IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.10251 of 2006

Industrial Development Bank of India,
No.115, Anna Salai,
Saidapet, Chennai-600 015. .. Petitioner

vs

1.The Tax Recovery Officer,
Income Tax Department,
Office of the Tax Recovery Officer,
D.P. Thottam, Muthialpet,
Pondicherry-605 003.

2.Gyan Leatherboard Ltd.,
VIII, Thuthipet,
Villianuer Commune,
Pondicherry-645 502. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring that the recovery proceedings under the provisions of the Income Tax Act, 1961 by the first respondent in so far as attaching and selling the immovable property of the second respondent, viz., factory premises, land comprised in R.S.Nos.119/1A, 119/2A, 119/3A, 122/6B, 122/7 of an extent of Acre 7.15 cents, situate at Thuthipet Village, Vilianur Commune, Pondicherry with the Sub Registration District of Villianur is null and void.

For the Petitioner : Mr.A.Thayaparan

For the Respondents : Mr.V.Mahalingam
Sr. Standing Counsel
Mrs.S.Premalatha
Standing Counsel
for respondent No.1

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.A.Thayaparan, learned counsel for the petitioner; and, Mr.V.Mahalingam, learned Senior Standing Counsel for the first respondent.

2. Learned counsel for the petitioner submits that respondent No.2 is a borrower and the petitioner is a secured creditor. The secured asset is now registered with Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) on 14.3.2024.

3. There is no dispute with the proposition that the secured creditor has priority charge over the income tax dues. Reference can be had to the judgment of a Full Bench of this Court in the case of the *Assistant Commissioner (CT) Anna Salai-III Assessment Circle v. Indian Overseas Bank and another, AIR 2017 Mad 67 (FB)*.

4. In the light of the that, it is declared that the petitioner has priority charge over the first respondent in respect of the mortgage deed executed by the second respondent in favour of the petitioner.

5. With the above declaration, the writ petition is disposed of. There shall be no order as to costs. Consequently, WP MP Nos.11589 of 2006 and 1232 of 2007 are closed.

(S.V.G., CJ.) (D.B.C., J.)
21.03.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

The Tax Recovery Officer,
Income Tax Department,
Office of the Tax Recovery Officer,
D.P. Thottam, Muthialpet,
Pondicherry-605 003.

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

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