IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.30751 of 2017
and WMP No.33633 of 2017

State Bank of India,
rep. by its Chief Manager,
SME Branch, Walajapet,
Vellore District. ... Petitioner

Vs.

1.The Assistant Commissioner,
Commercial Tax,
Office of the Commercial Tax,
Ambur, Vellore District.

2.The Sub-Registrar,
Ambur, Vellore District.

3.M/s.Ramraj Industries,
rep. by its Partner,
Mrs.Mangaiyarthilagam,
No.16, Periya Kammavara Street,
Ambur Town, Vellore-635 802.

4.The Recovery Officer,
Employee Provident Fund Organisation,
Regional Office, SI TNHB, Phase-III,
Sathuvachari, Vellore-632 009 ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the first and fourth respondents to remove the attachment effected with the office of the second respondent in respect of collateral security/mortgaged property as offered by the third respondent covered under MOD registered as Doc No.4985/2013 S.R.O. Ambur so as to enable the petitioner Bank or its successors to register the sale certificate/sale deed in favour of the auction purchaser/third party (s) in accordance with law.

For Petitioner : Mr.M.L.Ganesh

For R1 : Mrs.G.Dhanamadhri
Government Advocate

For R2	:	Mr.J.Pothiraj, Special Government Pleader
For R3	:	Mr.Avinash Wadhwani
For R4	:	Mr.K.Ramu

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O R D E R

Heard Mr.M.L.Ganesh, learned counsel for the petitioner, Mrs.G.Dhanamadhri, learned Government Advocate for the first respondent, Mr.J.Pothiraj, learned Special Government Pleader for the second respondent, Mr.Avinash Wadhwani, learned counsel for the third respondent and Mr.K.Ramu, learned counsel for the fourth respondent.

2.The petitioner is the State Bank of India and the relief sought for is against the first respondent to remove the attachment effected by them in respect of the property, which has been offered as collateral by the third respondent/borrower to the petitioner/Bank. The petitioner seeks for consequential relief to enable them to register Sale Deed in favour of the auction purchaser.

3.Learned counsel for the third respondent submitted that the Debt Recovery Appellate Tribunal has set aside the sale effected by the Bank in favour of the third party. Therefore, to that extent, the prayer sought for has become infructuous.

4.So far as the first limb of the prayer is to whether the Bank has priority over the dues of the Sales Tax Department. The issue is no longer res integra and has been decided by a Full Bench of this Court in the case of The Assistant Commissioner (CT) vs. the Indian Overseas Bank and another in W.P.Nos.2675 of 2011 etc., batch dated 10.11.2016, to which I was a party and the Court held that financial institution, which is a secured creditor would have 'Priority of Charge' over the mortgaged property over and above the Department of the Government. At this juncture, it would be beneficial to refer to the order passed by the Full Bench.

> “The writ petitions have been listed before the Full Bench in pursuance to the reference order in W.P.No.6267 of 2006 and W.P.No.253 of 2011, in respect of the following issues:-
>
> ''a) As to whether the Financial

Institution, which is a secured creditor, or the department of the government concerned, would have the 'Priority of Charge' over the mortgaged property in question, with regard to the tax and other dues.

b) As to the status and the rights of a third party purchaser of the mortgaged property in question.''

2.We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principal Act, which reads as under:-

''31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation. - For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.''

3.There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with ''notwithstanding'' clause and has come into force from 01.09.2016.

4.The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.

5.The aforesaid would, thus, answer question (a) in favour of the financial institution, which is a secured creditor having the benefit of the mortgaged property.

6.In so far as question (b) is concerned, the same is stated to relate only to auction sales, which may be carried out in pursuance to the rights exercised by the secured creditor having a mortgage of the property. This aspect is also covered by the introduction of Section 31B, as it includes ''secured debts due and payable to them by sale of assets over which security interest is created''.

7.We, thus, answer the aforesaid reference accordingly.

8.The matters be placed before the roster Division Bench for dealing with the individual cases."

5.Thus, following the above order, the attachment of the mortgaged property by the Sales Tax Department is held to be without jurisdiction and accordingly, this writ petition to that extent is allowed and the attachment effected by the first respondent shall stand removed forthwith. This order shall be intimated by the first respondent to the second respondent to make necessary entry in his records. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner,
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Office of the Commercial Tax,
Ambur, Vellore District.

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4.The Recovery Officer,
Employee Provident Fund Organisation,
Regional Office, SI TNHB, Phase-III,
Sathuvachari, Vellore-632 009.

+1cc to Mr.V.Raghavachari, Advocate SR.No.3947
+1cc to Mr.L.Ganesh, Advocate SR.No.3966
+1cc to Mr.K.Ramu, Advocate SR.No.4355
+1cc to Government Pleader SR.No.4647

W.P.No.30751 of 2017

CO()
GMD(10/02/2018)