levied by Respondent No.1.

16. He submits that inaction on the part of Respondent No. 1 and his conduct is causing severe prejudice to the Petitioner in recovery of its

dues and that the order/inaction/failure of Respondent No.1 is erroneous, incorrect, arbitrary and unreasonable and deserves to be set aside by this Court.

17. Learned Senior Counsel refers to and relies upon the decision of the Hon'ble Supreme Court in the case of **Bombay Stock Exchange Vs. V. S. Kandalgaokar (2015) 2 SCC 1** and the decision of this Court in the case of **State Bank of India Vs State of Maharashtra (2020) SCC online Bom 4190**, in support of his contentions. He submits that the Income Tax Act does not provide for paramountcy of income tax dues; crown debt has no precedence and that the department has no answer to this in its reply. He further submits that this Court has also in the case of *State Bank of India (supra)* held that secured debt has priority over tax dues and that the said decision squarely applies to the case of Petitioner with respect to income tax dues. He submits that, therefore, Petitioner as secured creditor has a prior superior charge over the Income Tax dues.

18. Learned Senior Counsel further submits that, earlier in Writ Petition No. 2580 of 2019 filed by the Petitioner, this Court passed an order dated 15th October 2019 in respect of two other properties of Petitioner which were attached by Tax Recovery Officer, pursuant to

which order, the Tax Recovery Officer lifted the attachment on those properties.

19. Learned Senior Counsel submits that in view of the above, similar treatment ought to have been given in respect of the said premises as well, which Respondent No. 1 has failed to do, thereby requiring this Court's intervention to direct lifting/raising of the attachment.

20. On the other hand, Respondent-Revenue has filed affidavit in reply dated 9th July 2021. It is submitted that as the total Income Tax demand against the Borrower was Rs. 58,64,54,659/-plus interest for different assessment years from 2006-2007 to 2013-2014, in the absence of any other means of recovery of the outstanding demand, immovable property of Borrower-assessee was attached by TRO under the provisions of Second Schedule to the Income Tax Act.

21. It is further submitted that recovery survey under Section 133A of the Income Tax Act was conducted by the assessing officer, DCIT-5(1), Mumbai on 11th December 2012 at the said premises for the purposes of recovery of outstanding demand of Rs. 4,47,98,536/- pertaining to the assessment year 2011-12, during which survey, assessee Borrower

was summoned to produce various details including details of loans and advances, however, Borrower had nowhere mentioned about the mortgage of subject property with Petitioner. He submits that therefore in the interest of Revenue, the said premises were attached.

22. Learned standing counsel for Revenue, Mr. Sham Walve, reiterates the submissions made in the affidavit. He also refers to decision of the Supreme Court in the case of **Central Bank of India Vs. State of Kerala (2009) 4 SCC 94** submitting that in that case statutory first charge created in favour of State under Section 26B of the Kerala Act was held to have primacy over the right of the bank to recover its dues.

23. He also submits that assessee is in default since 2012 and since attachment of the defaulter's bank account could not help in the recovery of the tax dues, the immovable property has been attached in the interest of Revenue. He further submits, referring to the affidavit, that the department has also lodged its claim before the official liquidator vide letter dated 20th December 2017 for recovery of the demand of Rs. 58,64,54,659/-.

24. Lastly, Mr. Walve, learned advocate for Respondents, submits that though the immovable property of the Borrower has been attached by TRO, in the interest of revenue as per Sections 220 to 232 of the Income Tax Act and Second Schedule thereof, there is no provision in the said Act to vacate/lift the attachment till the finalisation/recovery of the demand. He, therefore, fairly submits that in the absence of such provision, it would be for this Court to pass appropriate orders.

25. We have heard Dr. Birendra Saraf, Learned Senior Counsel for Petitioner as well as Mr. Sham Walve, Learned Standing Counsel for the Respondent-Revenue as well as Mr. Jejeebhoy, Learned Counsel for the Official Liquidator. We have, with their able assistance, perused the papers and proceedings in the matter.

26. Facts are not in dispute. Petitioner is a secured creditor of the Borrower company (now in liquidation), having earlier acquired the rights, title and interest in the facilities granted by the banks to the Borrower alongwith security over properties including the said premises, and has been substituted in the original applications filed by the respective banks before the Debts Recovery Tribunal, Mumbai under RDB Act. Petitioner has taken possession of the said premises after issuance of notice under Section 13(2) of the SARFAESI Act and

also issued a possession notice under Section 13(4) of the SARFAESI Act and Rule 8(1) of the Securitisation Rules. Petitioner had also informed Respondent No. 3 and also published necessary public notices about the said possession. Petitioner's repeated requests to Respondent-TRO to lift/raise attachment over the said premises have not been attended to. The provisions of Section 31-B of the RDB Act as well as Section 26-E of the Securitization Act being applicable to the case of Petitioner, the Revenue is saying that TRO was not aware of the charge in favour of Petitioner and that there is no provision in the Income Tax Act empowering the TRO to lift/raise the attachment once levied.

