

2025 LiveLaw (SC) 1125

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
B.R. GAVAI; CJI., K. VINOD CHANDRAN; J.**

November 20, 2025.

Special Leave Petition (C) No.27740, 28496, 28042, 30476 of 2011; 619 of 2012
Jalgaon District Central Coop. Bank Ltd. versus State of Maharashtra and Ors.

Employees' Provident Funds And Miscellaneous Provisions Act, 1952 (EPF&MP Act) - Section 11(2) - Securitisation And Reconstruction Of Financial Assets And Enforcement of Security Interest Act, 2002 (SARFAESI Act) - Section 26E - Priority of Dues - First Charge Vs. Priority to Secured Creditors – Held, the statutory first charge created under Section 11(2) of the EPF&MP Act in respect of provident fund dues has precedence over the priority conferred on a secured creditor under Section 26E of the SARFAESI Act - While Section 26E of the SARFAESI Act (introduced later in 2020) provides an overriding non-obstante clause conferring priority to a secured creditor's debts over all other debts and government dues, this priority cannot be equated with a "first charge" - Section 11(2) of the EPF&MP Act expressly creates a statutory first charge on the establishment's assets for the amount due, and this first charge prevails over the priority given under Section 26E of the SARFAESI. [Paras 22 - 24]

Order of Payment from Sale Proceeds: From the proceeds of the sale of the assets by the secured creditor - i. The first charge would be for the dues under the EPF&MP Act (including contribution, interest, penalty, and damages); ii. The remaining proceeds are then applied in satisfaction of the secured debt of the appellant-bank; iii. Workmen are granted liberty to approach the appropriate authority under the MRTU & PULP Act to determine their dues, which would only be satisfied if any amount remains after satisfaction of the provident fund dues and the secured creditor's debt. [Relied on Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner, (2009) 10 SCC 123; Paras 17-27]

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) - Section 26E - Secured Creditor's Priority - Workmen's Dues - Workmen's Dues (Unquantified): The workmen's dues which have not been quantified as of now cannot have any priority over the secured creditor's claim, which is conferred priority under Section 26E of the SARFAESI Act, if the proceeds can only satisfy the secured debt - Appeals allowed. [Para 28]

For Petitioner(s): Mr. M. Y. Deshmukh, AOR Ms. Manjeet Kirpal, Adv. Ms. Sanyukta N. Suryawanshi, Adv. Mr. Atharva D. Kale, Adv. Mr. Aswathaman D., Adv.

For Respondent(s): Ms. Preet S. Phanse, Adv. Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Shrirang B. Varma, Adv. Mr. Shivaji M. Jadhav, AOR Mr. Brij Kishor Sah, Adv. Mr. Adarsh Kumar Pandey, Adv. Mr. Vignesh Singh, Adv. Mr. Aditya S. Jadhav, Adv. Mr. Shivaji M. Jadhav, Adv. Mr. Brij Kishor Sah, Adv. Ms. Apurva, Adv. Mr. Adarsh Kumar Pandey, Adv. Mr. Vignesh Singh, Adv. Mr. Aditya S. Jadhav, Adv. M/S. S.M. Jadhav And Company, AOR.

J U D G E M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. The appellant in all these appeals is the secured creditor, a Co-operative Bank, who seeks to proceed against the properties of the mortgagee, a Co-operative Society,

engaged in the manufacture of sugar at its factory. The specific contention is that the appellant having registered the transaction with the respondent Society, at the Central Registry, as constituted by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002¹, has an overriding claim over the assets of the factory. The factory has become defunct, and the Society has defaulted the loan. For recovery of the dues, the mortgaged property has been proceeded against by the Bank, which has a priority insofar as satisfaction of the defaulted loan amounts. The specific contention taken is that the secured creditor has a priority, even as against the dues of the workmen and the Provident Fund amounts defaulted, as provided under Section 26E of the Act of 2002.

3. We heard Mr. M.Y. Deshmukh, learned counsel appearing for the appellant-bank and Mr. Shivaji M. Jadhav, learned counsel appearing for the respondent-workmen and their union.

4. It is submitted by Mr. Deshmukh that Sections 26D and 26E of the SARFAESI Act introduced w.e.f. 24.01.2020, has an overriding effect insofar as the recovery of dues of the secured creditor. The learned counsel also placed heavy reliance on the judgment in **Punjab National Bank & Ors. v. Union of India & Ors.**².

