

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

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND**

*** HON'BLE MS. JUSTICE J. UMA DEVI**

+Writ Petition No.33417 of 2018

Date: 04-12-2018

#Between:

M/s. ICICI Bank Limited, having its Branch Office
At ICICI Bank Towers, Plot No.12, Financial District,
Nanakramguda, Gachibowli, Hyderabad, represented
By its Authorised Signatory, Mr. Sreedhar Inampudi

... Petitioner

And

Tax Recovery Officer-I, Income Tax Department,
Room No.833, 8th floor, IT Towers, A.C. Guards,
Hyderabad and 3 others

... Respondents

! Counsel for the Petitioner : Mr. G. Kalyan Chakravarthy

^ Counsel for Respondents : Mr. K. Raji Reddy, counsel for
Income Tax Department
G.P. for Revenue (Telangana)
Mr.C.P.Ramasamy, for
R-3

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? Cases referred

- 1) Manu/AP/0251/2018
- 2) 1980 122 ITR 227 (Bombay)
- 3) AIR 2007 Madras 118
- 4) 2009 21 VST 505 (SC)
- 5) (2015) 2 SCC 1

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.33417 of 2018

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

The ICICI Bank has come up with the above writ petition challenging an order of attachment dated 14-03-2018 issued by the Tax Recovery Officer-I of the Income Tax Department under Rule 48 of the Second Schedule to the Income Tax Act, 1961.

2. We have heard Mr. G. Kalyan Chakravarthy, learned counsel for the petitioner, Mr. K. Raji Reddy, learned senior standing counsel for the Income Tax Department, Mr. C.P. Ramaswamy, learned counsel appearing for the 3rd respondent and the learned Government Pleader for Revenue (Telangana) for the 2nd respondent.

3. The main ground on which the ICICI Bank has come up with the above writ petition is that a company by name M/s. Sojiram Ispat Private Limited availed financial assistance from the petitioner-bank, way back in June, 2011 and that the 3rd respondent herein guaranteed the repayment of the loan and also mortgaged the immovable properties bearing Plot Nos.B-52 and B-53 situated at Assisted Private Industrial Estate, Balanagar, Hyderabad. After the borrower company failed to repay the outstanding amounts and their account became a Non Performing Asset, the petitioner bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act, 2002) and sold the property and also got the Sale Certificate issued. But,

when an attempt was made to have the sale certificate registered, the Sub-Registrar refused on the ground that there was an order of attachment issued by the Tax Recovery Officer of the Income Tax Department. Therefore, challenging the order of attachment, the Bank has come up with the above writ petition.

4. The Tax Recovery Officer, who is the 1st respondent herein, has filed a counter affidavit, primarily contending that the impugned attachment is pursuant to a Tax Recovery Certificate, which was issued pursuant to an Order of Assessment relating to the Assessment Year 2009-10 and that since the proceedings for assessment were under Section 143 (2) of the Income Tax Act, 1961, which were pending on the date of creation of the mortgage, the mortgage itself was null and void in view of the provisions of Section 281 (1) of the Income Tax Act, 1961.

5. We have carefully considered the rival contentions.

6. The problem posed in this writ petition could have been easily resolved, had Section 26E of the Securitisation Act, 2002, inserted by way of amendment under Central Act 44 of 2016 been notified. The proceedings initiated by the petitioner bank in this case are under the Securitisation Act, 2002 and hence, the issue raised in the writ petition requires detailed consideration.

7. For an easy resolution of the dispute on hand, it is necessary to have a look at the timeline of events. We shall present the timeline in two parts, (i) one relating to the creation of the mortgage in favor of the Bank and the proceedings under the Securitisation Act, 2002 and (ii)

the other relating to the initiation of proceedings under the Income Tax Act.