27. Petitioner is also now seeking to sell the said premises, however, in view of the order of attachment dated 17th January 2013 and failure on the part of the first Respondent to grant NOC, Petitioner is before us.

28. The moot issue arising herein, whether the secured debt assigned in favour of Petitioner has a priority over Government dues/tax dues, is, no longer *res integra*.

29. The Supreme Court in the case of *Bombay Stock Exchange Vs. V. S. Kandalgaonkar (supra)*, while considering the question whether the

lien exercised under Rule 43 of the Stock Exchange can be said to be a superior right to the Income Tax dues, which may become payable by virtue of the Stock Exchange being a secured creditor, has held that the Income Tax Act does not provide for any paramountcy of dues by way of Income Tax. Supreme Court while holding thus, referred to its own decision in the case of **Dena Bank Vs. Bhikhabhai Prabhudas Parekh & Co. (2000) 5 SCC 694**, where it was held that Government dues have priority only over unsecured debts. Paragraphs 39 and 40 of the said decision are respectfully quoted as under:-

“39. The first thing to be noticed is that the Income Tax Act does not provide for any paramountcy of dues by way of income tax. This is why the Court in Dena Bank case held that Government dues only have priority over unsecured debts and in so holding the Court referred to a judgment in Giles V. Grover in which it has been held that the Crown has no precedence over a pledgee of goods. In the present case, the common law of England qua Crown debts became applicable by virtue of Article 372 of the Constitution which states that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force until altered or repealed by a competent legislature or other competent authority. In fact, Collector V. Central Bank of India after referring to various authorities held that the claim of the Government to priority for arrears of income tax dues stems from the English common law doctrine of priority of Crown debts and has been given judicial recognition in British India prior to 1950 and was therefore “law in force” in the territory of India before the Constitution and was by continued Article 372 of the Constitution (AIR pp. 1835-36, para 7: SCR at pp. 861-62)

40. In the present case, as has been noted above, the lien possessed by the Stock Exchange makes it a secured

creditor. That being the case, it is clear that whether the lien under Rule 43 is a statutory lien or is a lien arising out of agreement does not make much of a difference as the Stock Exchange, being a secured creditor, would have priority over Government dues.”

30. This Court in the case of *State Bank of India Vs. State of Maharashtra and Ors. (supra)* has, after considering the provisions of SARFAESI Act as well as RDDB Act had the occasion to consider the question of priority between the charge of a secured creditor and tax/VAT dues under the Maharashtra Value Added Tax Act, 2002 where it has been observed that the mortgage of a secured creditor gets prior charge over the charge of the State for tax/VAT dues. The following paragraphs of the said decision are also usefully quoted as under :-

“ 30. From a plain and conjoint reading of Section 31-B of the RDB Act and Section 25-E of the SARFAESI Act it is clear that by virtue of the non-obstante language contained therein, the rights of secured creditors to realise secured debts by sale of assets over which security interest is created, shall have priority over Government dues including revenues, taxes, cesses and rates due to the Central/State Government or to the Local Authority. We also note the reference in the pleadings to the dates of creation of charge/security interest as well as lodging of the claim and dates of commencement of recovery proceedings to stake a claim of first charge over the said property. Petitioner's mortgage was created on the said property on 13th January 2014 and as secured creditor it has claimed priority of charge over the charge of the Sales Tax Department. We find that Respondent No.2 had claimed first charge on the said property, inter alia, stating that it had initiated recovery proceedings under Sections 32, 33 and 34 of the MVAT Act on 10th March 2016 whereas attachment under Section 32 of the MVAT Act was

vide letter dated 28th March, 2018 to the Petitioner. Petitioner had initiated proceedings under the provisions of the RDB Act. It has also taken steps as noted above to enforce the security interest in the said property vide notice dated 27th November 2017 under [Section 13\(2\)](#) of the SARFAESI Act prior to the notice dated 28th March 2018 of Respondent No.2.

34. In our considered view the facts in the case at hand being similar to the facts in the case of ASREC (India) Limited (Supra) that decision would squarely be applicable to the facts of this case that if any Central statute creates priority of a charge in favour of a secured creditor, the same will rank above the charge in favour of a State for a tax due under the value added tax of the State. Therefore, in our view what becomes relevant in the facts of this case is the issue of priority of charge on the said assets of secured debt over tax dues and not whether the charge is first or not in time.

35. In this view of the matter, though it would not be necessary for us to deal with the contention of the Respondents relating to the date of effectiveness of [Section 26-E](#) of the SARFAESI Act, however we are of the view that even if [Section 26-E](#) was effective only prospectively from 24th January, 2020 and not applicable to the facts at hand, that would not make any difference; as according to us Section 31-B of the RDB Act itself would be sufficient to give priority to a secured creditor over the Respondent's charge for claiming tax dues.