5. Mr. Jadhav, on the other hand makes a fervent plea that the workmen have been denied their wages and even the PF amounts defaulted. The provident fund dues definitely have a first charge, as has been affirmed in **Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner**³ which are to be first paid before the bank proceeds to set off the defaulted loan amounts. The learned counsel for the appellant points out that the claim made by the workmen, which was grossly delayed, was rejected by the Industrial Court. The respondent-workmen, however, point out that by Annexure R-3 a learned Single Judge of the High Court of Judicature of Bombay, at Aurangabad had permitted them to approach the liquidator appointed by the Sugar Commissioner to consider their claims and in any event, the Industrial Court without consideration of the merits rejected the claim on the mere premise that there was no affidavit filed putting forth the reasons for delay, seeking condonation.

6. On facts, it has to be noticed that the Co-operative Society engaged in the manufacturing of sugar, mortgaged their properties and also hypothecated the stock in trade to the Bank as security for loan availed. In the year 2000, the factory stood closed because of the huge losses. On 17.03.2001, the appellant-bank approached the Cooperative Court with Dispute No.459 of 2000 in which dispute a Receiver was appointed on 11.01.2001. The dispute was adjudicated, allowing the appellant-bank to recover an amount of Rs.30,24,32,954/-. In 2002, the Commissioner of Sugar appointed a liquidator to commence the proceedings for liquidation and in 2006, the appellant-bank issued a notice under Section 13(2) of the SARFAESI Act and took over possession of the secured assets of the Society. After the takeover of the assets, for a year, the factory was run by another company, based on an agreement of lease, which also did not turn around the business, upon which the assets were handed over back to the appellant-bank.

7. The workers approached the liquidator for payment of their dues and later in the year 2007 approached the Industrial Court under the Maharashtra Recognition of Trade

¹ for short, 'the SARFAESI Act'

² (2022) 7 SCC 260

³ (2009) 10 SCC 123

Unions and Prevention of Unfair Labour Practices Act, 1971⁴. The said application stood dismissed as it was delayed and since there was no application filed for condonation of the delay occasioned.

8. When the appellant-bank proceeded to sell the properties, there were multiple writ petitions filed challenging the same by the workmen and their Union seeking recovery of the dues of the workmen and the defaulted amounts of provident fund. A Director of the appellant also challenged the auction proceedings, specifically a corrigendum issued. The Society and its members also filed separate writ petitions; all of which were decided by the impugned judgment, against which the appeals are filed. The impugned judgment relied on the judgment in **United Bank of India v. Satyawati Tondon and Ors.**⁵, wherein this Court had expressed serious concern in the High Courts' continuing to ignore the statutory remedies available under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the SARFAESI Act to invoke the jurisdiction under Article 226, having serious adverse impact on the rights of the banks and other financial institutions. The Division Bench which heard the writ petitions by the common impugned judgment left remedy to the different petitioners to approach the appellate authority and insofar as the claim made by the workmen, liberty was left to them to seek for their dues once it is quantified by a competent court. The provident fund dues were found to have priority which was directed to be paid immediately on the sale of the property, before applying the proceeds to the debt due to the bank.

9. The directions issued, which the appellant-bank seriously assails, found in paragraph 26, are as under: -

"26. In these circumstances, the following order will meet the ends of justice:

(i) The bank may proceed with the sale in accordance with the law.

(ii) The sale proceeds shall be deposited in a separate account i.e. "No Lien Account" in the bank. Unpaid wages and other legal dues of the workers shall be paid from this account once the dues are quantified by a competent court.

(iii) The provident fund dues shall be deposited with the Provident Fund authorities, immediately on the sale of the property and before applying the proceeds to any other debt, including the banks claim.

(iv) All other contentions raised by the petitioners in the present petitions may be agitated by them before the Debt Recovery Tribunal under Section 17 of the Securitization Act."

10. The contention raised by the appellant-bank is also based on the introduction of Chapter IVA w.e.f. 24.01.2020. Chapter IV constitutes a Central Registry and Section 23 requires that all the particulars of every transaction of securitisation, asset reconstruction or creation of security interest, shall be filed with the Central Registrar in the manner provided, on payment of such fee as may be prescribed. The appellant has complied with Section 23 as is evident from Annexure A-40. The 'Asset ID Search Report' (A-40) speaks of the appellant-bank having complied with Section 23 insofar as the security interest created on the assets of the respondent-society, having been registered with the Central Registry, thus making applicable Section 26E.

⁴ for short, 'the MRTU & PULP Act'

⁵ (2010) 8 SCC 110

11. The provision under Section 26E, in addition to Section 35, gives a debt of the secured creditor priority over the workmen's dues if it is registered with the Central Authority as provided under the Act of 2002.

