

Sherwood Resorts Pvt.Ltd. and another	... Petitioners
v/s	
State of Maharashtra and others	... Respondents

Mr Praful Joshi with Ms Karen Sequeira i/b M/s Hariani and Co. for
Petitioners.
Mr B.B. Sharma, AGP for Respondent No.1 – State.
Mr Nilesh Rikame for Respondent No.2.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

Reserved on : 29th September, 2015.
Pronounced on : 16th October, 2015.

JUDGMENT [Per B. P. Colabawalla, J]:-

1. Rule. Respondents waive service. By consent of parties, Rule made returnable forthwith and heard finally.
2. By this Petition under Article 226 of the Constitution of India, the Petitioners challenge the legality and validity of the attachment order dated 29th April, 2013 but signed on 2nd May,

2013 (for short, the “**impugned attachment order**”) (Exh ‘Q’ to the Petition), passed by the Sale Tax Authorities. The attachment was levied on an immovable property purchased by the Petitioners pursuant to an auction conducted by Respondent No.2 – SICOM under the provisions of the *Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short, the “**SARFAESI Act**”). Petitioner No.1 is a Company incorporated and registered under the provisions of the Companies Act, 1956 and Petitioner No.2 is its shareholder. It is the case of the Petitioners that the impugned attachment order was passed by Respondent No.5 (Sales Tax officer, C-008, VAT Recovery, Raigad Division, Belapur, Navi Mumbai), after the said property was purchased by the Petitioners for valuable consideration and without any notice of the alleged charge of the Sale Tax Authorities, which they now seek to enforce against the said property.

3. It is the case of the Petitioners that one M/s. Icon Oil and Specialties Ltd (for short, “**Icon Oil**”) was the owner of an immovable property consisting of land and factory buildings, other structures and plant and machinery, situate at Plot No.1, Survey No.59 (Part) of Village Honad, at Takai - Adhoshi Road, Taluka

Khalapur, District Raigad, area of plot admeasuring approximately 10,790 sq.mtrs. and built up area thereon admeasuring 10,552.31 sq.ft. (hereinafter referred to as the **“secured property”**). The said Icon Oil was also a debtor of Respondent No.2 – SICOM. To recover its dues from Icon Oil, Respondent No.2 conducted an auction of the secured property under the provisions of the SARFAESI Act. In this auction, the Petitioners were the highest bidder and the sale was accordingly confirmed in their favour. It is in these circumstances that the Petitioners claim to be the owners of the secured property.

4. It appears that Icon Oil, apart from being a debtor of Respondent No.2, was also in arrears of its Sales Tax dues to the tune of Rs.2,77,72,073/-. To recover these arrears, Respondent No.5 passed the impugned attachment order, attaching the secured property. As stated earlier, it is the case of the Petitioners that when they purchased the secured property, they had no notice of the purported charge / claim of the Sales Tax Authorities in the sum of Rs.2,77,72,073/-. It is in these circumstances that the Petitioners challenge the legality and validity of the impugned attachment order (Exh.'Q' to the Petition), on the ground that the

same is arbitrary, illegal and without jurisdiction.

5. The contesting Respondents in this Writ Petition are Respondent Nos.1, 3, 4 & 5. Respondent No.1 is the State of Maharashtra and Respondent Nos.3 to 5 are high ranking officials of the Sales Tax Department. Respondent No.6 is the Official Liquidator of the erstwhile Iccon Oil that has been ordered to be wound up pursuant to an order dated 18th March, 2015 passed by this Court in Company Petition No.653 of 2013. Respondent No.7 is the Tahsildar of Taluka Khalapur, District Raigad and Respondent No.8 is the Talathi, Honad, Taluka Khalapur.

6. It is the case of the Petitioners that on the secured property, the said Iccon Oil carried on its business as a manufacturer of lubricating and other oils, petroleum products, petro-chemicals etc. During the course of its business, Iccon Oil obtained financial assistance from banks like Central Bank of India, Union Bank of India and State Bank of Indore (now merged in State Bank of India). Such assistance was obtained inter alia against security of its immovable and movable property, including plant and machineries. Since Iccon Oil did not pay its dues to the banks, on 8th October 2003, Central Bank of India issued a notice under

section 13(2) of the SARFAESI Act calling upon Iccon Oil to repay an amount of Rs.12,05,77,541/- as on 14th March, 2001. As Iccon Oil failed to comply, a notice was published in the newspapers on 17th April, 2004 notifying that Central Bank of India had taken over possession of the secured property under the provisions of the SARFAESI Act.