36. The following observations of the Full Bench of the Madras High Court authored by Chief Justice Sanjay Kishan Kaul (as his Lordship then was) in the case of [The Assistant Commissioner \(Ct\) vs The Indian Overseas Bank](#) relied upon by our court in the case of ASREC (India) Limited (Supra) are relevant and are quoted as under:

"The writ petitions have been listed before the Full Bench in pursuance to the reference order in W.P.No.6267 of 2006 and W.P.No.253 of 2011, in respect of the following issues:- "

“a) As to whether the Financial Institution, which is a secured creditor, or the department of the government concerned, would have the 'Priority of Charge' over the mortgaged property in question, with regard to the tax and other dues.

b) As to the status and the rights of a third party purchaser of the mortgaged property in question.”

2. We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principal Act, which reads as under:-

“31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation. - For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.”

3. There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with

"notwithstanding" clause and has come into force from 01.09.2016.

4. *The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.*

5. *The aforesaid would, thus, answer question (a) in favour of the financial institution, which is a secured creditor having the benefit of the mortgaged property.*

6. *In so far as question (b) is concerned, the same is stated to relate only to auction sales, which may be carried out in pursuance to the rights exercised by the secured creditor having a mortgage of the property. This aspect is also covered by the introduction of [Section 31B](#), as it includes "secured debts due and payable to them by sale of assets over which security interest is created".*

7. *We, thus, answer the aforesaid reference accordingly.*

8. *The matters be placed before the roster Division Bench for dealing with the individual cases."*

39. *In view of the above and being in respectful agreement with the views expressed in the cases cited above, we hold that the mortgage of the secured creditor viz. the Petitioner Bank gets prior charge over the charge of the Respondents for tax/VAT dues."*

31. In our view the aforesaid decisions cover the case of Petitioner herein. There is no reason for us to take any other view in this case other than to say that the charge of secured creditor would have priority over Government dues under the Income Tax Act. There is no provision in the Income Tax Act which provides for any paramountcy of

the dues of the Income Tax department over secured debt.

32. With reference to the decision of *Central Bank of India Vs. State of Kerala (supra)* relied upon by the counsel for the Revenue, we note that the said decision was also distinguished in the above decision of the *State Bank of India Vs. State of Maharashtra & Ors. (supra)* observing that the Hon'ble Supreme Court had considered the provision of Section 38-C of the Bombay Sales Tax Act, 1959 and Section 26-B of the Kerala General Sales Tax Act, 1963 vis-a-vis the provisions of Section 34(1) the RDB Act and Section 35 of the SARFAESI Act, whereas Section 31-B was not on the statute book then and therefore did not come into consideration in the said matter; moreover, the decision in the case of *Central Bank of India Vs. State of Kerala (supra)* was prior in time to the amendment inserting 31-B in the RDB Act and Section 26E in the SARFAESI Act. Paragraph 41 of the decision in the case of *State Bank of India Vs. State of Maharashtra and Ors. (supra)* is usefully quoted as under :-

“41. Before parting with the record we would like to state that we are conscious of the decision of the Supreme Court in the case of Central Bank of India Vs. State of Kerala (2009) 4 SCC 94 wherein the Supreme Court took the view that if the State Act creates first charge on the property, then secured creditor cannot have claim against the statutory provision. The Supreme Court was considering the provisions of Section 38-C of the Bombay Sales Tax Act 1959 and Section 26-B of the Kerala General Sales Tax Act 1963, vis-a-vis the provisions of Section 34(1) of the Recovery of Debts due to Banks and

Financial Institutions Act, 1993 (now the RDB Act) and Section 35 of the SARFAESI Act. However, firstly, since Section 31-B was not on the statute book then, the impact of this Section did not come up for consideration while deciding the matter. Also with respect, it must be observed that the judgment in the case of Central Bank of India (supra) was prior to the amendment in the RDB Act as well as the SARFAESI Act, which inserted Section 31-B in the RDB Act and Section 26-E in the SARFAESI Act.”

33. We are therefore, of the view that Petitioner’s charge/mortgage over the said premises has priority over the dues of the Income Tax department and the said attachment dated 17th January 2013 by Respondent No.1 cannot come in the way of Petitioner’s rights as secured creditor.

34. In view of the aforesaid discussion, we direct Respondent No. 1 to, within a period of two weeks from the date of this order, (i) raise the said attachment levied pursuant to the order of attachment dated 17th January 2013 on the said premises viz. office premises No. 1004, 10th Floor, Prasad Chambers, Opera House, Mumbai-400 004 and (ii) to grant and issue No Objection Certificate permitting the Petitioner to sell the said premises.

35. Petition is allowed in the above terms. There shall, however, be no order as to costs.

(ABHAY AHUJA, J.)

(SUNIL P. DESHMUKH, J.)