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

WRIT PETITION NO.2230 OF 2014

HDFC Bank Ltd. ..Petitioner
-*Versus*-
Union of India & Ors. ..Respondents

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Mr. Kuldeep Patil a/w Vivek Patil, Arjun Pawar & Shrikant Patil i/b. Chetan Agrawal for the Petitioner.
Mr. R. C. Master a/w Y. S. Bhate for the Respondent Nos.1 and 2.
Mr. Pradeep s. Jetly a/w Ms. Suchitra Kamble for the Respondent No.3.
Mr. D. A. Nalawade, Govt. Pleader for the Respondent No.4.
Mr. Ranjeet H. Patil for the Respondent No.11.

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CORAM: S.C. DHARMADHIKARI
AND
SUNIL P. DESHMUKH, JJ.

DATE :- 16th FEBRUARY, 2015.

P.C.:

The HDFC Bank has filed this Writ Petition not so much on its own behalf but on benalf of an auction purchaser Mr. Roshan Shetty, who has been impleaded as Respondent No.11.

2] The facts are not in dispute and they are that the 4th Respondent Regional Transport Authority are not registering the transfer of a vehicle in favour of the auction purchaser Respondent No.11 simply because the borrower/debtor, Respondent No.5 company has failed to remit and pay the service tax.

3] The Petitioner points out that the car loan was sanctioned on the terms and conditions including that of a hypothecation of the vehicle in favour of the bank. The loan was disbursed and it was to be repaid in 48 equal monthly installments of Rs.70,400/-. The Petitioner points out that Respondent No.5 made payment of 14 equal monthly installments but thereafter the account became irregular. The vehicle was repossessed on 8th May, 2014. Due intimation was given to the police station and other authorities. Thereafter, in the light of huge outstanding loan amount, the vehicle was sold/auctioned and respondent No.11 successful bidder has deposited a sum of Rs.16,56,000/-. The bank claims that there are certain arrears and therefore, it suffered a loss in this auction. We are not concerned as much about all this because after the vehicle was disposed of the Khar Branch of the Petitioner Bank received a letter from the Service Tax Authorities (Respondent No.3) to furnish details of the transfer. It claimed that the service tax dues has not been paid and remitted. Therefore, the vehicles cannot be registered. There is a detailed correspondence on this ground.

4] After hearing all parties, we are of the view that in the present facts and circumstances any larger issue or question need not be decided. If the bank claims priority of its dues over and above that of the service tax department even that aspect is not required to be gone into and decided. Equally, whether service tax which was to be recovered together with interest and penalty if any, can be recovered from the purchaser of the vehicle at the above auction, is also a question or issue which need not detain us. We have been informed by Mr. Jetly appearing on behalf of these authorities and who have to recover the tax, namely, the Respondent No.1, 2 and 3 that, in the event, these Respondents are desirous of recovering the sums from the bank and equally the borrower and others they would take appropriate steps in accordance with law. Presently, it has no objection to the vehicle being registered in the name of the Respondent No.11 but that should be without prejudice to the rights and contentions. They would proceed against the bank also seek to recover the taxes from the sale proceeds which are retained by the bank.

5] Once all these statements are made by Mr. Jetly and on instructions and the contesting Respondents have no objection to the vehicle being registered without prejudice to their legal rights and contentions, then, the Writ Petition can be disposed of conveniently. We accept these statements made by Mr. Jetly on instructions as undertakings given to this Court. We clarify that the vehicle shall be registered by the Regional Transport Authority/Competent Officer in the name of the auction purchaser Respondent No.11 but all these steps would be without prejudice to the rights and contentions of the Respondent No.1 to 3 and to recover the dues by way of service tax arrears. All contentions of the parties in relation thereto are kept open. We clarify that merely because we have accepted the statements made by Mr. Jetly as undertakings given to this Court, that shall not be construed as expression of any opinion on the rival contentions and in relation to the stand of the Petitioner bank before us. We clarify that it would be for the appropriate Court/forum to examine the above issues and independent of the registration of the vehicle. The Writ Petition is disposed of in these terms. No costs.

6] Mr. Nalawade has fairly stated that if Respondent No.11 appears before the Regional Transport Authority, Andheri(W), Mumbai, with the relevant documents, the registration authority shall register the vehicle in the name of Respondent No.11 within two weeks from the date of such application. Statement accepted.

(SUNIL P. DESHMUKH, J.) **(S.C. DHARMADHIKARI, J.)**

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