I. Timeline relating to the Banker's action:

Date	Event
30-06-2011	The bank sanctions Cash Credit Facility
11-07-2011	The 3 rd respondent-guarantor creates a mortgage of the properties in question in favour of the petitioner-bank.
30-11-2012	The borrower's account becomes NPA
16-02-2013	Demand Notice under Section 13 (2)
19-06-2013	Possession Notice under Section 13 (4)
31-01-2017	Order of the District Magistrate under Section 14 for possession
12-06-2017	Possession taken, not through the Advocate Commissioner, but through Police
08-11-2017	Sale of the property in public auction
07-12-2017	Sale Certificate issued
14-12-2017	A writ petition in W.P.No.19442 of 2017 filed by the 3 rd respondent, challenging the action of the bank in taking physical possession through Police is allowed by this Court and the possession was directed to be restored to the owner. However, the auction sale was not the subject matter of the writ petition and hence, the High Court order does not deal with the validity of the sale.
01-03-2018	The bank redelivered possession to the 3 rd respondent as per the order of this Court
09-03-2018	A fresh application is filed by the bank under Section 14
05-05-2018	A fresh order under Section 14 is passed, but the Commissioner finds a tenant in the property. However, he undertakes to vacate the premises.
12-07-2018	A fresh writ petition in W.P.No.18947 of 2018 challenging the order under Section 14 is filed, but the same is dismissed by this Court. While dismissing the writ petition, this Court holds that even the auction in favour of the 4 th respondent herein cannot be held to be invalid.
21-07-2018	Possession of the property is taken by the bank
Last week of July, 2018	The bank approaches the Sub-Registrar for registration of the sale certificate, but the Sub-Registrar refuses to

	register, on the ground that there was an attachment by the Income Tax Department.
01-08-2018	The bank gives a representation to the Tax Recovery Officer, for raising the order of attachment. However, there was no reply.
14-09-2018	The bank files the above writ petition.

II. Timeline relating to the events connected with the Income Tax

Department.

Date	Event
31-07-2009	Sri Gopal Agrawal, Managing Partner of the 3 rd respondent files a return of income.
September 2010	The case of Sri Gopal Agrawal was selected for scrutiny through CASS and a notice was issued under Section 143 (2) of the Income Tax Act, 1961
23-02-2011	A Notice under Section 142 (1) of the Income Tax Act, 1961 is issued.
27-12-2011	A revised Order of Assessment is passed, resulting in a liability of Rs.6,61,83,812/-.
27-12-2011	A notice of demand under Section 156 of the Income Tax Act, 1961 is issued.
09-01-2014	A Tax Recovery Certificate is issued
	Sri Gopal Agrawal appears before the Income Tax Officer and offers the immovable properties in question, as available for attachment, in view of his success in W.P.No.19442 of 2017 challenging the proceedings under Section 14 of the Securitisation Act, 2002.
14-03-2018	The Tax Recovery Officer attaches the property

8. Keeping in mind the above timelines of events, let us now take a look at the relevant provisions of the Income Tax Act, on the basis of which the Income Tax Department asserts its right to have the property attached.

9. Sections 220 to 232 of the Income Tax Act, 1961 prescribes the modes of collection and recovery of tax. The moment any tax,

interest, penalty, fine or any other sum becomes payable consequent upon an order passed under the Act, the Assessing Officer is obliged to serve a notice of demand upon the assessee, under Section 156 of the Act. The notice of demand is to be in the prescribed form. Under Section 220 (1), any amount specified in the notice of demand under Section 156, should be paid within 30 days of service of the notice. The period of notice can even be lesser than 30 days, if certain conditions are specified.

10. Under Section 220 (4), an assessee will be deemed to be in default, if the amount indicated in the notice of demand is not paid within the time prescribed.

11. When an assessee is in default or deemed to be in default, the Tax Recovery Officer may draw up, in terms of Section 222 (1), a statement in the prescribed form, specifying the amount of arrears due from the assessee and shall thereafter proceed to recover the amount specified in the certificate by one or more of the following modes namely:

- (1) Attachment and sale of assessee's movable property;
- (2) Attachment and sale of assessee's immovable property;
- (3) Arrest of the assessee and his detention in prison;
- (4) Appointment of a Receiver for the management of the assessee's properties.