7. Thereafter, by a Deed of Assignment dated 31st March 2010, Respondent No.2 – SICOM inter alia acquired all the right, title and interest arising out of the loan disbursed by the said Central Bank of India to Iccon Oil, alongwith the assignment of the secured property. Therefore, by virtue of this Deed of Assignment, Iccon Oil became the debtor of Respondent No.2.

8. Since Iccon Oil did not honour its debt, under the provisions of the SARFAESI Act, Respondent No.2 sought to enforce its security by sale of the secured property. Accordingly, on 9th December, 2011 Respondent No.2 published a sale notice which was followed by another sale notice on 28th December, 2011. These sale notices were challenged by Iccon Oil in the Debt Recovery Tribunal **(DRT)**, as well as the Debt Recovery Appellate Tribunal

(DRAT), without any success.

9. Since the said challenge failed, Respondent No.2 once again issued a sale notice on 25th August, 2012 under the provisions of the SARFAESI Act, inviting offers in respect of the secured property on an “as is where is” and “as is what is” basis. The Petitioners, being desirous of purchasing the secured property, bid in the public auction held on 10th September, 2012 and offered a consideration of Rs.2,21,50,000/-. This offer was subsequently revised on 21st February, 2013 to Rs.2,65,00,000/-.

10. On 15th March 2013, Respondent No.2 was pleased to accept this offer of the Petitioners and accordingly, the Petitioners made payment of the full sale consideration of Rs.2,65,00,000/- on 21st March 2013. On 1st April 2013, Respondent No.2 confirmed receipt of the entire sale consideration and requested the Petitioners to proceed with the execution of the sale certificate.

11. It is the case of the Petitioners that prior to purchasing the secured property, the Petitioners undertook a complete title due diligence and obtained a 7/12 extract dated 15th May, 2012

(Exh.'G' to the Petition) in respect of the secured property which recorded the name of Icon Oil as the owner. The “other rights column” of the 7/12 extract recorded that one *District Industries Centre, Raigad* had a charge on the secured property in the sum of Rs.4,30,601/-. In the said 7/12 extract, no charge of the Sales Tax Authorities was reflected at that time. It was in these circumstances that the Petitioners decided to bid for the secured property. It is the further case of the Petitioners that even after the sale of the secured property was confirmed in its favour, they once again obtained another 7/12 extract dated 12th April, 2013 (Exh 'L' to the Petition) which also did not reflect the purported charge of the Sale Tax Authorities in the sum of Rs.2,77,72,073/-.

12. As stated earlier, after the entire sale consideration of Rs.2,65,00,000/- was paid, the Petitioners were requested to proceed with the execution of the sale certificate. It is the case of the Petitioners that the only reason the Petitioners could not obtain registration of the Sale Certificate is on account of the excessive stamp duty demanded by the registering authority by taking into account the alleged arrears of sales tax dues of Icon Oil, in addition to the consideration paid (of Rs.2,65,00,000/-) by the Petitioners to Respondent No.2. It is in this light that the Petitioners once again

applied for and obtained the latest 7/12 extract dated 9th January, 2014 in respect of the secured property. It is at this time that they were shocked and surprised to note that now the said 7/12 extract showed an additional entry. Now, apart from the earlier charge of Rs.4,30,601/- of the *District Industries Centre, Raigad*, for the first time, the said 7/12 extract also reflected a charge of Rs.2,77,72,073/- of the Sales Tax Authorities. This was duly brought to the notice of Respondent No.2 and Respondent No.2 was informed that this charge of the Sales Tax Authorities in the sum of Rs.2,77,72,073/- was not reflected in the 7/12 extract when they purchased the secured property from Respondent No.2. Thereafter, it is stated in the Petition that the Petitioners have obtained physical possession of the secured property with the help of Police Officials of Khopoli Police Station on 3rd April, 2014. This is how they claim to be in possession as well as the owners of the secured property.

