IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30553 of 2023
and W.M.P.No.30183 of 2023

Bank of India,
Through its Authorised Officer,
Rajapalayam Branch,
No.402, Tenkasi Road,
Rajapalayam 626 117.
Virudhunagar District. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Office of the Assistant Commissioner,
Commercial Taxes,
Krishnagiri-1 Region,
Krishnagiri.

2.The Joint Commissioner,
Commercial Taxes,
Hosur,
Krishnagiri District.

3.M/s.Shree Krishna Timber & Marbles,
A partnership firm through one of its
Partner, K.Senthil Kumar,
No.133, Gandhi Road,
Palayampettai, Krishnagiri 635 001.

4.M/s.Senthil Kumar Timbers,
A partnership firm through one of its
Partner K.Senthil Kumar,
S.No.36/3A1 and 36/3A3,
Bayyanapalli village,
Krishnagiri Taluk,
Krishnagiri District.

5.The Sub Registrar,
Krishnagiri Joint No.2,
Sub Registrar Office,
Krishnagiri. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of attachment passed by the 1st respondent in his proceedings in Na.Ka.No.1097/2013/A3 dated 04.01.2023 and the order passed by the 1st respondent in Na.Ka.No.423/2021/A3 dated 04.07.2023 and the Auction-sale notice issued by the 1st respondent in Na.Ka.No.1097/2013/A3 dated 04.07.2023 and quash the same as illegal and arbitrary and consequently direct the 5th respondent to remove the attachment entry made in respect of the land comprised in S.No.36/3A3, Bayannapalli Village, Krishnagiri Taluk in the office of the Sub-Registrar Joint No.2, Krishnagiri.

For Petitioner : Mr.K.S.Karthik Raja

For R1 & R2 : Ms.K.Vasanthamala
Government Advocate

For R5 : Mr.S.Ravikumar
Special Government Pleader

ORDER

Ms.K.Vasanthamala, learned Government Advocate takes notice for the respondents 1 and 2. Mr.S.Ravikumar, learned Special Government Pleader takes notice for the 5th respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2.This writ petition has been filed by the petitioner seeking to call for the records pertaining to the impugned order of attachment passed by the 1st respondent in his proceedings in Na.Ka.No.1097/2013/A3 dated 04.01.2023 and the order passed by the 1st respondent in Na.Ka.No.423/2021/A3 dated 04.07.2023 and the Auction-sale notice issued by the 1st respondent in Na.Ka.No.1097/2013/A3 dated 04.07.2023 and quash the same as illegal and arbitrary and consequently direct the 5th respondent to remove the attachment entry made in respect of the land comprised in S.No.36/3A3, Bayannapalli Village, Krishnagiri Taluk in the office of the Sub-Registrar Joint No.2, Krishnagiri.

3.Learned counsel for the petitioner submitted that the petitioner is the secured creditor of the respondents 3 and 4. The 3rd respondent has obtained various credit facilities from the petitioner bank to a tune of Rs.7 Crores by creating equitable mortgage of land measuring about 3 acres comprised in S.No.36/3A3 Bayyanapalli Village, Krishnagiri Taluk and other properties. Thereafter, the 3rd respondent firm was declared as Non Performing Assets and the petitioner is the first charge holder of the property. While so, the 1st respondent has passed an attachment order dated 04.07.2023 in respect of the alleged sales tax dues payable by 3rd respondent for the period from 2012 to 2018 and another attachment order dated 04.01.2023 in respect of tax dues payable by the 4th respondent.

4.He further submitted that when the petitioner is the first charge holder of the assets of the respondents 3 and 4, the 1st respondent cannot make any attachment and the same is unsustainable. Hence, the present writ petition came to be filed.

5.In support of his contention her referred the judgment of the Hon'ble Full Bench of this Court in the case of ***The Assistant Commissioner vs.The Indian Overseas Bank*** made in ***W.P.Nos.2675 of 2011 etc batch*** dated ***10.11.2016***. The relevant portion of the judgment is extracted hereunder:-

> “2.We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principal Act, which reads as under:-
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>> "31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and

> rates due to the Central Government, State Government or local authority.
>
> Explanation. - For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

> 3.There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with "notwithstanding" clause and has come into force from 01.09.2016. "

6.The learned Government Advocate appearing for the respondent would fairly submit that the charge created by the respondents 1 and 2 is subsequent to the charge created by the petitioner. Therefore, the respondents 1 and 2 are the second charge holders and the first charge holder would always be the petitioner. Further, he would submit that the total outstanding liability of the respondents 3 and 4 to the petitioner was around a sum of Rs.7 crores and the subject property is worth about a sum of Rs.15 crores, in which case, there will be an excess amount available after discharging all the liabilities of the petitioner-Bank. Therefore, as the second charge holder after discharging the liabilities of the petitioner-Bank, the respondents 1 and 2 are entitled for the balance amount towards the discharge of the liability of tax dues of the respondents 3 and 4.

7. Further, the Government Advocate would also concur the law laid down by the Hon'ble Full Bench of this Court (cited supra).

8. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

9. In the present case, it is an admitted fact that the first charge holder is the petitioner-Bank and the second charge holder is the respondents 1 and 2. As the first charge holder, the petitioner is entitled to appropriate the outstanding liabilities of the respondents 3 and 4 first and thereafter, if anything is left balance, the respondents 1 and 2 are

entitled to appropriate the same towards the tax dues of the respondents 3 and 4.

10. Further, in the present case, the property is worth about a sum of Rs.15 crores and the total liabilities as contended by the respective learned counsel, which the respondents 3 and 4 are liable to pay to the petitioner is around a sum of Rs.7 Crores. If the property is worth about a sum of Rs.15 crores, after discharge of the entire outstanding amount to the petitioner-Bank, certainly the respondents 1 and 2, as the second charge holders, can appropriate the outstanding tax dues of the respondents 3 and 4 to the Department.

11. By holding the above, this writ petition is disposed of. Consequently the connected miscellaneous petitions are also closed. No costs.

19.10.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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