12. The Recovery under any one or more of the modes stipulated in Section 222 (1) should be in accordance with the rules laid down in the Second Schedule. Section 226 also prescribes other

modes of recovery, in cases where no Certificate of Recovery is drawn up under Section 222. Similarly, Section 232 recognises the fact that apart from the modes of recovery specified in Chapter XVII of the Income Tax Act, the Department will always have the right either to file a suit for recovery of money or to take recourse to any other law relating to recovery of dues to the Government.

13. In order to make the procedure and modes of collection and recovery stipulated in Chapter XVII D of the Act more meaningful, Section 281 of the Act contains a declaration that any transfer or creation of charge on the assets of the assessee, during the pendency of the proceedings under the Act shall be void. Since the contentions raised by the learned standing counsel for the Department and the learning counsel appearing for the 3rd respondent revolve entirely around Section 281, the same is extracted as follows:

“281 (1) Where, during the pendency of any proceeding under this Act or after the Second Schedule thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise:

Provided that such charge or transfer shall not be void if it is made-

- (i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee; or*
- (ii) with the previous permission of the Assessing Officer.*

(2) This section applies to cases where the amount of tax or other sum payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value.

Explanation- In this section, “assets” means land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of

the assets aforesaid does not form part of the stock-in-trade of the business of the assessee)”

14. Though sub-section (1) of Section 281 declares that any charge created on the assets of the assessee or any transfer made by the assessee of his assets during the pendency of any proceedings under the Act shall be void, two questions have come up repeatedly before courts. The first is as to whether all transfers made by the assessee during the pendency of the proceedings would automatically become null and void, without anything being done by any statutory authority or court. The second question is as to whether the Tax Recovery Officer or the Civil Court, which is competent to issue a declaration of nullity and voidity of transfers under Section 281 (1) of the Income Tax Act.

15. On the second question, the Supreme Court held in ***The Tax Recovery Officer-II v. Gangadhar Vishwanath Ranade*** (AIR 1999 SC 427) that the Tax Recovery Officer cannot declare any transfer to be void and that the only course of action open to the Revenue is to file a suit in terms of Rule 11 (6) of the Second Schedule to the Income Tax Act, 1961. However, in ***Shriya Bhupal v. the Assistant Commissioner of Income Tax*** (W.P.No.11629 of 2007, dt.2-5-2018)¹, this very Bench took a view that after the amendment to Section 281 (1) of the Income Tax Act, 1961, it may not be necessary to drive the Income Tax Department to the Civil Court to seek a declaration of nullity and voidity of the transfer under Section 281 (1) of the Act. The assessee has taken the said decision on appeal to the

¹ Manu/AP/0251/2018

Supreme Court in S.L.P. (Civil) No.12299 of 2018 and the Supreme Court has ordered notice in the Special Leave Petition on 18-05-2018.

16. On the first question as to whether all transfers made by the assessee during the pendency of the proceedings under the Act become automatically null and void, we must search for an answer from the Second Schedule to the Income Tax Act, 1961. The Second Schedule contains a set of Rules specifying the modes of recovery and the procedure to be followed. The Second Schedule contains a set of 94 Rules, divided into six parts. Part-I contains general provisions, Parts-II and III contain the rules relating to attachment and sale of movable and immovable properties respectively, Part-IV contains the provisions for appointment of a Receiver, Part-V contains the provisions for arrest and detention of the defaulter and Part-VI contains some miscellaneous provisions. We are not concerned in this case with any of the Rules contained in Parts II and IV to VI.

17. The attachment of an immovable property under Section 222 (1) (b) is to be made in terms of Rule 48 of the Second Schedule. The manner in which Rule 48 is drafted, gives a clue as to whether the nullity and voidity stipulated in Section 281 is automatic or not. Rule 48 of the Second Schedule reads as follows:

“48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.”