13. As mentioned earlier, an order of attachment dated 29th April, 2013 but signed on 2nd May, 2013 (Exh 'Q' to the Petition) was passed by Respondent No.5 attaching the secured property for recovery of the outstanding dues of the Sales Tax Authorities. These dues of M/s Iccon Oil (in the sum of Rs.2,77,72,073/-) were

for the periods 1999-2000, 2001-2002 and 2002-2003. Accordingly, by a letter dated 22nd May 2013, Respondent No.7 (Tahasildar, Khalapur) enclosed a copy of the said order of attachment and directed Respondent No.8 to take further necessary action to record the charge of the Sales Tax Authorities in the sum of Rs.2,77,72,073/-. After the Petitioners obtained possession of the secured property, on 7th April 2014, a visit was paid by the Sales Tax Inspectors to the place of business of Icon Oil for recovery of the sales tax dues. At this time, the Sales Tax Inspectors learnt that the secured property had been sold by Respondent No.2 and the same was in possession of the Petitioners. This was duly recorded by the Sales Tax Inspectors in their submission which is annexed at Exh. 'P' to the Petition.

14. Be that as it may, in furtherance of recovering the Sale Tax dues, on 20th June 2014, Respondent No.3 (Commissioner of Sales Tax, VAT, Admin.) issued a notice under section 62A of the Bombay Sales Tax Act, 1959 to Respondent No.2 (with a copy marked to the Petitioners) inter alia alleging that though the secured property was attached by the Sales Tax Authorities way back in April 2013, Respondent No.2 had sold the same to the Petitioners and that the said transfer being an intent to defraud the

revenue, there was reason to believe that the transfer by Respondent No.2 was void under section 62A of the Bombay Sales Tax Act, 1959.

15. In view of the aforesaid notice, the Petitioners attended the hearing in the Office of Respondent No.3 on 15th July, 2014 and submitted their written submissions inter alia stating that the notice issued was completely illegal and unsustainable in law. It was submitted that the purported new charge of Rs.2,77,72,073/- was recorded in the 7/12 extract of the secured property only after 22nd May 2013, while the Petitioners had bonafide purchased the same by paying the full consideration to Respondent No.2 on 21st March 2013, without any knowledge of the alleged encumbrance of the Sales Tax Authorities. At that time, the only encumbrance recorded in the 7/12 extract was a sum of Rs.4,34,601/- due to *District Industries Centre, Raigad*. It is important to note that in the written submissions filed by the Petitioners, they also intimated the Sales Tax Authorities that the said defaulter M/s Icon Oil was already functioning at another address duly registered under the Maharashtra Value Added Tax Act, 2002.

16. Thereafter, the Petitioners, through their Advocates

and Solicitors, also addressed a letter dated 22nd June 2015 to Respondent No.5 calling upon him to direct the Office of the Respondent No.7 to withdraw / cancel the alleged charge of the Sales Tax Authorities and submit a copy of the written communication to the Petitioners within 7 days of receipt of the said letter. No action was taken on this letter and neither has the impugned order of attachment been lifted and / or cancelled. It is in these circumstances that the Petitioners have approached us inter alia praying that the impugned order of attachment be quashed and set aside.

17. For the sake of completeness, we must mention here that apart from taking action under the provisions of the SARFAESI Act, Respondent No.2 also initiated winding up proceedings against Icon Oil, by filing Company Petition No.653 of 2013 in this Hon'ble Court. In the said Company Petition, on or about 18th November, 2014 Respondent No.5 herein (Sales Tax Officer, CO08) filed Company Application (L) No.603 of 2014 praying that this Court be pleased to direct Icon Oil to settle the dues of the Sales Tax Authorities amounting to Rs.2,77,73,073/-. Thereafter, Company Petition No.653 of 2013 as well as Company Application (L) No.603 of 2014 were disposed of by two separate orders, both dated 18th

March, 2015. By the order passed in the Company Petition (Exh 'W' to the Petition), this Court ordered the winding up of M/s Iccon Oil and appointed the Official Liquidator (Respondent No.6 herein) to take charge of the assets belonging to M/s Iccon Oil. As far as Company Application (L) No.603 of 2014 is concerned, this Court ordered that since Iccon Oil had been wound up, the Government of Maharashtra through the Department of Sales Tax, shall file their claim before the Official Liquidator (Exh 'X' to the Petition). With these directions Company Application (L) No.603 of 2014 was disposed of.

