IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Sri Justice ABHINAND KUMAR SHAVILI

<u>WRIT PETITION No.8104 OF 2013</u>

Between:

State Bank of India,
Stressed Assets Recovery Branch,
No.22, 1st Floor, Bangalore City
Branch, J.C. Road, BANGALORE.

...Petitioner

Vs.

The Tax Recovery Officer,
Range-6, Office of the Tax
Recovery Officer, Room No.636,
6th Floor, C Block, IT Towers,
AC Guards, HYDERABAD and another.

.. Respondents

For Petitioner : Sri M. Srikanth Reddy

For Respondents : Sri B. Narasimha Sarma

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.8104 OF 2013

ORDER: *(per V. Ramasubramanian, J)*

The State Bank of India has come up with the above writ petition challenging an order of attachment passed by the 1st respondent herein on 16.01.2013, in respect of a property that was mortgaged to the Bank and which was also sold by the Bank through the Recovery Officer of the Debts Recovery Tribunal.

2. Heard Sri M. Srikanth Reddy, learned counsel for the petitioner and Sri B. Narasimha Sarma, learned Senior Standing Counsel for the respondents.

3. The petitioner Bank sanctioned certain credit facilities to a private limited company by name, Malhar Travels Private Limited, way back on 17.07.1990. As security for the due repayment of the loan, the Director of the borrower, namely, Mr. Suresh Nadgir, deposited the title deeds relating to the property in question, thereby creating an equitable mortgage.

4. On the ground that the borrower committed default in repayment, the Bank initiated proceedings for recovery and for enforcing the mortgage, by filing of suit in O.S. No.162 of 1994. At that time, Recovery of Debts due to Banks and Financial Institutions Act, 1993, had come into force, but the amount to be recovered was lesser than the ceiling limit prescribed in the Act and hence, the Bank sought recourse to a civil suit.

5. A preliminary decree was passed in the suit on 22.11.1996 and it was followed by a final decree on 19.06.2006.

6. The Recovery Officer of the Debts Recovery Tribunal thereafter issued a certificate of recovery on 18.06.2010 and brought the property to sale. The sale was conducted on 28.12.2012 in which three persons participated. The highest bid of Rs.48,75,000/- was accepted and a sale certificate was issued by the Recovery officer.

7. But when the purchaser took the sale certificate to the office of the Sub-Registrar for registration, the same was rejected on the ground that there was an order of attachment passed by the Tax Recovery Officer of the Income Tax department subsisting. Therefore, after getting a copy of the order of attachment passed on 16.01.2013 by the Tax Recovery officer, the Bank has come up with the above writ petition challenging the same, as they are obliged to complete the formality of execution and registration of the sale deed in favour of the auction purchaser.

8. The Income Tax department has filed a counter affidavit claiming that an assessee by name, Mr. M.Someshwar Reddy, committed default in payment of income tax dues and that therefore, an order of attachment pending assessment was passed under Section 281B of the Income Tax Act, 1961, (for short 'the Act') on 10.02.2005. This Someshwar Reddy was a person who purchased the very same property from the borrower who committed default in payment of the loan amount to the Bank. Therefore, obviously he was a person who purchased the property, that was under mortgage to the Bank. Interestingly the purchase by Mr. Someshwar Reddy was in the year 1998, much after the preliminary decree in the suit was passed. Therefore, Someshwar Reddy had not actually acquired a valid title to the property, but at the most could be said to have acquired a right of redemption. But even the right of redemption was lost after the final

decree was passed in 2006. Therefore, the order of attachment passed on 10.02.2005 by the Assessing Officer under Section 281B of the Act itself was not valid. In any case, the said order survived by statutory prescription only for a period of six months. Even if it had been extended, it would have survived only for another two years. After 2007, there was no valid order of attachment pending assessment.

9. But when the Tax Recovery Officer passed an order of attachment on 16.01.2013, the sale by the Recovery Officer of the Debts Recovery Tribunal had already taken place. Therefore, the attachment order passed in respect of a property to which the assessee in default had not acquired a valid title, cannot survive.

10. Hence, the Writ Petition is allowed, the impugned order of attachment is set aside and the Sub-Registrar is directed to register the sale certificate/sale deed upon compliance with the formalities such as stamp duty and registration fee.

11. However, if the Bank has any surplus fund left with them, after appropriating the dues of the borrower, the same shall be paid to the Income Tax department to the extent of the dues by the assessee in default.

12. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

October 25, 2017

KTL