18. We have already extracted Section 281. If the declaration of nullity and voidity under Section 281 (1) is automatic, then there is no

necessity for the Law Makers to empower the Income Tax Officer to pass an order of attachment under Rule 48 prohibiting all transfers and the creation of charge on the properties. The fact that Section 281 requires a catalyst to ignite it is made clear by Rule 48.

19. Apart from Rule 48, Rule 16 of the Second Schedule also throws light upon the interpretation to be given to Section 281. Rule 16 (1) declares that the moment a notice is served on a defaulter under Rule 2, he becomes incompetent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer. Rule 16 (1) goes further to say that even a Civil Court cannot issue any process against such a property in execution of a decree.

20. Rule 16 (2) declares as void any private alienation of the attached property. ***While Section 281 (1) declares all transfers made during the pendency of the proceedings upto the stage of issuance of a notice under Rule 2 void, Rule 16 (2) takes over from the stage of attachment. In other words, the field of operation of Section 281 and Rule 16 are different. The voidity under section 281 is from the stage of commencement of proceedings upto the stage of issue of notice under Rule 2. The voidity under Rule 16 is from the stage of attachment.*** Rule 16 Reads as follows:

16. (1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment."

21. Since Rule 16(1) refers to a notice under Rule 2 as the trigger point, let us take a look at Rule 2. It reads as follows:

"When a certificate has been drawn up by the Tax Recovery Officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realize the amount under the schedule"

It is seen from Rule 2 extracted above that the notice to be issued thereunder, can be issued only after a Certificate of Recovery is drawn up by the Tax Recovery Officer under Section 222 (1).

22. A combined reading of Rules 2 and 16 would show that the sequence of measures to be taken by the Tax Recovery Officer for the attachment and sale of the property of an assessee in default would be as follows:

- (1) First a notice of demand is to be served on the assessee by the Assessing Officer under Section 156.
- (2) The non-payment of the amount stipulated in the notice of demand would make the assessee a defaulter under Section 220 (4).
- (3) Once an assessee becomes a defaulter, a Tax Recovery Certificate is to be issued under Section 222 (1) by the Tax Recovery Officer.

- (4) After the drawing up of the Tax Recovery Certificate under Section 222 (1), the Tax Recovery Officer should serve a notice under Rule 2 of the Second Schedule, requiring the defaulter to pay an amount specified in the certificate within 15 days of service of the notice.
- (5) After the service of notice under Rule 2, the defaulter becomes incompetent under rule 16 (1) to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer.
- (6) If the amount mentioned in the notice issued under Rule 2 is not paid within the time specified in the notice, the Tax Recovery Officer may attach the property under Rule 48.
- (7) Once an order of attachment is passed, any private alienation of the attached property becomes void in terms of rule 16 (2).

23. If we keep in mind the sequence of steps to be taken first by the Assessing Officer and then by the Tax Recovery Officer in terms of Section 222 (1) read with Rules 2, 4, 16 and 48, it will be clear that they are compartmentalized into 3 sections, (i) the first, up to the issue of a certificate of recovery (ii) the second, from the issue of a certificate of recovery upto the attachment of the property for non compliance with the demand made under Rule 2 and (iii) the third, the voidity of all transfers from the date of the order of attachment.

24. Section 281 (1) operates from the stage of commencement of proceedings under the Act upto the stage of service of a notice of demand under Rule 2. Rule 16 (1) operates from the stage of service

of a demand under Rule 2 upto the stage of attachment. Rule 16 (2) takes over from the stage of attachment. Among these 3 provisions namely section 281 (1), Rule 16(1) read with Rule 2 and Rule 16(2), only the first (section 281) and the third (rule 16[2]) talk about voidity. Rule 16 (1) merely talks about prohibition of alienation.

