IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 509 OF 2016
WITH
CIVIL APPLICATION NO. 353 OF 2017

Kalyan Jewellers India Private Limited and Anr. …. Petitioners

Versus

Union of India & Ors. …. Respondents

Dr. Milind Sathe, Senior Advocate a/w Mr. Amey Nabor i/by. M/s. A.S.Dayal & Associates for Petitioners.
Mr. Suresh Kumar for Respondent No. 2.
Ms. Rathina Maravarman for Respondent No. 3.

CORAM : R. M. BORDE AND A. S. GADKARI, JJ.
DATE : FEBRUARY 14, 2017.

P.C.

. The Petitioners who claim to be lessees of the premises under Lease Agreement executed on 6th March, 2013 with Respondent No. 4, is objecting to the directions issued by the Tax Recovery Officer – 10(3), Mumbai on 29th October, 2013 instructing the Petitioners to pay the rent of the property directly to the office towards income tax dues. It is claimed that the landlord of the premises owes a sum more than Rs. 400 crores towards the arrears of income tax, recoverable by the Income-tax Department.

2. It is not a matter of dispute that the landlord has committed default in making payment of dues recoverable by Respondent No. 3 – Bank and as a result thereof, Respondent No. 3 – Bank has initiated proceedings before the Mumbai Debt Recovery Tribunal-II, which is registered as Original Application No. 836 of 2016. The Respondent No.3 – Bank is praying for enforcement of the security interest under the RDDB & FI Act,1993 for recovery of the dues and also praying for appointment of Receiver or Commissioner to take custody of the secured assets described in the petition and to sell or dispose of the same by private treaty or public auction or otherwise and to appropriate the net sale proceeds thereof towards the liquidation of the dues of Respondent No.3 – Bank. There are several other prayers made in the Original Application, which need not be reproduced, since those are not relevant for deciding the issue involved in the instant petition. The issue in respect of priority of claims between Bank of Baroda and the Income-tax Department shall have to be dealt with in the Original Application presented by the Bank before Mumbai Debt Recovery Tribunal-II.

3. The learned counsel appearing for Respondent No.3 Bank, on instructions, makes a statement that the Income-tax

Department would be impleaded as a party - Respondent to the proceedings of Original Application and necessary steps would be taken expeditiously.

4. The Respondent No. 3 – Bank shall tender an application seeking amendment for impleadment of Income-tax Department as a party – Respondent within three weeks from today.

5. On making an application for impleadment of Income-tax Department as a party – Respondent, the Debt Recovery Tribunal shall consider the same favourably and permit the original applicant to implead the Income-tax Department as a party – Respondent and shall also permit the amendment relating to the issue of priority of claims if prayed, between Bank of Baroda and Income-tax Department.

6. So far as the notice issued by the Tax Recovery Officer on 29th October, 2013 is concerned, the same shall not be pressed in service, and same shall be deemed to have been recalled.

7. Considering the oral undertaking given by the Petitioners before this Court to deposit an amount of rent receivable by the landlord in respect of leasehold premises, i.e. Respondent No.4 from the month of March-2017 onwards till the

disposal of the original application pending with the Mumbai Debt Recovery Tribunal-II. The deposit of amount by the notice issued by Income-tax Department impugned in the petition shall be deemed to have been recalled and shall not be enforced before the Debt Recovery Tribunal towards monthly lease premium shall be subject to the final orders those would be passed by the Debt Recovery Tribunal in Original Application proceedings initiated by Respondent No.3 – Bank.

8. In view of the directions as above, the writ petition is disposed of.

9. In view of disposal of the writ petition, pending Civil Application does not survive, and as such, stands disposed of accordingly.

10. It is clarified that this Court has not considered the issue of priority of claims between Bank of Baroda and Income Tax Department and it would be open for the Tribunal to decide the said issue on its own merits.

[A. S. GADKARI, J.] **[R. M. BORDE, J.]**