12. One other aspect to be observed is that the workmen had approached the Industrial Court which rejected the different claims filed by them which have been annexed as Annexures A-6 to A-16. A challenge was made to the order of the Industrial Court in a writ petition which was disposed of by Annexure R-3. The petitioners therein challenged the order of the Industrial Court, claiming wages between March 1998 to December 1999. The learned Single Judge who disposed of the petition posed a question as to whether the matter should be remanded to the Industrial Court, since it was rejected on the ground of delay or allowed to be agitated before the Liquidator. Eventually, the Liquidator was directed to verify the claims and pass an order computing the amounts due to the workmen, pending disposal of the present appeals. The Liquidator's role is no more relevant since the secured creditor has taken over the property and had proceeded for sale as per the Act of 2002. There is hence no question of determination of the amounts due, by the Liquidator,

13. **Punjab National Bank**² considered the issue of priority of Central Excise dues as against the secured creditor to proceed under the SARFAESI Act. The first charge provided for the excise dues was incorporated in the Central Excise Act, 1944 w.e.f. 08.04.2011, that too subject to the SARFAESI Act, while the mortgage/ hypothecation of the properties to the secured creditor in that case occurred long before. Hence, Section 13 of the Act of 2002 read with Section 35 was found to enable an overriding effect for the Act of 2002 over all other existing laws. The claim for prior satisfaction of the excise dues was rejected. This applies squarely to the dues of the workmen which as of now has not even been quantified. As of now since Section 26E gives a priority to the secured creditor's dues even if the claim of the workmen was accepted and their dues determined, it could not have been recovered from the sale proceeds of the auction conducted by the secured creditor; if the proceeds could only satisfy the debt due to the secured creditor.

14. The next question is as to the priority of the provident fund dues which, in any event has a first charge created under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952⁶. This Court in **Maharashtra State Cooperative Bank Ltd.**³ found that the priority under Sections 11(1) and (2) of the EPF & MP Act would operate against the statutory as well as non-statutory and secured as well as un-secured debts, including mortgage or pledge. Section 11 as amended in 1973, was found to be as under:

"27...It (sub-section (1) of Section 11) lays down that the amount due from the employer in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under Section 14-B, accumulations required to be transferred under Section 15(2) or any charges payable by him under any other provision of the Act or the Scheme or the Insurance Scheme shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

28. Sub-section (2), which was added to Section 11 by Act 40 of 1973 contains a non obstante clause and lays down that if any amount is due from the employer whether in respect of the employees' contribution deducted from the wages of the employee or the employer's contribution, the same shall be deemed to be the first charge on the assets of the establishment and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts...."

⁶ for short, 'the EPF&MP Act'

15. We are in the present case concerned with a *non obstante clause*, giving priority to the secured creditors brought under the SARFAESI Act in the year 2020 which overrides any other law in force at the time of its incorporation, pitted against a specific first charge provided in a welfare legislation, enacted earlier. The above requires consideration based on the precedents of this Court on similar issues of precedence, whether it be to a priority conferred by statute, notwithstanding the law in force at the time of enactment or a first charge statutorily created in a stand-alone provision.

16. **Maharashtra State Cooperative Bank Ltd.**³ has to be perused in detail, though the said decision is prior to introduction of Chapter 26-E in the Act of 2002 with effect from 24.01.2020. The issue arising therein was whether the sugar bags pledged by a company in favour of the appellant bank as security for repayment of a loan, could be attached and sold in realization of provident fund dues. The appellant bank contended that since the sugar bags were already pledged with the appellant bank, the first charge created statutorily under Section 11(2) of the EPF&MP Act cannot have priority over the dues of the appellant bank. It was also alternatively contended that even if the first charge could be said to operate for the amounts determined under Section 7-A, being the contributions of the employer and the employee, it could not apply to interest payable under Section 7-Q and the damages levied under Section 14-B.

17. This Court in **Maharashtra State Cooperative Bank Ltd.**³ considered the background which led to the enactment of EPF&MP Act, which was found belonging to “*the family of legislations enacted by Parliament in furtherance of the mandate of Articles 38 and 43 of the Constitution*” (sic), intended to give social security to the workers employed in the factories and other establishments; essentially a welfare legislation. On an analysis of the provisions of the EPF&MP Act, it was found to provide for framing of various schemes, establishment of funds and a regulatory regime to ensure compliance by imposition of penalty and damages as also comprehensive provisions for recovery by way of attachment and sale of the assets of the employer. Sub-section (2) of Section 11 was held to be not only a declaration “*that the amount due from the employer towards contribution under the Act shall be treated as the first charge of the assets of the establishment, but also lays down that notwithstanding anything contained in other law, such dues shall be paid in priority to all other dues* (sic. paragraph 28)”. Asserting that the Act is a social welfare legislation intended to protect the interest of weaker sections of the society it was found imperative that the Court give a purposive interpretation to the provisions, keeping in mind the Directive Principles of State Policy embodied in the Constitution.