25. Therefore the only way Section 281 (1) can be reconciled with sub-rules (1) and (2) of Rule 16 is to hold that up to the stage of issue of an attachment in terms of Rule 48, the transfers made by the assessee in default can be declared void only if an exercise is carried out by some one (be it the Tax Recovery Officer or a Civil Court). But after an attachment is made, the declaration of voidity under Section 281 (1) becomes automatic without any further effort on the part of any one. This is in view of sub-rule (2) of Rule 16.

26. The conclusion that we have reached as above, is also fortified by the provisions of Rule 11 of the Second Schedule. Rule 11 empowers the Tax Recovery Officer to investigate into all claims and objections made to the attachment or sale in execution of a certificate of recovery. A detailed procedure is prescribed in sub-rules (3) and (4) of Rule 11 as to how the investigation is to be carried out. Sub-rule (5) of Rule 11 empowers the Tax Recovery Officer to disallow any claim or objection to the attachment or sale, if he is satisfied after investigation that the property was in possession of the defaulter as his own property or that the property was in possession of some other person in trust for the defaulter or that the property was in occupation of a tenant paying rent to the defaulter. If an order rejecting the claim or

objection is passed by the Tax Recovery Officer under Rule 11 (6), the party against whom such an order is made, may move the Civil Court to establish his right, in terms of Rule 11 (6).

27. The procedure prescribed in Rule 11 for the investigation of claims and objections to the attachment or sale of a property, is relatable to the proviso to sub-section (1) of Section 281. It may be seen from the main part of sub-section (1) of Section 281 that the same declares all transfers and creation of charges to be void. But the proviso to sub-section (1) carves out an exception, in cases where the creation of the charge or the transfer was for adequate consideration and without notice of the pendency of any proceeding under the Act. What is important to note from the proviso (i) is that the exception carved out therein may be available only up to the stage of issue of an order of attachment. The proviso (i) to sub-section (1) of Section 281 uses the words “***without notice of the pendency of such proceeding***”. Therefore, an assessee or a transferee or a mortgagee can claim the benefit of proviso (i) only if the transfer has been made or charge created before the issue of an order of attachment, but during the pendency of the proceedings under the Act. Once an order of attachment is to be issued, then Rule 16 (2) will come into play and the benefit of the proviso to sub-section (1) of Section 281 may not be available.

28. Therefore, it is clear that the proviso (i) to sub-section (1) of Section 281 provides an escape route for innocent third parties, to whom the property of the assessee is transferred during the pendency

of the proceedings, but before an attachment is ordered. This compartmentalization is very important to be noted, in view of the fact that during the pendency of the proceedings for assessment, an assessee does not become an assessee in default. Section 281 (1) cannot be interpreted to mean that every assessee is likely to become an assessee in default and therefore, all transfers effected by him even before he becomes a defaulter are null and void.

29. Keeping in mind the fundamental premise on which the scheme of Section 281 read with Section 222 and the Second Schedule to the Act operates, let us now come back to the facts of the case. The timeline of events Part-II, which we have furnished elsewhere, shows that the 3rd respondent herein filed a return of income on 31-07-2009. His case was selected for scrutiny through CASS. Notices under Section 143 (2) were issued in September 2010 and February 2011. A notice under Section 142 (1) was issued on 23-02-2011. The order of assessment itself was passed only on 27-12-2011 under Section 143 (3). Consequently, the demand notice under Section 156 was issued only on 27-12-2011, giving the Managing Partner of the 3rd respondent thirty days time. Even if the period of thirty days is counted from the date of the notice namely 27-12-2011, the notice period would expire on 26-01-2012. Therefore, the Managing Partner of the 3rd respondent became an assessee in default in terms of Section 220 (4), only on 26-01-2012. It is only thereafter that a notice ought to have been issued under Rule 2. We do not know the date on which the notice under Rule 2 was issued.

30. However, it is an admitted fact that the Tax Recovery Certificate was issued on 09-01-2014. The order of attachment was issued on 14-03-2018.

