BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P.(MD) No.4861 of 2018
and
W.M.P.(MD) No.4861 of 2018

Tamilnadu Mercantile Bank Ltd.,
having one of its branches at
Door No.280, Madurai Road,
Virudhunagar - 626 001.
Virudhunagar District, rep. by
The Chief Manager/Authorised Officer
Mr.B.Sivakumar ... Petitioner

-vs-

1.The Joint Sub Registrar No.1,
Office of the District Registrar,
Virudhunagar.

2.The Commercial Tax Officer,
Commercial Tax Office,
Virudhunagar.

3.S.Sridharan ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the attachment entry made by the 2nd respondent wards tax arrears, registered as Doc.No.13/2017 in Vo.No./P.No.797/89 dated 13.12.2017 registered on the file of the 1st respondent on 19.12.2017 and the communication of the 1st respondent dated 20.02.2018 refusing registration of their sale certificate and quash/delete the said entry by lifting the attachment and for a consequential direction to the 1st respondent to register the sale certificate executed by the petitioner bank in favour of the 3rd respondent within a time period to be fixed by this Court.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.D.Muruganandam, AGP for RR1&2
Mr.V.Meenakshi Sundaram for R3

O R D E R
(Order of the Court was made by T.S.SIVAGNANAM, J.)

Heard Mr.N.Dilip Kumar, learned counsel for the petitioner bank and Mr.D.Muruganandam, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.V.Meenakshi Sundaram, learned counsel for the third respondent.

2.The petitioner has filed this writ petition challenging the order passed by the first respondent refusing to register the sale certificate on the ground that the Commercial Tax Department has created an encumbrance on the property. The Commercial Tax Department claims to have a charge over the property on account of sales tax arrears payable by the borrower. The question would be as to whether the petitioner, who is a secured creditor would be priority over all other dues. This issue is no longer res-integra and it has been settled by the Full Bench of this Court in the case of Assistant Commercial Tax Officer (CT) V. Indian Overseas Bank – 2016(6) CTC 769. For better appreciation, the decision is quoted herein:

> "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."

3.The above decision of the Full Bench squarely answers the legal issue, wherein, it has been held that the secured creditor is entitled to realise secured debts due and payable by sale of assets over which security interest is created and 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. Therefore, the impugned order has to be held to be unsustainable in law.

4.For the above reason, the writ petition is allowed. The impugned order is set aside. The first respondent is directed to register the sale certificate after deleting the encumbrance created at the instance of the Commercial Tax Department and the sale certificate shall be registered in favour of the third respondent, within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Joint Sub Registrar No.1,
Office of the District Registrar,
Virudhunagar.

2.The Commercial Tax Officer,
Commercial Tax Office,
Virudhunagar.

+1cc to M/S.N.Dilip Kumar, Advocate SR.No. 53406
+1cc to M/S.D.Muruganandam, Advocate SR.No. 53975
+1cc to M/S.V.Meenakshi Sundaram, Advocate SR.No. 53508

W.P.(MD) No.4861 of 2018
and
W.M.P.(MD) No.4861 of 2018
07.03.2018

Arul
JM/SV MMS/SAR 4/20.03.2018/4P/6C