18. In this factual background, Mr Joshi, learned counsel appearing on behalf of the Petitioners, submitted that they are the bonafide purchasers of the secured property under a public auction conducted by Respondent No.2 – SICOM under the provisions of the SARFAESI Act. Admittedly, the Petitioners did not have any notice of the dues of the Sales Tax Authorities either when they bid for the secured property or when the sale was completed in their favour. Mr Joshi further submitted that the sale of the secured property was advertised in the newspapers as required under the provisions of the SARFAESI Act and the Rules framed thereunder. Despite this publication, the Sales Tax Authorities did not inform

Respondent No.2 of its claim or raise any objection to the sale that was to be conducted by Respondent No.2. He submitted that as far back as on 10th September 2012, the Petitioners had bid for the secured property in the sum of Rs.2,21,50,000/- which was subsequently revised on 21st February, 2013 to a sum of Rs.2,65,00,000/-. He submitted that before purchasing the secured property, the Petitioners had undertaken a due diligence of the title of the secured property and obtained a 7/12 extract in respect thereof which only recorded the charge of the *District Industries Centre, Raigad* in the sum of Rs.4,30,601/-. There was no charge of the Sales Tax Authorities reflected in the 7/12 extract dated 15th May, 2012. It was in these circumstances that the Petitioners bid for the secured property and Respondent No.2 was pleased to accept the same on 15th March, 2013. The Petitioners thereafter made full payment of the sale consideration of Rs.2,65,00,000/- on 21st March 2013, the receipt of which was duly confirmed by Respondent No.2 on 1st April, 2013 and the Petitioners were accordingly requested to proceed with the execution of the Sale Certificate.

19. Mr Joshi submitted that even after the purchase of the secured property, they once again obtained a 7/12 extract dated

12th April, 2013 which also did not reflect the purported charge of the Sales Tax Authorities to the tune of Rs.2,77,73,073/-. This alleged charge of the Sales Tax Authorities was for the first time reflected in 7/12 extract dated 9th January, 2014. This was long after the secured property was purchased by the Petitioners in the public auction conducted by Respondent No.2. Looking to all these facts, Mr Joshi submitted that the Petitioners were bonafide purchasers of the secured property for valuable consideration and without any notice of the charge/dues of the Sales Tax Authorities and therefore the impugned attachment order passed by Respondent No.5 in relation to the secured property and belonging to the Petitioners, was arbitrary, capricious, without jurisdiction and in flagrant violation of the principles of natural justice.

20. Mr Joshi additionally submitted that the Sales Tax Authorities have been extremely complacent, if not negligent, in pursuing their claim against Icon Oil. He submitted that on their own showing the assessment orders for the periods 1999-2000, 2001-2002 and 2002-2003 were passed as far back as on 20th October, 2006, 20th October, 2006 and 26th February, 2008 respectively. Despite this, and having their claim crystallized as far back as on 20th October, 2006 and 26th February 2008, the Sales

Tax Authorities did nothing to ensure that their charge / claim is reflected in the 7/12 extract of the secured property. The Sales Tax Authorities being this complacent, could not now decide to chase the secured property in the hands of the Petitioners, who admittedly have no outstanding dues of the Sales Tax Department. He submitted that Respondent No.5 has further been complacent by not pursuing the recovery proceedings against the defaulting Company (Iccon Oil) which is very much in existence and functioning at the address supplied by the Petitioners as is reflected in the written submissions filed by them in answer to the notice issued under section 62A of the Bombay Sales Tax Act, 1959.

21. It was the submission of Mr Joshi that where there was only a transfer of individual assets of the defaulting Company, rather than the defaulting Company being sold as a going concern, those individual assets could not be chased in the hands of bonafide purchasers. He submitted that this charge of the Sales Tax Authorities could not be enforced against a transferee who had no notice of the same, unless by law the requirement of such notice has been waived. He submitted that in the present case, admittedly there has been no waiver of such notice by the Petitioners. For all the aforesaid reasons, Mr Joshi submitted that the impugned

attachment order dated 29th April, 2013 and signed on 2nd May, 2013 (Exh.'Q' to the Petition) is wholly illegal and ought to be set aside by us in our writ jurisdiction under Article 226 of the Constitution of India and the Petitioners are thus also entitled to other consequential reliefs.

