IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15712 OF 2022

Omkara Assets Reconstruction Private Limited and anr. … Petitioners

V/s.

The State of Maharashtra and ors. … Respondents

Mr.Charles D'Souza with Mr.Snepy Ambawat i/by M/s V. Deshpande & Co., Advocates for the Petitioners.

Ms.Shruti D. Vyas, "B" Panel Counsel for the State.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.

DATE : 10 APRIL 2023.

P.C.:-

1. Heard learned counsel for the parties.

2. The Petitioners have sought various prayers, however, has restricted the Petitioners the following prayer, prayer clause (a1):-

> *"(a1) That this Hon'ble Court be pleased to order and declare that by virtue of provisions of Section 26E of SARFAESI Act, the Petitioner has priority of charge on the subject property viz. 40 (Part), Hissa No.2, Near Trio Engineering Private Limited, Village Chimbli (Chakan), Taluka Khed, Pune admeasuring 24170 sq. ft. out of property admeasuring 01, Hector 08 R i.e. 108 R out of Gat No.40, together with Compound Wall, Industrial Shed are admeasuring 150 sq. ft. constructed thereon, Electrical Control Room, Staff Cabin, bearing and lying at village Chimbli,*

> *Taluka and Sub-Registration District Khed, District and Registration District Pune and within the local limits of Grampanchayat Chimbli and within the limits of Zilla Parishad Pune and Taluka Panchayat Samittee Khed over and above the charge of Respondent No.2 or such other statutory authority"*

3. The Petitioner No.1 is an Asset Reconstruction Company under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short) seeking a declaration that by virtue of provisions of section 26E of the SARFAESI Act, Petitioner No.1 has priority of charge over subject property as against the State of Maharashtra through the Commissioner of Sales Tax.

4. Basic facts are not in dispute before us and the question is regarding the implication of these facts.

5. The basic facts are that the subject property was mortgaged to the predecessor of LIC the Petitioner No.1. The assignor of the Petitioner No.1 and the Petitioner No.1 have taken actions under the SARFAESI Act. The Respondent No.2-Sales Tax Department also has claim over the said property in respect of the debt payable by Respondent No.4 borrower/ the assessee towards the sales tax dues.

6. The issue regarding the priority of charge *vis-a-vis* the secured creditor and the tax authorities including Sales Tax department of the State was considered by the Full Bench of this court in the case of *Jalgaon Janta Sahakari Bank Limited and anr. vs. Joint Commissioner*

of Sales Tax Nodal 9, Mumbai and anr.[1]. By judgment and order dated 7 April 2022, the Division Bench held that attachment orders issued post 24th January 2020, if not filed with the Central Registry, any department of the Government to whom a person owes money on account of unpaid tax has to wait till the secured creditor by sale of the immovable property being the secured asset collects its secured dues. In the light thereof, the question would arise as regards the registration with Central Registry of Securitisation Asset, Reconstruction and Security Interest of India ("CERSAI" for short).

7. The Petitioners have pointed out that the State Bank of India- the assignor has registered the charge with CERSAI on 14 March 2022. The debt was assigned on 30 March 2022. The Petitioners also registered the charge with CERSAI on 6 May 2022 and against this the Respondent No.2-Department has not registered their charge. Therefore, in light of the decision of the Full Bench in the case of *Jalgaon Janta Sahakari Bank Limited (supra)*, the Petitioners are entitled to succeed.

8. Accordingly, the writ petition is allowed in terms of prayer clause(a1) reproduced above. The legal consequences of this declaration would follow and parties would take necessary steps accordingly.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**

1 Writ Petition No.2935 of 2018