

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Thursday, the Eighteenth day of March Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice T.S.SIVAGNANAM

and

The Hon`ble Ms Justice R.N.MANJULA

CMP.Nos.1708 and 1711 of 2021

and WA.No.427 of 2021

D.HARISH KUMAR [PETITIONER IN BOTH THE PETITIONS]

Vs

1 THE COMMERCIAL TAX OFFICER II [RESPONDENTS IN BOTH THE PETITIONS]
COMMERCIAL TAX DEPARTMENT,
GOVERNMENT OF PUDUCHERRY,
T.P.NAGAR, PUDUCHERRY 5.

2 THE CITY UNION BANK LIMITED.,
SINGAPORE PLAZA, NO.53
AND 54 MISSION STREET,
PUDUCHERRY.

3 L.PERIYASAMY

4 P.MANGAIYARCARRASSY

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant an order of interim stay of the order passed in WP.No.11148 of 2016 dated 05.10.2020 (in CMP.1708/2021) and;

(ii) To grant an order of interim stay of all further proceedings pursuant to the notice in 837/CTI-11/A2/2015-16 dated 13.01.2016 issued by the 2nd respondent. (in CMP.No.1711/2021) in WA.No.427/2021 respectively.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.P.HARIBABU Advocate for the petitioner in both the petitions and of Mr.P.HARIBABU, Advocate for MR.V.USHA Additional Government Pleader(Puducherry) for 1st respondent in both the petitions and MR.T.K.RAMKUMAR, Advocate for 2nd respondent in both the petitions and MR.HARSHAVARDHAN GANESAN Advocate for 3rd respondent in both the petitions the court made the following order:-

(Order of the Court was made by T.S.Sivagnanam, J.)

Heard Mr.P.Haribabu, learned counsel for the appellant; Mr.T.P.Manoharan, learned Senior Counsel for Ms.V.Usha, learned Additional Government Pleader (Puducherry) for the first respondent; Mr.T.K.Ramkumar, learned counsel for the second respondent-Bank; and Mr.Harshavardhan Ganesan, learned counsel for the third and fourth respondents.

2.When the appeal was heard for admission on 11.02.2021, considering the submissions made on that day, the Court was informed that the property, which is subject matter of this litigation, was brought for auction by the second respondent-Bank in exercise of its powers under the SARFAESI Act, 2002 and the very same property is being sought to be proceeded against by the Commercial Tax Department for recovery of the arrears of the sales tax payable by Ms.Vasanthi, Proprietrix of M/s.Vasanthi Automobiles, Puducherry, who had sold the property.

3.The appellant before us, who had filed the writ petition challenging a notice issued by the Commercial Tax Department under the provisions of the Puducherry Value Added Tax Act, 2007 to initiate revenue recovery proceedings, claimed to be a lessee under the third and fourth respondents, who is stated to have purchased the property from the said Ms.Vasanthi. Admittedly, the lease was entered into much after the attachment was made by the Sales Tax Department. If this is the factual situation, then the observations made by us in our interim order dated 11.02.2021, will not enure in favour of the appellant and the decision of the Full Bench of this Court in the case of **Assistant Commissioner (CT) vs. Indian Overseas Bank in W.P.No.2675 of 2011 dated 10.11.2016** would have no application to the facts and circumstances of the case. Therefore, based on the wrong facts, the interim order was granted and this having been clarified today, the appellant is no longer entitled for any interim order.

4.Accordingly, the interim order dated 11.02.2021 is vacated and the miscellaneous petitions in C.M.P.Nos.1708 and 1711 of 2012 are dismissed.

5.It is open to the first respondent to proceed for recovery of

the sales tax arrears in accordance with law.

-sd/-
18/03/2021
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE COMMERCIAL TAX OFFICER II
COMMERCIAL TAX DEPARTMENT,
GOVERNMENT OF PUDUCHERRY,
T.P.NAGAR, PUDUCHERRY 5.

2 THE CITY UNION BANK LIMITED
SINGAPORE PLAZA, NO.53 AND 54 MISSION STREET,
PUDUCHERRY.

+2 C.C. to M/S.A.MUTHURAMAN Advocate SR.NO.1922

Order

in
CMP.Nos.1708 and 1711 of 2021

in WA.No.427/2021

Date :18/03/2021

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SDR 29/03/2021

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