22. On the other hand, Mr Sharma, learned counsel appearing on behalf of Respondent No.1, submitted that the facts of the present case would clearly establish that the Sales Tax Authorities were diligent in pursuing their claim against Icon Oil. He submitted that after the assessment orders were passed on 20th October 2006, 20th October, 2006 and 26th February 2008, a notice under section 39 of the Bombay Sales Tax Act, 1959 was served on Icon Oil on 17th November, 2012. Thereafter, a notice dated 19th November, 2012 was issued and served upon Icon Oil under section 178 of the Maharashtra Land Revenue Code, 1966. Thereafter, on 26th December, 2012 an order of attachment in Form No.4 was issued under section 182 of the said Maharashtra Land Revenue Code 1966. Accordingly, on 3rd January 2013, the Tahasildar of Khalapur, District Raigad (Respondent No.7) directed the Talathi of Honad Village (Respondent No.8) to lodge the claim of the Sales Tax Authorities in the 7/12 extract which was duly

acknowledged by the Talathi's Office. On 12th March 2013, the said Talathi, Honad Village informed the Tahasildar, Khalapur that he had taken note of the sales tax dues and made an entry in Ferfar Note 1483 dated 15th January, 2013 as per the directions of the Tahasildar. Thereafter, on 29th April, 2013 additional information was provided in Form No.4 to the Tahasildar, Khalapur, District Raigad regarding the survey numbers. In this factual background, Mr Sharma submitted that the Petitioners had full knowledge of the dues of the Sales Tax long before they decided to purchase the secured property. Having done so with open eyes, the Petitioner today cannot contend that they are bonafide purchasers for value without notice of the claim of the Sales Tax Authorities. He therefore submitted that the impugned order of attachment levied on the secured property is fully justified and the Sales Tax Authorities would be entitled to recover their dues by enforcing their charge against the said secured property.

23. With the help of learned counsel, we have perused the papers and proceedings in this Writ Petition alongwith the impugned order of attachment. It is not in dispute that the secured property was mortgaged inter alia in favour of Central Bank of India who issued a demand notice under section 13(2) of the

SARFAESI Act to Iccon Oil for repayment of the amounts due to it as on 14th March, 2001. Iccon Oil did not comply with the aforesaid demand notice. Therefore, on 17th April 2004, Central Bank of India published a notice in the newspapers notifying that it had taken over possession of the secured property under the provisions of the SARFAESI Act. Thereafter, by a Deed of Assignment dated 31st March 2010, the debts (along with the underlying security) owed by Iccon Oil to Central Bank of India were assigned in favour of Respondent No.2. It is in these circumstances that Respondent No.2, to recover dues, issued a sale notice on 25th August, 2012 inviting offers in respect of the secured property. When this sale notice was published, the Sales Tax Authorities did not object to the sale of the secured property on the ground that they had a claim against Iccon Oil. Be that as it may, pursuant to this sale notice, the Petitioners bid for the secured property as far back as on 10th September, 2012 for a consideration of Rs.2,21,50,000/- (which was subsequently revised on 21st February, 2013 to Rs.2,65,00,000/-).

24. It is also not in dispute that before bidding for the secured property, the Petitioners obtained the 7/12 extract dated 15th May, 2012 in respect of the secured property. This 7/12

extract did not reflect the charge of the Sales Tax Authorities. It was in these circumstances that the Petitioners bonafide believed that the only charge on the secured property was the dues of the *District Industries Centre, Raigad* in the sum of Rs.4,30,601/-. Therefore, the Petitioners bid for the secured property, which bid was duly accepted by Respondent No.2 on 15th March, 2013. In fact, the Petitioners made full payment of the sale consideration of Rs.2,65,00,000/- on 21st March 2013, the receipt of which was duly accepted by the Respondent No.2 on 1st April 2013. From these facts it is clear that the sale of the secured property was confirmed in favour of the Petitioners on 1st April, 2013.

25. Even after the purchase of the secured property, the Petitioners once again obtained a 7/12 extract of the secured property dated 12th April, 2013. Even in this 7/12 extract, the charge of the Sales Tax Authorities (in the sum of Rs.2,77,73,073/-) was not reflected. It is only for the first time on 7th January, 2014 that the charge of the Sales Tax Authorities was reflected in the 7/12 extract of the secured property. This was much after the sale of the secured property was confirmed in favour of the Petitioners. In these circumstances, we find that Mr Joshi is fully justified in contending that the Petitioners had no knowledge or notice of the

charge of the Sales Tax Authorities before they purchased the secured property from Respondent No.2 and therefore, the Sales Tax Authorities cannot enforce their charge against the secured property.

