

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 2121 of 2013

and MP Nos. 1 and 2 of 2013

M/s.Canara Bank
Overseas Branch
Spencer Tower II (Ground Floor)
No.770-A, Anna Salai, Chennai 600 002.
Rep. By its Senior Manager Petitioner

Vs.

1. The Assistant PF Commissioner &
Recovery Officer,
Sub-Regional Office,
No.31, Filterbed Road,
Vellore 632 004.
2. Best & Crompton Apparels Ltd.,
No.28 Industrial Estate (North),
Ambattur, Chennai 600 098.
3. Edelweiss Asset Reconstruction Company Ltd.,
Edelweiss House, Off. C.S.T.Road,
Kalina, Mumbai 400 098
Rep By its Authorised Signatory,
Mr.Karan Arora ... Respondents

R-3 is impleaded as per order dated 18.01.2017
by DKKJ in WMP No.215 of 2017 in WP. No.2121 of 2013

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorarified Mandamus calling for the entire records relating
to the impugned auction notice dated 21.01.2013 issued under
Reference No.TN/VLR/74361/RECY/2012, by the 1st Respondent herein
for the sale of the immovable property more fully and
particularly described schedule hereunder in exercise of their
powers conferred under Section 8(B)(1)(a) of the Employees
Provident Fund and Miscellaneous Provisions Act, 1952, read with

Rule 52 to 56 of Second Schedule to Income Tax Act 1961, and to quash the same, in as much as the petitioner herein has got priority first charge in and over the assets of the 2nd respondent and the 2nd respondent being a running company and to consequently direct the 1st respondent herein to notify the sale of the schedule mentioned property in consultation with the petitioner herein.

For Petitioner : No appearance

For Respondents : Mr.K.Gunasekar for R1
Mrs.S.Indumathi Ravi for R3

No appearance for R2

O R D E R

The petitioner challenging against the impugned notice dated 21.01.2013 issued under Reference No.TN/VLR/74361/RECY/2012, by the 1st respondent for the sale of the immovable property more fully and particularly immovable property described schedule in the Writ Petition.

2. Heard Mr.K.Gunasekar, learned counsel appearing for the 1st respondent and Mrs.S.Indumathi Ravi, learned counsel appearing for the 3rd Respondent and No one represented by the petitioner and the 2nd respondent.

3. The authorised signatory of the 3rd respondent has filed an under taking affidavit dated 16.01.2017, and paragraph 4 of the said affidavit reads as follows:

"4. I submit that once the property is sold and the amount realized out of the sale proceeds a sum of Rs.1,02,95,966/- i.e. due and liable to be paid by the 2nd respondent to the 1st respondent shall be paid out of the sale proceeds received by the 2nd respondent in accordance to the provisions of the SARFEASI Act, 2002."

4. According to the learned counsel for the respondent relied upon the decision of the Supreme Court judgment [(2009) AIR SCW 6784] in Maharashtra State Co.op Bank Limited v. Assistant Provident Fund Commissioner & Anr., wherein paragraph 47 of the Judgment it is held that Section 11 of the Employees' Provident Funds and Miscellaneous Provisions Act, gives Statutory priority to the amount due from the employer vis-a-vis all other debts.

jv

5. Therefore, in the light of the above undertaking affidavit filed by the 3rd respondent and in the light of the decision of the Hon'ble Supreme Court cited supra, the Writ Petition is disposed of. No Costs. Consequently, the connected miscellaneous petitions are closed.

sd/

Assistant Registrar(CS II)

/true copy/

Sub Assistant Registrar

jv

To

The Assistant PF Commissioner &
Recovery Officer, Sub-Regional Office,
No.31, Filterbed Road, Vellore 632 004.

+1cc to Mr.K.Gunasekar, Advocate SR.No.3799.

+1cc to M/s.S.Indumathiravi, Advocate SR.No.3621.

W.P. No. 2121 of 2013

SK(CO)
GN(10/02/2017)

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