THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

<u>WRIT PETITION NO.23620 OF 2017</u>

<u>ORDER:</u> {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Smt. S.A.V.Ratnam, learned counsel for the petitioner-Bank and Sri K.Raji Reddy, learned Senior Standing Counsel for the Income Tax Department and, with their consent, the Writ Petition is disposed of at the stage of admission.

Respondent Nos.8 to 10 obtained a loan from the petitioner mortgaging the subject property. The petitioner initiated proceedings under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for brevity) and, thereafter, issued a notice under Section 13(4) of the said Act on 14.09.2016. It took physical possession of the mortgaged property from respondent Nos.8 to 10 and, thereafter, issued a tender-cum-auction notice of the subject properties vide paper notification dated 18.02.2017. The auction was conducted on 22.06.2017, wherein Sri Pothula Siva Prasad, Smt. Rokkam Sudharani and Jangala Suneela were the highest bidders. They are said to have remitted a sum of Rs.51,25,000/- towards partial sale consideration. While matters stood thus, the Deputy Commissioner of Income Tax issued notices to the petitioner-Bank informing them that the subject lands were under attachment for recovery of the Income Tax dues of Rs.60.84 lakhs from M/s. Sai Concrete Pavers Private Limited (the eighth respondent).

Chapter IVA of the SARFAESI Act, 2002 (from Section 26B to Section 26E) was inserted by Section 18 of Act 44 of 2016 with effect from 01.09.2016. Section 26E of the SARFAESI Act relates to the priority of secured creditors, and stipulates that, notwithstanding anything contained in any other law for the time being in force, after the registration of a security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority. The debt due, in the present case, is the income-tax payable by the eighth respondent to the Union of India; and as Section 26E of the SARFAESI Act gives priority in payment of the debts of a secured creditor over other dues, including the taxes payable to the Union of India, the attachment notice is liable to be and is, accordingly, set aside. Needless to state that on the sale of the subject property, if any amount is available, after the entire loan of the borrower with interest and other charges are satisfied, it shall be made available to the Deputy Commissioner, Income Tax for its adjustment to the income-tax dues of the eighth respondent.

The Writ Petition is, accordingly, disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

28th August 2017
RRB