HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No. 22834 of 2018

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

1) The State Bank of India has come up with the above writ petition challenging the orders of attachment issued by the Tax Recovery Officer of the Income Tax Department and the Enforcement Directorate, in respect of the properties that form the subject matter of security interest.

2) Heard Mr.Narendar Reddy, learned Senior Counsel appearing for the petitioner, Smt.M.Kiranmai, learned Standing Counsel for the Income Tax Department, Mr.N.Harinath, learned counsel appearing for the Enforcement Directorate and the learned Government Pleader appearing for respondents 6 to 10.

3) It appears that the 5th respondent-company availed credit facilities from the petitioner-bank and other banks which formed a consortium, to the extent of about 720 crores during the period from 2006 to 2014. The loan accounts became non-performing assets in August, 2015 and hence measures under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act") were initiated.

4) A demand notice under Section 13 (2) of the Securitization Act was issued on 24.08.2016 followed by possession notices issued on various dates, both in respect of the properties of the borrower company and in respect of the properties of third party guarantors. The bank also filed an application in O.A.No.515 of 2017 for the recovery of a total amount of nearly Rs.530 crores.

5) In the meantime, the 5th respondent company initiated Corporate Insolvency Resolution Process through the National Company Law Tribunal, Hyderabad in CP (IB) No.12/10/HDB/2017. It appears that the National Company Law Tribunal has passed an order on 24.08.2017 directing liquidation of the 5th respondent.

6) There is no dispute that the petitioner as well as the Income Tax Department were before the National Company Law Tribunal. But the Tax Recovery Officer issued orders of attachment on 13.10.2016 by serving Form No.16 on the 4th respondent. Therefore, when the petitioner bank sold the properties belonging to the third party guarantors, the sale certificates were refused to be registered by the Sub-Registrars. This is why the petitioner bank is before us.

7) There is no dispute that the mortgage in favour of the petitioner bank was prior in point of time to the orders of attachment passed by the Tax Recovery Officer. The creation of the mortgage was during the period from 26.12.2013 to 05.02.2014. The orders of attachment issued by the Tax Recovery Officer were only dated 13.10.2016.

8) The orders of attachment passed by the Tax Recovery Officer, were in relation to the assessment years 2008-2009 to 2014-2015. Therefore, the Tax Recovery Officer pitches his claim for priority on the basis of Section 281 of the Income Tax Act, 1961. In other words the claim of the Tax Recovery Officer is that the very creation of the mortgage, during the pendency of the assessment proceedings, is null and void in view of Section 281 of the Income Tax Act, 1961.

9) But the very same issue as to whether a mortgage created during the pendency of the assessment proceedings would automatically become null and void under Section 281 of the Income Tax Act, 1961, came up for consideration before a Bench of this Court to which one of us (VRS, J) was a party. By a judgment dated 04.12.2018 rendered in W.P.No.33417 of 2018, the Bench of this Court held that any transaction that took place during the pendency of the assessment proceedings would not automatically become null and void under Section 281 of the Income Tax Act.

10) It is contended by Smt.M.Kiranmai, learned Senior Standing Counsel for the Income Tax Department that under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016, the 5th respondent has been ordered to be liquidated and a liquidator was appointed and that since the bank is also a party before the National Company Law Tribunal, the questions raised in the writ petition should be raised only before the Official Liquidator. According to the learned Senior Standing Counsel, the questions relating to

priority of charge can be adjudicated only before the liquidator in terms of Section 33 (2) of the Insolvency and Bankruptcy Code, 2016, as the provisions of the Insolvency and Bankruptcy Code may take precedence.

11) But in the case on hand, the properties which the petitioner bank has sold under the Securitization Act, are that of third party guarantors. If the petitioner bank has sold or attempting to sell the properties of the 5th respondent company, then what the learned Senior Standing Counsel for the Income Tax Department contends may be right. The properties of a company ordered to be wound up under the provisions of the Insolvency and Bankruptcy Code, 2016, cannot be brought to sale by the bank under the Securitization Act. But when the properties sought to be sold are that of third party guarantors, the said impediment cannot stand in the way of the bank.

12) In view of the above, the action of the Sub-Registrars, who are respondents 6 to 10, in refusing to register the sale deeds, in view of the orders of attachment passed by the 2nd respondent Tax Recovery Officer, is not in accordance with law. The properties which belong only to third party guarantors, which do not form part of the proceedings before the National Company Law Tribunal, can always be sold by the bank and the attachment orders which are issued by the 2nd respondent after creation of mortgage cannot bind.

13) Hence, the Writ Petition is disposed of, directing respondents 6 to 10 to proceed with the registration of the properties of third party guarantors sold by the bank outside the purview of the Insolvency and Bankruptcy Code, 2016.

14) As a sequel, miscellaneous petitions, if any, pending in the writ petition stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

Dr. SHAMEEM AKTHER, J

February 25, 2019
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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER



WRIT PETITION No. 22834 of 2018

Date: 25.02.2019

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