IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9540 OF 2023

Asset Reconstruction Company (India) Limited. ...Petitioner
V/s.
State of Maharashtra Through The office Of
The Govt. Pleader and Ors. ...Respondents

...

Mr. Shadab Jan a/w. Mr. Kshitij Parekh i/b. Apex Law Partners, Advocate for the Petitioner.

Shri. N. C. Walimbe a/w. Ms. Kavita N. Solunke, Assistant Government Pleader for the Respondent-State.

Mr. Ram Ochani i/b. Karan Adik, Advocate for the Respondent No.4 & 5..

...

CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ

DATE : 30th SEPTEMBER 2024.

P.C. :

1. Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner, an assignee from the State Bank of India seeks a declaration that it has priority over the claim of the 2nd respondent-the Sales Tax Department in the matter of recovery of its dues from the 3rd respondent, a Private Limited Company. On the basis of the deed of mortgage dated 21st August 1998 executed by the 3rd

Respondent in favour of the State Bank of India, it was granted credit facilities. Since there was a default in making the repayment, the State Bank of India filed proceedings for recovery that resulted in a Recovery Certificate being issued in its favour. The Sales Tax Department issued a communication to the Regional Officer of the Maharashtra Industrial Development Corporation on 28th July 2006 seeking to create an encumbrance on the said property. Thereafter on 31st August 2007, the Sales Tax Department drew a Panchanama indicating that movables such machineries and plant standing on the land had been seized. It is on that basis that the steps taken by the Petitioner, an assignee of the debt from the State Bank of India has filed the present Writ Petition seeking a declaration as regards its priority in recovery of the dues.

3. We have heard the learned counsel for the petitioner as well as the learned Additional Government Pleader for the Sales Tax Department. The learned counsel for the petitioner has relied upon the judgment of the Full Bench of this Court in the case of *Jalgaon Janta Sahakari Bank Ltd & Anr V/s. Joint Commissioner of Sales Tax & Anr* reported in *2022 (5) Mah LJ 691(FB)* to submit that in view of what has been held in paragraph No.154 of the said judgment, the

relief sought by the petitioner ought to be granted. He also referred to the judgment of *Bhushan Ramesh Bramgankar V/s, State of Maharashtra* reported in *(2024) 4 AIR Bom R 591* in that regard.

4. The learned Additional Government Pleader referred to the affidavit in reply and especially paragraph No.XI thereof. The same indicates drawing of Panchnama with regard to the movables on the land in question.

5. From the documents on record, it is clear that there is no order of attachment of the immovable property passed as required under the provisions of Maharashtra Land Revenue Code, 1966. It is merely an attachment of movables to indicate their seizure for sale of the same. In paragraph No.154 of the judgment in J*algaon Janta Sahakari Bank Ltd & Anr (supra),* it has been observed as in the absence of documents indicating attachment of the properties along with proclamation, it cannot be said that the Sales Tax Department had a prior charge over the immovable property. In the present case, there is also a registration under the Central Registry of Securitisation Asset Reconstruction and Security Interest of India dated 28th June 2013 in favour of the Petitioner.

6. In view of the judgment of Full Bench of this Court, the petitioner is entitled for a declaration as regards the priority of its charge. Hence, for aforesaid reasons the Writ Petition is allowed in terms of prayer clause (a), (c) and (d) which read as under :-

> (a) That this Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or writ of certiorari or writ in the Nature of certiorari or any appropriate writ or direction or order to declare that the Petitioner has priority over the claim of Respondent No. 2 and is therefore entitled to transfer the leasehold rights of the said Property described as All that piece and parcel of lease-hold land known as Plot No.C-42, in the MIDC Lote Parshuram Industrial Area, within the village limits of Lote and outside the limits of Khed Municipal Council in rural area, Taluka and Registration Sub district Khed, District and Registration District Ratnagiri containing by admeasuring 15,000 square meters together with building admeasuring 4,920 sq. ft.; in the name of the H-1 bidder in the e- auction scheduled on 11th January 2021;
>
> (c) That this Hon'ble Court be pleased to declare that the claim of Petitioner will be prior to the claim of Respondent No.2 and the sale to be effected by the Petitioner will not be subject to the claim of Respondent No. 2 herein.
>
> (d) That the Hon'ble Court may be pleased to direct the revenue department of the state authority (Tehsildar) to remove the name of Respondent No.2 from the said immovable mortgaged property as reflected in the 7/12

extract.

7. The consequential steps be taken within a period of eight weeks from today.

8. Rule is made absolute in above terms with no order as to costs.

[RAJESH S. PATIL, J] **[A.S. CHANDURKAR, J.]**