IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2841 OF 2017

Vijaya Bank ..Petitioner
Versus
State of Maharashtra & Ors. ..Respondents

Mr. Rajeev Pandey a/w Mr. Ashish Kanojia i/by PRS Legal, Advocates for the Petitioner.
Mr. V. A. Sonpal, Special Counsel a/w Ms. Jyoti Chvan, AGP for Respondent Nos.1 & 2 - State.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 22nd NOVEMBER, 2019

P.C.

1] Heard learned counsel for the parties.

2] Under Sub Section (6) of Section 44 of the Maharashtra Value Added Tax Act, 2002, it is legislated as under :-

> *"(6) Subject to the provisions of the Companies Act, 2013, where any tax or other amount recoverable under this Act from a private company, whether existing or wound up or under liquidation, for any period, cannot be recovered, for any reason whatsoever, then, every person who was a director of the private company during such period shall be jointly and severally liable for the payment of such tax or other amount unless, he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in*

relation to the affairs of the said company."

3] Suffice it to state that where any tax is recoverable under this Act from a private company and it cannot be recovered from the company for any reason whatsoever, then a director of the private company shall be jointly and severally liable for the payment of such tax, unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the said company.

4] Thus, unless proceedings under the act are initiated against a director and an order as contemplated under Sub Section (6) of Section 44 is passed, dues towards tax under the said Act cannot be enforced against any property of a director of the company in default.

5] The relevance of aforesaid preamble statement in law is that the 3rd Respondent: M/s. Roshan Electrical Co. Pvt. Ltd. availed credit facilities from the Petitioner and its directors Mr. Maxim Mathias stood guarantor and also created an equitable mortgage by deposit of title deed of Unit No.11, Atlanta Estate, Hanuman Tekdi Road, Vit Bhatti, Goregaon (E), Mumbai-400 063. There was default, the Petitioner Bank proceeded under SARFAESI Act, 2002 and has taken over physical possession of the secured asset.

6] It perceived to be faced with a problem in the sale of the flat on 16.02.2016 when the Sales Tax Department, with recording that ₹ 20,20,16,580/- is due from the 3rd Respondent, addressed a communication to the Petitioner to said effect.

7] Suffice it to state the impugned notice does not attach the flat in question and is a simple communication to the Petitioner that the 3rd Respondent is liable to pay the sum mentioned in the letter to the Sales Tax Authorities.

8] Under the circumstances, the Petitioner can enforce its lien over the property and appropriate the sale proceeds as the secured creditor.

9] So declaring, the Petition is disposed of.

Balaji G. Panchal

Digitally signed by Balaji G. Panchal
Date: 2019.11.25 10:52:10 +0530

SMT. BHARATI DANGRE, J **CHIEF JUSTICE**