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**(2004) 04 BOM CK 0118**

**Bombay High Court**

**Case No:** Criminal A. No. 1203 of 2002

Yusuf Suleman and Brother

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision:** April 13, 2004

**Acts Referred:**

- Maharashtra Protection of Interest of Depositors (Financial Establishment) Act, 1999 - Section 4, 7, 8

**Citation:** AIR 2004 Bom 310 : (2004) 3 MhLj 1000

**Hon'ble Judges:** A.S. Aguiar, J

**Bench:** Single Bench

**Advocate:** R.A. Shaikh, for the Appellant; A.S. Shitole, APP, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

A.S. Aguiar, J.

This appeal is from the order dated 4th June, 2002, passed by the Learned Special Judge under the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as the "MPID Act"), in Misc. Application No. 347 of 2003, rejecting the appellant's application, for removing the seal and lock on the premises, bearing Gala No. 7-B, situate on the ground floor of the building known as Shariah House, Maulana Azad Road, Petwala Compound, Mumbai 400008, and claiming arrears of rent for the period from June 2000 till vacant possession of the said premises is handed over to the appellants.

2. It is the case of the appellants that they are the landlords of the premises bearing Gala No. 7-B, situate on the ground floor of the building known as Shariah House, Maulana Azad Road, Petwala Compound, Mumbai 400008 and that these premises were let out to the company Shariah Islamic Financial & Investment Company (India) Ltd., as a tenant, on a monthly rent of Rs. 350.50, with effect from November 1994.

3. The Directors of the said company were arrested by the GB CB CID, in C.R. No. 100 of 2000 under Sections 420, 406 and 120-B of the Indian Penal Code. The said C.R. is the subject matter of Special Case No. 44 of 2000, wherein the premises in question were sealed by the police with the hope of selling the same and recovering a substantial amount which would be utilised in repayment of the depositors' claims to the extent possible. The appellants filed Misc. Application No. 347 of 2001 for unsealing and payment of arrears of rent, before the Special Court, which as stated above, came to be rejected as the property in question has been sealed and secured for payment to the investors after the same is sold for a reasonable price. Hence this appeal.

4. Admittedly the appellants are owners of the premises in question. However, the office premises were let out to the company in the year 1994. The Directors of the company Shariah Islamic Financial & Investment Company (India) Ltd., are involved in a conspiracy to cheat and defraud various investors. 5. Learned advocate for the appellants has relied upon the judgment of this Court in the case of *Motilal Hastimal Bothara v. State of Maharashtra*, reported in 2003 All MR 1011, in support of his contention that the police have no power to seize and seal the said premises unless provisions of Sections 4, 7 and 8 of the MPID Act are complied with. A perusal of the said judgment indicates that the said sections pertain to attachment of property i.e., by sealing and seizing of suit premises, not enlisted as the property notified u/s 4. It was held that u/s 8 the property can be attached by the Court provided the said property was notified u/s 4. In the present case the property has not been notified u/s 4 of the MPID Act. Without going into the contentions of the learned advocate for the appellants, the present application itself is not maintainable. The premises in question have admittedly been let out to the company, the Directors of which are involved in an offence of cheating investors. The appellants have no interest in the property other than revisionary rights and recovery of rent. The appellants cannot ask for possession because possession was not with the appellants at the time of sealing of the premises. The application for unsealing or removing the attachment is in effect an application for possession. The possession of the said premises was with the tenants viz., Shariah Islamic Financial & Investment Company (India) Ltd., the Directors of which are involved in an offence, registered under the MPID Act. Neither the Company, Shariah Islamic Financial & Investment Company (India) Ltd., nor its directors have surrendered the tenancy back to the landlords. Hence the appellants cannot apply for possession in the guise of an application for unsealing the premises. The remedy, if at all available, lies elsewhere. The application before the MPID Court has been rightly rejected. The present appeal also requires to be rejected and is accordingly dismissed in limine. Appeal to stand disposed of.