BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2023

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.24020 of 2022

Bank of Baroda through its
Regional Stressed Assets Recovery Branch,
Represented by its Chief Manager,
1st Floor, Plot No.14, Door No.3, 4, 5,
Sakthivelammal 10th Street,
S.S.Colony, Madurai – 625 016. .. Petitioner

Vs.

1.The Commissioner of Income Tax,
Income Tax Department,
V.P.Rathinasamy Nadar Road,
B B Kulam,
Madurai - 625 002.

2.Income Tax Officer Ward 3,
Income Tax Department,
Virudhunagar.

3.R.Miller .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Declaration, that the petitioner Bank is the first Charge holder in respect of Building in SIDCO measuring 9436.44 sq.ft in S.No. 200/3, bearing Door No.4/624 under Assessment No.708 situated at Soolakkarai Village, Aruppukottai Taluk, Virudhunagar District for the Sale cum Auction proceeding that may be initiated by the petitioner Bank as against the above said property mortgaged by the 3rd respondent.

For Petitioner	: Mr.S.Ramakrishnan for Mr.K.Muraleedharan
For R-1 & R-2	: Mr.N.Dilipkumar Standing Counsel

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

The Writ of Declaration has been instituted by the Bank of Baroda to declare the Bank as the first charge holder in respect of building in SIDCO measuring 9436.44 sq.ft in S.No.200/3, bearing Door No.4/624 under Assessment No.708 situated at Soolakkarai Village, Aruppukottai Taluk, Virudhunagar District for the Sale cum Auction proceeding that may be initiated by the petitioner Bank as against the above said property mortgaged by the third respondent.

2. The learned Standing Counsel appearing on behalf of the respondents 1 and 2/Income Tax Department made a submission that even as per the legal position settled by the Courts, the Income Tax Department shall be construed as the second charge holder. The petitioner being a secured creditor is the first charge holder and the Income Tax Department shall be considered as second charge holder as far as the subject property is concerned.

3. In view of the said position, the petitioner and the respondents 1 and 2 are at liberty to recover their dues by following the procedures as contemplated under the relevant provisions of the Act.

4. As per letter dated 07.08.2017, addressed to the Authorised Officer, Bank of Baroda, the Income Tax Officer requested that the income tax arrears of the assessee for the assessment year 2013-14 may be considered for payment as and when the subject property was auctioned and after adjusting the dues of the Bank. The said procedures are contemplated under

Rule 9 of the SARFAESI Rules and the petitioner Bank is bound to follow the said procedures as contemplated, in the event of excess money remains after adjusting the Bank dues.

5. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs.

(S.M.S.,J.) (L.V.G.,J.)
18.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To
1.The Commissioner of Income Tax,
Income Tax Department,
V.P.Rathinasamy Nadar Road,
B B Kulam,
Madurai - 625 002.

2.Income Tax Officer Ward 3,
Income Tax Department,
Virudhunagar.

S.M.SUBRAMANIAM,J.
and
L.VICTORIA GOWRI,J.

Lm

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