26. As far as the documents relied upon by Mr Sharma are concerned, nothing has been brought to our notice that any of these documents were brought either to the notice of Respondent No.2 or the Petitioners, or that the Petitioners had knowledge (actual or constructive) of the claim/charge of the Sales Tax Authorities, prior to them purchasing the secured property in a public auction conducted under the provisions of the SARFAESI Act.

27. There is no dispute about the fact that the dues of Iccon Oil crystallized in favour of the Sales Tax Authorities by virtue of the assessment orders that were passed as far back as on 20th October 2006, 20th October, 2006 and 26th February 2008 respectively. Despite this, until November 2012, the Sales Tax Authorities took no action whatsoever against M/s Iccon Oil for recovery of their dues. Furthermore, it is also an admitted fact that when the Petitioners purchased the secured property in the public auction conducted by Respondent No.2, no charge of the Sales Tax

Authorities was reflected in the 7/12 extract of the said property. The only charge reflected at that time was a charge of the *District Industries Centre, Raigad* in the sum of Rs.4,30,601/-. In these circumstances, Mr Joshi is fully justified in contending that when they purchased the property, the Petitioners had no notice of the dues payable to the Sales Tax Authorities by Icon Oil and whose property the Petitioners purchased in the public auction.

28. On the issue of enforcement of charge, it would be apposite to refer to a decision of the Supreme Court in the case of ***State of Karnataka & Anr. Vs. Shreyas Papers P. Ltd.***¹ and more particularly paragraphs 18 to 21 thereof (of the SCC report) which read as under:-

“Enforceability of the charge

18. The next limb of Mr Hegde's arguments was that since Section 13(2)(i) of the KST Act creates a charge on the property of the defaulting company, the charge would continue on the properties, even if it changes hands by transfer.

19. While the expression “charge” is not defined by the KST Act, this concept is well known in property law and has been defined by Section 100 of the Transfer of Property Act, 1882 (hereinafter “the TP Act”). Here “charge” is defined as:

“100. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions

¹ (2006) 1 SCC 615 : AIR 2006 SC 865

hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, **save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.**"

(emphasis supplied)

20. As the section itself unambiguously indicates, a charge may not be enforced against a transferee if she/he has had no notice of the same, unless by law, the requirement of such notice has been waived. This position has long been accepted by this Court in Dattatreya Shanker Mote v. Anand Chintaman Datar [(1974) 2 SCC 799, 811 (para 18)] and in Ahmedabad Municipal Corpn. of the City of Ahmedabad v. Haji Abdulgafur Haji Hussienbhai [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04(para 3)] (hereinafter "Ahmedabad Municipal Corpn."). In this connection, we may refer to the latter judgment, which is particularly relevant for the present case.

21. Ahmedabad Municipal Corpn. [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04 (para 3)] was a case where a person was in arrears of property tax, due under the Bombay Provincial Municipal Corporation Act, 1949. Consequently, the Municipal Corporation created a charge over the property of the defaulter. However, the property was sold in execution of a mortgage decree. When the Municipal Corporation purported to exercise their charge over the property, the purchaser in court-auction filed a suit for a declaration that he was the owner of the property and that the arrears of municipal taxes due by the transferor were not recoverable from him by proceeding against the property purchased in the auction. In the appeal before this Court, the Municipal Corporation's main argument was that where the local law provided for the creation of a charge against a property for which municipal taxes were due, transferees of such properties were imputed with constructive knowledge of any charge created against the properties that they had purchased. This argument was, however, rejected. This Court held that while constructive notice was sufficient to satisfy the requirement of notice in the proviso to Section 100 of the TP Act, whether the transferee had constructive notice of the charge had to be determined on the facts and

circumstances of the case. [Ibid., at SCC pp. 765-66 (para 12) : AIR pp. 1207-08(para 8)] In other words, this Court held that there could be no fixed presumption as to the transferee having constructive notice of the charge against the property. In fact, the principle laid down in Ahmedabad Municipal Corpn. [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04(para 3)] has been correctly applied in a sales tax case similar to the present case. [CTO v. R.K. Steels, (1998) 108 STC 161 (Mad)]”

(emphasis supplied)

29. In view of this authoritative pronouncement of the Supreme Court, in the facts of the present case we have no hesitation in holding that the Petitioners, having no knowledge of the charge of the Sales Tax Authorities before they purchased the secured property, the Sales Tax Authorities could not enforce their charge against the secured property.