18. **Builders Supply Corporation v. Union of India & Ors.**⁷ considered the question as to whether the tax payable to the Union of India has priority over other debts, which affirmed such priority. **State Bank of Bikaner and Jaipur v. National Iron Steel Rolling Corporation**⁸ considered the priority of an earlier mortgage as against the first charge created under a sales tax enactment. It was held unequivocally that the statutory first charge created on the property of a dealer is on the entire property, the title of which is held by the mortgagee. Despite the mortgage it operates on the property as a whole, without being subject to the mortgage, was the finding. A charge was held to be a wider term, covering within its ambit, a mortgage, giving absolute precedence to the charge

⁷ (1965) 2 SCR 289

⁸ (1995) 2 SCC 19

created. **State of M.P. v. State Bank of Indore**⁹ likewise held the statutory first charge created under the sales tax act to prevail over the banks charge created by a mortgage.

19. In **Maharashtra State Cooperative Bank Ltd.**³ this Court referred, with approval, to a decision of a Division Bench of the Kerala High Court in **Recovery Officer and Assistant Provident Fund Commissioner v. Kerala Financial Corporation**¹⁰, which considered the interplay of Section 46-B of State Financial Corporations Act, 1951¹¹ with Section 11 of the EPF&MP Act. The Division Bench emphasised the two facets of Section 11(2) of the EPF&MP Act, primarily the first charge created and then the declaration that it would have priority over all other debts notwithstanding any law for the time being in force. Section 11(2) of EPF&MP Act having been enacted later, to the SFC Act, was found to override the earlier legislation i.e. Section 46-B which was an identical non-obstante clause. Similar was the principle propounded in **A.P. State Financial Corporation v. Official Liquidator**¹², wherein Section 29 of the SFC Act was found to subserve Section 529(1) and Section 529A of the Companies Act, which provisions were introduced subsequently with a social purpose, i.e.: to protect the dues of a workman.

20. This Court in **Maharashtra State Co-operative Bank Ltd.**³ while upholding the first charge and priority created under Section 11(2) of the EPF&MP Act also considered the question as to whether the first charge would be restricted to the amount determined under Section 7-A or would include the interest and damages levied. Paragraph 67 of the said decision is extracted hereunder:

“67. The expression “any amount due from an employer” appearing in sub-section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub-section (1) of Section 11 and Sections 7-A, 7-Q, 14-B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7-Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages.”

21. **Union of India v. SICOM Ltd.**¹³ was concerned with the Common law doctrine of priority or precedence of Crown debts *vis-a-vis* secured debts under the SFC Act of 1951. Therein, the appellant in satisfaction of amounts due to it proceeded against the properties of respondent No. 2. Respondent No.2 had borrowed a sum from SICOM; covered under the SFC Act, through an indenture of mortgage based on which, on default, SICOM sought to attach and seize the properties of the defaulter raising the issue of first charge by way of a prior mortgage. It was held that the common law principle of precedence conferred on Crown debt was a law, within the meaning of Article 13 of the Constitution of India, saved in terms of Article 372. However, when a debt is secured by reason of the provisions of a statute that becomes a first charge over the properties having regard to the plain meaning of Article 372 of the Constitution of India, which prevails over the Crown debt; an unsecured debt, was the finding. The Court also referred to Section 46-B of the SFC Act which is a nonobstante clause giving the provisions of the SFC Act an overriding effect

⁹ (2002) 10 SCC 441

¹⁰ (2002) 3 LLJ 643

¹¹ for short, ‘SFC Act’

¹² (2000) 7 SCC 291

¹³ (2009) 2 SCC 121

notwithstanding anything inconsistent in any other law for the time being in force or any other instrument having effect by virtue of any law.

22. *Punjab National Bank*² again considered the question of priority of Crown debt, being the duty due under the Central Excise Act of 1944, as against the secured creditor. Therein the department had made a confiscation order which however was not tenable, for reason of the power in the rules permitting such confiscation, having been omitted before the order was passed. Section 35 of the Act of 2002 which is *in pari materia* with Section 46-B of the SFC Act was noticed along with Section 13 to find that the secured debt has a priority especially when the Central Excise Act and Rules at that time did not provide for a first charge; which was later provided as per Section 11-E. The mere provision, enabling recovery of debts due, deeming it to be arrears due on land revenue, it was held, would not confer a charge having precedence over all other debts. Even after introduction of Section 11-E wherein a first charge was created, Section 13 and Section 35 of the SARFAESI Act was held to prevail, since the first charge created under Section 11-E of the Central Excise Act, 1944 was subject to the provisions contained in the SARFAESI Act.

