IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.11.2023**

CORAM:

**THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY**

**WP No.15011 of 2022 and**
**WMP No.14230 of 2022**

M/s.City Union Bank Limited
Salem – Suramangalam Branch
Represented by its Manager (Legal)
Mr.R.M.Renganath
Ground Floor, 196-15, Nambikkai Munai Mall,
Suramangalam Junction Road,
Thiruvakaundanoor Byepass, Suramangalam,
Salem, Tamil Nadu – 636 005. ... Petitioner

vs.

1. Tax Recovery Officer
   No.3, Gandhi Road,
   Salem – 636 007.

2. The Sub Registrar
   Salem Joint-III,
   Salem – 636 307.

3.M/s.DR Agency,
Represented by its Proprietor Mr.D.Elavarasan
No.2/3-1, Sidhar Kovil Main Road,
Sivathapuram, Salem – 636 307.

4.Mr.S.Devaraj

5. Mrs.D.Ellammal ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus calling for the records on the file of the 1st respondent in TRC No.5/2011-12/SLM dated 14.01.2020 and quash the impugned order of attachment in FORM No.I.T.C.P.16 in so far as Item No.1 & 8 as illegal, arbitrary and violation of the principles of natural justice and consequently direct the 2nd respondent to strike the name of the 1st respondent from the EC with respect to the Item No.1 & 8 as mentioned in FORM No.I.T.C.P.16 in TRC No.5/2011-12/SLM dated 14.01.2020.

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|---|---|---|
| For Petitioner | : | Mr.R.Sivaraman |
| For Respondent | : | Mr.R.S.Balaji,<br>Senior Standing Counsel<br>Assisted by Ms.S.Premalatha,<br>Jr.Standing Counsel for R1<br>Mr.S.Ravikumar<br>Special Govt. Advocate (Taxes)<br>RR3 to RR5 – No appearance |

**ORDER**

This writ petition was filed challenging the impugned attachment order dated 14.04.2020 passed by the first respondent and also seeking a direction to the 2nd respondent to strike the name of the 1st respondent from the EC with respect to the Item No.1 & 8 as mentioned in FORM No.I.T.C.P.16 in TRC No.5/2011-12/SLM dated 14.01.2020.

2. The case of the petitioner is that in order to avail the credit facilities, Mr.S.Devaraj and Mrs.D.Ellammal who are the guarantors of the third respondent had mortgaged various properties with the petitioner Bank by way of memorandum of deposit of title deeds dated 31.07.2017 and 21.08.2017. The third respondent failed to repay the loans within the stipulated time period and therefore the petitioner Bank proceeded for the recovery of the outstanding loan amount, as per RBI norms. However, when the petitioner Bank approached the second respondent for registration of sale certificate, they were informed that there was an attachment by the first respondent towards the mortgaged property. The mortgage registered by the 4th and 5th respondent in favour of the petitioner Bank was by way of a registered mortgage deed. The date of deposit of title deeds is on 31.07.2017 & 21.08.2017 and duly registered with CERSAI on 17.09.2017, whereas, the first respondent has made an attachment on 22.01.2020. Hence, the petitioner is entitled as a priority mortgagor.

3. The learned counsel appearing for the petitioner would submit that originally the property of the fourth and fifth respondents

were mortgaged by virtue of the registered mortgage deeds dated 31.07.2017 and 21.08.2017. However, the first respondent, for the tax dues of the third respondent, attached two properties, viz. Property measuring about 0.13 ½ acres (5880 sq.ft.) in S.No.61/1, Nallampatti Village, and property measuring about 0.35 acres in S.No.61/3B, 61/3, Nallampatty Village, Salem District (mentioned in the writ affidavit dated 28.04.2022 filed in W.P.No.15011 of 2022), Since the mortgage deeds were executed in favour of the petitioner Bank for the money borrowed by the third respondent, according to the petitioner, the first respondent is not entitled to any right over the properties of the third respondent to recover the tax dues. Hence, this writ petition.

4. Per contra, Mr.R.S.Balaji, learned Senior Standing Counsel appearing for the first respondent would submit that they are entitled to collect the tax dues out of the sale proceeds of those two properties mortgaged with the petitioner, as a second charge holder. He would further submit that as a first charge holder, the petitioner is entitled to collect money out of the sale proceeds of the properties under attachment and after the clearance of the dues of the petitioner, if anything is left

over, as a second charge holder, the first respondent is entitled to recover the same towards the tax dues of the third respondent.

5. In reply, the learned counsel for the petitioner, in agreement with the submissions made by the learned Senior Standing Counsel for the first respondent, would submit that in a similar case, the Hon'ble First Bench of this Court also passed an order dated 27.09.2023 in WP Nos.19742 of 2021 & etc. batch.

6. In view of the submissions made by the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the first respondent, this Court makes it clear that the first respondent, as a second charge holder is entitled to recover the tax dues of the third respondent, as a second charge holder, after the settlement of the entire dues of the petitioner Bank. Also being the first charge holder, the petitioner is entitled to recover their entire dues thereafter, if any amount is left over, as a second charge holder, the first respondent is entitled to recover the same towards tax dues of the 3rd respondent from and out of the said sale proceeds.

7. With the above, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

28.11.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
Rgr

To

1. Tax Recovery Officer
   No.3, Gandhi Road,
   Salem – 636 007.

2. The Sub Registrar
   Salem Joint-III,
   Salem – 636 307.

**KRISHNAN RAMASAMY, J.**

rgr

**WP No.15011 of 2022**

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