HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2713 of 2018

Bank Of Baroda, Through Its Branch Manager, Having Office At Civic Centre, Bhilai Branch, Bhilai, District Durg, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Its Secretary, Department Of Revenue, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. The District Collector, District Durg, Chhattisgarh.
3. The Additional Tahsildar, Ahirwar, Tahsil Dhamdha, District Durg, Chhattisgarh.
4. Chhattisgarh State Co-Operative Marketing Federation Limited, Through Its Director, Near Agrasen Chowk, Samta Colony, Raipur, District Raipur, Chhattisgarh.
5. M/s S.J. Rice Mills, A Proprietorship Firm, Through Its Proprietor Mala Phally Joseph, Village Birebhat Ahiwara, Tehsil Dhamdha, District Durg, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Ankit Singhal, Advocate
For State/Respondents No.1 to 3.	:	Mr. Rajesh Singh, Dy. G.A.
For Respondent No.4	:	Mr. Vinod Deshmukh, Advocate
For Respondent No.5	:	Mr. J.K.Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

15.04.2019

Heard.

1. By way of the present petition, the auction notice dated 14.09.2018 is under challege, which is issued by the Nayab Tahsildar, Ahiwara, Tahsil Dhamdha, District Durg against M/s. S.J. Rice Mill who is arrayed as respondent No.5.

2. The notice was issued by the State in exercise of power under the Revenue Recovery Act, 1890 for recovery of amount which was due to the State on the different heads. The auction notice wherein the auction date was fixed on 26.09.2018 shows that various properties of respondent No.5 were subject of auction sale. The said auction notice is subject of challenge by the petitioner Bank on the ground that M/s. S.J. Rice Mills, the

proprietorship firm, availed different loan under term loan to the extent of Rs.70 Lakhs and cash credit of Rs.25 Lakhs from the Bank and equitable mortgage was created to secure the advance sanctioned which includes entire land, machinery and immovable property and Bank is a secured creditor.

3. It is contended on behalf of the Bank that the Bank would have priority as the Bank was secured creditor under the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 *(for short "SARFAESI Act")*. Section 26E gives a priority to the Bank over all dues owed to any other creditors, therefore, it is stated that the Bank shall be at liberty to recover the aforesaid assets irrespective of any dues of any other agency or the State. Learned counsel referred to the cases decided by the different High Courts, which are reported in 2017 SCC Online Mad 4552 *(Asset Reconstruction Company India Limited v. Commercial Tax Officer),* 2017 SCC Online Bom 274 *(Axis Bank Limited v. State of Maharashtra),* 2017 SCC Online Hyd 252 *(Dist. Manager v. Authorised Officer)* & 2016 SCC Online Mad 10030 *(Assistant Commissioner v. Indian Overseas Bank)* and would submit that in the similar manner while interpreting Section 26E of SARFAESI Act different Courts had held that recovery for secured creditors would have a priority. Accordingly, the auction notice contemplating the auction on 26.09.2018 cannot be given effect as it would override and defeat the right of the petitioner Bank.

4. Learned counsel for the respondent would submit that though the auction was fixed on 26.09.2018 but no one turned up, as such, it did not yield any result. It is further contended that on 14.01.2019 the District Magistrate Durg has passed an order in favour of the petitioner Bank and the property has been handed over to them as such no further order is required as of now.

5. Be that as it may, this is not in dispute that the respondent No.5 availed different loan limits for running the Industry under the term loan as also

under the cash credit. In order to secure the loan, the respondent No.5 have created equitable mortgage by depositing of title deed with the Bank so as to secure the loan. The said loan was sanctioned in the year 2013 as per the memorandum of deposit of title deed filed as Annexure P-1. The document further shows that the plant and machinery were also placed under hypothecation to avail the loan limit. Since the loan was obtained to start the Industry and the immovable properties were mortgaged and machinery and goods were hypothecated, the Bank would be stepped into the shoes of secured creditor by virtue of such execution of agreement and creation of mortgage. In SARFAESI Act the right of secured creditor is defined under Section 26E of the Act of 2002.

6. Section 26E of the SARFAESI Act reads as under :

> 26E : 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.

7. This provision was brought into effect by the Government of India under Notification dated 01.09.2016 whereby the Central Government appointed 01.09.2016 as the date on which the provision came into force.

8. It is relevant to note that the auction notice dated 14.09.2018, Annexure P-8, published in paper was much later to the grant of loan from 2013 by the time the property was put to auction by notice. Section 26E of the SARFAESI Act had already enveloped the properties which are subject of sale by auction. Section 26E of the SARFAESI Act starts with non-obstante clause and reads as 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 etc. Therefore, the tax even if was due to the State, it has to be yield to Section 26(E) of the SARFAESI Act as against the recovery so contemplated under the Revenue Recovery Act, 1890.

9. In view of this, it is held that the Bank shall have a priority and have the first charge to recover its dues for the outstanding loan. Consequently, the State cannot be allowed to act on recovery notice dated 14.09.2018. After dues to the Bank are liquidated, the State shall be fee to have the charge over the remaining assets of the firm respondent No.5.

10. With such observation, the petition stands disposed off.

Sd/-
Goutam Bhaduri
Judge

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