In the High Court of Judicature at Madras

Dated : 04.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.11911 of 2018

M/s.Indian Bank rep.by its
Authorized Officer
D.Sivasubbramanian ...Petitioner

Vs

1.The Commissioner, Corporation of
Greater Chennai, Ripon Buildings,
Chennai-3.

2.A.Murugeshan, Proprietor, Mercury
Impex ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the first respondent to remove the lock and seal affixed on the secured asset for payment of property tax arrears to enable the petitioner to take physical possession of the immovable property to bring the property for auction sale to appropriate the sale proceeds in the loan account of the second respondent.

For Petitioner : Mr.S.Parthasarathy
For Respondent-1 : Mr.R.Arunmozhi

ORDER

Mr.R.Arunmozhi, learned Standing Counsel accepts notice for the first respondent. In the light of the orders this Court proposes to pass, notice to the second respondent is dispensed with and the writ petition itself is taken up for final disposal.

2. The petitioner bank advanced certain financial facilities to the second respondent, who is the proprietor of a proprietorship concern. The second respondent defaulted in repayment of the monies advanced. Consequently, there is amount of more than Rs.74 lakhs payable by the second respondent to the petitioner bank.

3. Thereafter, the petitioner bank initiated proceedings under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 for recovery of the amounts

payable by the borrower by filing O.A. No.113 of 2017 before Debts Recovery Tribunal-I, Chennai. The said original application has been allowed by the Tribunal on 02.4.2018 and a recovery certificate has been issued in favour of the petitioner bank. The petitioner bank also obtained an order on 12.7.2017 under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 from the learned Chief Metropolitan Magistrate, Chennai-3 in Crl.M.P.No.7139 of 2017 for providing assistance to recover possession of the mortgaged asset.

4. The petitioner bank is unable to proceed further because the first respondent - Corporation affixed a seal on the mortgaged property for recovery of property tax dues. It appears that a sum of Rs.64,500/- is due and payable by the second respondent to the first respondent - Corporation and since the second respondent defaulted in payment of the property tax, the first respondent - Corporation rightly attached the property.

5. The petitioner is before this Court contending that under the provisions of Section 31-B of the Recovery of Debts and Bankruptcy Act, 1993, rights of the secured creditors to realize 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, the State Government or Local Authority. Therefore, the petitioner would contend that they have the rights to realize the debts due and payable by the borrower - second respondent by sale of the secured asset, over which, the security interest is created and shall have priority over the property tax arrears due and payable to the first respondent - Corporation.

6. There appears to be no quarrel on the legal position though there is an appeal filed by the Revenue against the order of the Full Bench of this Court dated 10.11.2016 in W.P.No.2675 of 2011 [AC (CT), Anna Salai III Assessment Circle Vs. Indian Overseas Bank]. In my considered view, this Court is not inclined to go into the said controversy, as the petitioner is a nationalized bank, which has security interest over the property mortgaged in their favour.

7. That apart, the dues payable to the first respondent - Corporation is not huge and it is stated to be lesser than Rs.65,000/-. In order to give quietus to the matter, this Court is inclined to issue the following directions while preserving the legal submissions made by the petitioner before this Court.

8. Accordingly, the writ petition stands disposed by directing the petitioner to pay the arrears of property tax payable by the second respondent for the property mortgaged to the first respondent - Corporation as indicated. On such payment, the first respondent – Corporation shall remove the seal affixed in the property in question and it is open to the petitioner to recover the amount of property tax, which would be remitted by the petitioner in pursuance of the orders of this Court, from the second respondent. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

The Commissioner,
Corporation of Greater Chennai, Ripon Buildings,
Chennai-3.

+1cc to Mr.R.ARUNMOZHI, Advocate, S.R.No.34603
+1cc to Mr.S.PARTHASARATHY, Advocate, S.R.No. 34545

WP.No.11911 of 2018

TR(12/06/2018)