

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

WRIT PETITION (L) NO.3041 OF 2019

Bank of Baroda

..Petitioner

Versus

State of Maharashtra

..Respondent

Ms. Pooja Kapadia i/by Nahush Shah Legal for the Petitioner.

Mr. Dushyant Kumar, AGP for the Respondent - State.

CORAM : PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

DATE : 15th NOVEMBER, 2019

P.C.

1] Heard learned counsel for the parties.

2] Whether the State of Maharashtra would have a first charge on the subject property in terms of Section 37 of the Maharashtra Value Added Tax Act, 2002 or the Petitioner would be the first charge holder in terms of Section 26E of the SARFAESI Act, 2002 is the issue which needs to be decided with respect to disbursement of the amount received by sale of the secured asset. But as regards the buyer, the price paid would entitle the buyer to transfer of title in the secured asset free from any kind of lien either of the Bank or the State of Maharashtra.

3] Thus, we dispose of the Petition declaring that the

unilateral assertion by the Sales Tax Officer in the letters dated 23rd June 2016 and 7th July 2016 that tax dues are the first charge on the property is void at this stage.

4] We permit the Petitioner to sell the secured asset but retain the sale value in a no lien account with it.

5] If the sale price satisfies the claim of the Petitioner as well as the State of Maharashtra that would be the end of the dispute. But if the sale price realized is less than the total dues of the Petitioner and the Respondent the issue could be sorted out at that stage by the Petitioner seeking a declaratory relief from this Court by way of a Writ Petition.

Balaji G.
Panchal

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by Balaji G.
Panchal
Date: 2019.11.16
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE