BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19827 of 2018 and
W.M.P.(MD)No.17608 of 2018

State Bank of India,
stressed Assets Management Branch,
1112, Raja Plaza Avinashi Road,
Coimbatore, 641 037,
represented by its Chief Manager. ... Petitioner

Vs.

1. The Commercial Tax Officer,
   No.70/2010, Sri Gokulam Complex (1st floor),
   Thuraiyur Salai, Musiri-621 211.

2. The District Registrar,
   Registration Department,
   Trichy District,
   Cantonment, Trichy.

3. The Sub Registrar,
   Taluk Office Campus,
   Musiri-621 211, Trichy.

4. M/s.Sri Vasavi Spinning Mills,
   represented by its Partner,
   Mr.Purushothaman,
   AAG Arts College Post,
   Vadugapatti, Musiri Taluk,
   Tiruchirappalli District.

5. S.Purushothaman
6. P.Geethalakshmi ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records in relation to the proceedings of the first respondent in Na-A 1243/2013-2014(A1) dated 17.10.2013 calling upon the second and third respondents to notify attachment in relation to the properties subject to prior mortgage with the petitioner bank and quash the same and consequently directing the second and third respondents to cancel / delete the encumbrance notified as D.No.16/2013 dated 17.10.2013 in the office of the third respondent.

For Petitioner : Mr.A.R.M.Ramesh
For R1 : Mr.K.Mu.Muthu
Additional Public Prosecutor
For R2 & R3 : Mr.M.Murugan, Government Advocate

ORDER

The petitioner had advanced loan to the fourth respondent. The respondents 5 and 6 stood as guarantors. Their title deeds were deposited to secure the loan transaction. The borrower committed default. The petitioner hence initiated proceedings under the SARFAESI Act. In the meanwhile, the first respondent herein raised a claim over the very same mortgaged property on the ground that the private respondents herein have tax liability and therefore charge must be created over the property mortgaged in favour of the petitioner. The third respondent herein made an entry in this regard by attaching the mortgaged property. To raise the same, the present writ petition has been filed. The petitioner challenges the impugned proceedings dated 17.10.2013 whereby a charge has been created over the property in question.

2.It is not in dispute that such a charge was created by the first respondent vide the impugned proceedings dated 17.10.2013 while the mortgage was created much earlier namely on 23.03.2011. Now the only question that arises for consideration is as to whether the claim of the first respondent will prevail over the claim of the secured creditor.

3.As rightly pointed out by the learned counsel for the petitioner bank, the issue is no longer res integra. The Hon'ble Full Bench of the Madras High Court in the decision reported in ***2016 (6) CTC 769*** in the case of ***Assistant Commissioner(CT), Annasalai III, Assessment Circle, Chennai Vs Indian Overseas Bank, represented by it Manager*** held that the financial institution which is a secured creditor will have the power of charge over the mortgaged property in question. The Hon'ble Full Bench answered the reference in favour of the secured creditor in view of the statutory amendments made to RDDB & FI Act and SARFEASI Act, 2002.

4.Section 31 B of the RDDB & FI Act and Section 26 E of SARFAESI Act are as follows:

"Section 31B of RDDB & FI Act : -

Priority to secured creditors

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

Section 26 E of SARFAESI Act :-
Priority to secured creditors
Notwithstanding anything contained in any other law for the time being in force, after the registration of 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."

5.The learned Government Advocate submits that the decision of the Hon'ble Full Bench has been challenged before the Hon'ble Supreme Court by filing an SLP.

6.Therefore, in this view of the matter, respectfully following the Hon'ble Full Bench decision reported in ***2016 (6) CTC 769***, the order impugned in this writ petition is set aside. The respondents 2 and 3 are directed to cancel the encumbrance created in respect of the mortgaged property in question pursuant to the impugned proceedings of the first respondent dated 17.10.2013.

7.Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Commercial Tax Officer,
   No.70/2010, Sri Gokulam Complex (1st floor),
   Thuraiyur Salai, Musiri-621 211.

2. The District Registrar,
   Registration Department,
   Trichy District,
   Cantonment, Trichy.

3. The Sub Registrar,
   Taluk Office Campus,
   Musiri-621 211, Trichy.

+ 1 CC TO Mr.A.R.M.RAMESH, ADVOCATE IN SR No. 94723
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 94770

PNN
TE/SV/SAR-4 : 30/11/2018 : 4P/6C