30. Faced with this situation, Mr Sharma submitted that the ratio of the aforesaid Supreme Court decision cannot be applied to the facts of the present case as the provisions under consideration before the Supreme Court were that of the Karnataka Sales Tax Act, 1957 and not of the Bombay Sales Tax Act, 1959. On this ground he sought to distinguish the judgment of the Supreme Court in the case of **Shreyas Papers**.¹ This argument is stated, only to be rejected. Firstly, the expression “charge”, just like in the Karnataka

Sales Tax Act, 1957, is also not defined in the Bombay Sales Tax Act, 1959. On the issue of enforceability of charge, the Supreme Court, whilst considering the provisions of Section 100 of the Transfer of Property Act, 1882 gave its findings in paragraphs 18 to 21 thereof. These findings are binding on us and we cannot distinguish the aforesaid decision on the specious ground that the same is rendered in the context of the provisions of the Karnataka Sales Tax Act, 1957. Secondly, even otherwise, we find that the very same judgment of the Supreme Court in the case of **Shreyas Papers**¹ has been relied upon by a another Division Bench of this Court in the case of ***M/s.National Steel and Agro Industries Ltd, Mumbai v/s the State of Maharashtra and Others.***² to which one of us (S. C. Dharmadhikari, J.), was a party. This decision was rendered in context to the Bombay Sales Tax Act, 1959. We find that this exact argument was canvassed before the the Division Bench in ***M/s.National Steel and Agro Industries Ltd's case***², and the same was repelled by this Court. The argument canvassed before the Division Bench was that no assistance could be derived from the decision of the Supreme Court in the case of **Shreyas Papers**.¹ After relying upon the very same paragraphs of the

² 2015 (2) ABR 805

Supreme Court judgment that have been reproduced above, this Court repelled the aforesaid contention in paragraphs 35 and 36 of its decision. In this view of the matter, we find no substance in this argument.

31. Mr. Sharma then submitted that admittedly the sale certificate in respect of the secured property has not yet been registered and therefore the title to the property does not pass to the Petitioners. In these circumstances, Mr Sharma submitted that therefore the Sales Tax Authorities were justified in attaching the secured property and enforcing their charge against the same. In the facts of the present case, we are unable to agree with this submission. As stated by the Petitioners in their affidavit in rejoinder, the only reason why the Sale Certificate could not be registered was because the stamp duty demanded by the Registering Authority was taking into account the arrears of Sales Tax dues of Icon Oil, in addition to the consideration already paid by the Petitioners to Respondent No.2. Admittedly, the Petitioners are not liable for this amount as they are not the debtors of the Sales Tax Authorities. Furthermore, when the sale of the secured property was confirmed in favour of the Petitioners, admittedly the charge of the Sales Tax Authorities was not reflected in the 7/12

extract of the said property. We therefore find no substance in the aforesaid argument canvassed by Mr Sharma.

32. We also must note here that Icon Oil was wound up by and under the orders of this Court and this Court by its order dated 18th March 2015, passed in Company Application (L) No.603 of 2014, has given liberty to the Sales Tax Authorities to file their claim before the Official Liquidator. We are informed that the claim of the Sales Tax Authorities has also been filed thereafter with the Official Liquidator of this Court and we are of the view that the Sales Tax Department is free to pursue its claim against Icon Oil.

33. Before parting, we must clarify that we haven't entered upon any controversy regarding the priority the Sales Tax Authorities may have on the sale proceeds received from the sale of the secured property to the Petitioners. The priority, if any, of the Sales Tax Authorities is not in issue before us and therefore we should not be understood to have rendered any finding in that regard. The issue of priorities shall be decided in appropriate proceedings before the appropriate forum, and in accordance with law.

34. In view of our foregoing discussion, Rule is made absolute and the Writ Petition is granted in terms of prayer clauses (a), (b), (e), (g) and (h). However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI J.)