31. But the mortgage was created by the 3rd respondent in favour of the petitioner-bank on 11-07-2011, much before the order of assessment was passed under Section 143 (3) on 27-12-2011. In other words, the assessee was nowhere near the point of being declared as an assessee in default on the date of creation of the mortgage. Hence, the creation of the mortgage cannot be said to have automatically become void in terms of Section 281 (1) merely because of the pendency of the proceedings under Sections 143 and 142. It required something more to be done, but the same was not done in this case. As a matter of fact even an investigation under Rule 11 was not carried out in this case. Therefore, the order of attachment is clearly illegal. On the date on which the order of attachment was passed, the property had already been sold by the petitioner-bank, in exercise of the power conferred upon the bank under the Securitisation Act, 2002.

32. It is important to note one more aspect. Section 281 (1), by its very nature operates only up to the stage of service of notice under Rule 2 of the Second Schedule. Therefore, Section 281 (1) obviously deals with a situation, which can be compared to fraudulent preferences dealt with by the Insolvency Laws. Therefore, what is applied to an assessee (or an insolvent under the Insolvency Laws) cannot be applied to a secured creditor like the bank.

33. There appears to be no provision in the Income Tax Act, by which a first charge is created automatically on the properties of the assesseees. There is no provision in the Income Tax Act similar to Section 16C of the Andhra Pradesh General Sales Tax Act, 1957.

34. It is by now well settled that wherever the statute does not create a first charge over the property, the crown's debt does not take precedence over the claim of the secured creditor. A useful reference can be made in this regard to the decision of the Full Bench of the Madras High Court in ***U.T.I. Bank Ltd., v. Deputy Commissioner of Central Excise***².

35. In ***Central Bank of India v. State of Kerala***³, a Three Member Bench of the Supreme Court had an occasion to consider two questions (i) whether Section 36 C of the Bombay Sales Tax Act, 1959 and Section 26 B of the Kerala General Sales Tax Act, 1963, by which a first charge was created on the property of the dealer, are inconsistent with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act) and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act); and (ii) whether by virtue of the *non-obstante* clauses contained in RDDB Act and Securitisation Act, the two Central Legislations will have primacy over State Legislations. Eventually, the Court held (i) that the RDDB Act, 1993 and Securitisation Act, 2002 do not create a first charge in favour of the secured creditor, (ii) that the relevant provisions of the Sales Tax Laws

² AIR 2007 Madras 118

³ 2009 21 VST 505 (SC)

are not inconsistent with the provisions of the Central Legislations, so as to attract the *non obstante* clause and (iii) that the charge created under the relevant Sales Tax Laws would prevail over the charge created in favour of the Bank.

36. But in a more recent decision in **The Stock Exchange v. V.S. Kandalgoankar**⁴, a question arose as to whether a lien created by the operation of the Rules of the Stock Exchange, on the security provided by a member, would have precedence over the dues to the Income Tax Department. After quoting with approval the decision of the Supreme Court in **Dena Bank v. Bhikabhai Prabhudas Parekh Co. (2000 (5) SCC 694)**, the Supreme Court came to the conclusion that the Income Tax Act does not provide for any paramountcy of dues by way of income tax and that the Government dues have priority only over unsecured debts. In its decision in **Stock Exchange**, the Supreme Court went to the extent of holding that the lien possessed by the **Stock Exchange** made it a secured creditor and that irrespective of whether the lien was a statutory lien or a lien arising out of an agreement, the same made the holder of the lien a secured creditor, who would have priority over Government dues.

37. Therefore, in the light of the fact that the mortgage was created by the assessee much before a demand was made under Rule 2 and even before an order of assessment was passed and in the light of the fact that before the stage of issue of a certificate of recovery, the

⁴ (2015) 2 SCC 1

voidity under Section 281 (1) is not automatic, the petitioner-bank deserves to succeed.

38. Accordingly, the writ petition is allowed and the impugned order of attachment is set aside. The Sub-Registrar may proceed to register the sale certificate issued by the Bank upon compliance with the necessary formalities. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 04-12-2018

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