23. In *Central Bank of India v. State of Kerala*¹⁴, a three Judge Bench was concerned with the first charge statutorily created under the Bombay Sales Tax Act, 1959 and Kerala General Sales Tax Act, 1963 *inter alia* as against the SARFAESI Act. Despite Section 13 and Section 35 of the SARFAESI Act, it was held that the GST Acts enacted by the State Legislature under Entry 54 of List II, creating first charge on the property of the dealer or person liable to pay sales tax cannot be struck down on the ground of inconsistency with the non-obstante clause in Section 35 of the SARFAESI Act, both of which provided for only preferential enforcement of security interest.

24. *Employees Provident Fund Commissioner v. Official Liquidator*¹⁵ was concerned with the interplay of again the EPF&MP Act and the Companies Act, specifically Section 529-A. The question raised was as to whether the employees' dues under the Companies Act had a priority as against the dues under the EPF&MP Act. It was held that the non-obstante clause in Section 11(2) of the EPF Act is not subject to the non-obstante clause in Section 529-A of the Companies Act since the words "*all other debts*" in Section 11(2) included debts due to secured creditors whereas Section 529-A of the Companies Act merely expanded the scope of workmen's dues and placed them on a par with debts due to secured creditors without creating any first charge in respect thereof.

25. Hence, when there are two enactments conferring priority in satisfaction of a debt coming under the respective enactments, by virtue of a non-obstante clause overriding the provisions of any law in force at that time, the time in which the statute was enacted or the provision was incorporated, assumes significance and the provision latter in time would prevail. However, if there is a first charge statutorily created, validly, *dehors* the non obstante clause conferring priority over other debts, the statutory charge would prevail. With these principles in mind, when we look at the provisions under the SARFAESI Act and the EPF&MP Act, the former with the incorporation of Section 26-E, we are of the opinion that there has to be found a first charge to the EPF&MP Act dues, under Section 11(2) of that Act.

¹⁴ (2009) 4 SCC 94

¹⁵ (2011) 10 SCC 727

26. We extract Section 11(2) of the EPF Act and Section 26-E of the SARFAESI Act hereunder.

“Sec. 11(2): Without prejudice to the provisions of sub-section (1), if any amount is due from an employer, whether in respect of the employee’s contribution (deducted from the wages of the employee) or the employer’s contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.

Sec. 26-E: Priority to secured creditors— Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be 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.”

27. Undisputedly, SARFAESI Act is the latter act and if the question was solely of the non-obstante clause giving it overriding effect from any law for the time being in force, the SARFAESI Act would prevail. However, in the EPF&MP Act, Section 11(2) creates a statutory first charge on the assets of the establishment for any amount due from an employer, be it the employers’ or employees’ contribution, which would include any interest or damages also as has been held in **Maharashtra State Co-operative Bank Limited**³. In that circumstance, the effect of the non obstante clause giving precedence over any other law for the time being in force pales into insignificance, as held in **Central Bank of India**¹³. There being a clear first charge created under the EPF&MP Act, it overrides the priority under Section 35 and Section 13 as also that conferred under Section 26-E since a priority cannot be equated with a first charge and cannot be given prevalence over the first charge statutorily created.

28. On the above reasoning, we find that the workmen’s dues which also has not been quantified as of now cannot have any priority over the claim raised by the secured creditor, the Bank, which is conferred a priority under Section 26-E of the SARFAESI Act. However, from the proceeds of the sale of the assets, the first charge would be for the dues under the EPF&MP Act which includes not only the contribution payable but also the interest, penalty and damages if any imposed. Hence, the sale proceeds have to be first applied in satisfaction of the dues under the EPF&MP Act and then in satisfaction of the secured debt of the appellant-bank.

29. On the above reasoning, we cannot but partly set aside the impugned judgment and the directions therein. The appellant-bank would be entitled to proceed with the auction, if not already proceeded with and from the proceeds received in auction, first the dues under the EPF&MP Act will have to be satisfied and then the debts due to the appellant Bank. We would only leave liberty to the workmen to approach the appropriate authority under the MRTU & PULP Act by an application to determine the dues, which shall be considered *de hors* the order rejecting the same on the ground of delay and *de hors* the delay caused as such. Such determination would be necessitated if there is any amount remaining after satisfaction of the provident fund dues and that of the secured creditor.

30. The appeals are allowed, setting aside the impugned judgment with the aforesaid directions.

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