**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 03.09.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

**W.P.No. 20296 of 2024**
**and**
**W.M.P.No. 22222 of 2024**

IDBI Bank Limited,
Represented by its Deputy General Manager,
Mr.Kannan TRJ Babu,
115, Anna Salai, Saidapet,
Chennai - 600 015. ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Central Circle 2(1),
Investigation Wing, Room No.122,
1st Floor, MG Road, Chennai - 600 034.

2.Meera Arun

3.A.M.Rajeshwari

4.Bala Yudhish Arun Murugaiah

5.Tharana Arun

6.The Sub-Registrar,
Mylapore,
No.5/9, Kavignar Bharathidasan Road,
Seethammal Colony, Crescent Street,
Alwarpet, Chennai - 600018.

7.The Tax Recovery Officer,
Central Circle-2, New No.42, Old No.108,
Uthamar Gandhi Road, Nungambakkam,
Chennai - 600 034.
(R7-suo motu impleaded as per order dated
03.09.2024 in WP.20296 of 2024) ... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to raise / remove the order of attachments bearing File No.21 of 2016 in the name of Late A.M.Arun and File No.22 of 2016 in the name of the Second Respondent both dated 01.08.2016 and as per communicated dated 14.07.2017 issued by the first respondent addressed to the sixth respondent and communicate the same to the sixth respondent and to direct the six respondent to register the validated sale certificate by the petitioner in respect of the Plot No.D, Old No.Door No.44, New No.199, St.Mary's Road, (Block No.86 Mylapore) Alwarpet, Chennai - 600018.

For Petitioner : Mr.Balamurali for Shivkumar and Suresh

For Respondents : Mr.A.N.R.Jayaprathap
Junior Standing Counsel for R1 & R7
Mr.P.Balathandayutham
Special Government Pleader for R6

**ORDER**

This Writ Petition was filed by the petitioner / Bank for a direction to the 1st respondent to remove the order of attachments and also to direct the 6th respondent to register the validated sale certificate produced by the petitioner.

2. The learned counsel for the petitioner / Bank would submit that they have got the property for sale as early as on 07.03.2023. He would submit that the property belongs to the respondents 2 & 3. The property mortgaged for the loan obtained by the 3rd respondent for the business purpose and mortgage was created as early as on 27.06.2013. The respondents 2 & 3 failed to pay the instalment as agreed, the assets of the respondents 2&3 were declared as non-performing assets and thereafter, the

petitioner / Bank invoked the SARFAESI Act and brought the property for sale on 07.03.2023. When they were going for registration of sale certificate, they came to know that the 7th respondent issued an attachment order on 01.08.2016 and provisional order of attachment on 27.09.2017. So immediately they have approached the 7th respondent but they have taken any steps to remove the attachment.

3. The learned counsel for the petitioner / Bank would submit that the petitioner arrayed as first charge holder as they have mortgaged the property on 27.06.2013 and the attachment order made by the 7th respondent is on 01.08.2016 and 27.09.2017. Therefore, he would submit that the 7th respondent is only a second charge holder. He would further submit that if anything is left, the 2nd respondent is entitled for the balance amount. Whatever the amount realized out of the sale proceeds, it is sufficient to meet out the liabilities of the petitioner. Therefore, nothing is available for the 7th respondent to settle their dues.

4. The learned counsel for the respondent submit, in the present case, the law has been settled in order passed in W.P.No.36486 of 2023.

Therefore, he would submit that the position of the 7th respondent is a second charge holder, the first charge holder is a Bank. In the event of settlement of the dues of the petitioner out of the sale proceeds, the 7th respondent entitled for the said amount.

5. In the present case, the respondents 2 & 3 are the borrowers. They have mortgaged that property for the amount borrowed from the petitioner / bank and the properties are mortgaged by the petitioner on 27.06.2013. Thereafter, the Income Tax Authorities issued the provisional attachment order on 01.08.2016. A regular attachment has also been made on 27.09.2017, the same was intimated to the 6th respondent and the 6th respondent was also registered the same.

6. Thus, the 1$^{st}$ charge was created by the petitioner against the subject property owned by the 2$^{nd}$ and 3$^{rd}$ respondents as early as on 27.06.2013. Thereafter, on 01.08.2016, the 7$^{th}$ respondent had attached the subject property and hence, the 7$^{th}$ respondent would be considered as a 2$^{nd}$ charge holder. Thereafter, the subject property was sold under the SARFAESI proceedings by the petitioner, as a 1$^{st}$ charge holder. According

to the petitioner, the amount realized out of the said sale proceeds was utilized in full towards the dues of the petitioner-Bank. Even after the utilization of entire sale proceeds, the outstanding liability of the petitioner-Bank has not been settled in full. Therefore, it is apparent that no amount is available for the 2nd charge holder.

7. The petitioner herein has approached this Court for appropriate direction to remove the attachment made by the 7th respondent. In the case on hand, the subject property was sold through the SARFAESI proceedings and accordingly, the sale certificate was issued by the petitioner, however, due to the attachment made by the 7th respondent and registered with the 6th respondent now the purchaser has been facing difficulties in registering the said sale certificate. This Court already clarified the legal position of the 7th respondent. The 7th respondent, being the 2nd charge holder, will be entitled out of the sale proceeds, only after the settlement of the dues to the 1st charge holder/petitioner. However, the amount realized out of sale proceeds of the subject property is not even sufficient to settle the petitioner's liability. Thus, no amount in excess over and above the dues of the petitioner is available for the 7th respondent. Under these circumstances,

unless and otherwise the attachment order issued and registered by the 7th respondent with the 6th respondent is removed, the 1st charge holder/petitioner will be put into irreparable loss while registering the sale certificate.

8. In view of the above, this Court passes the following order:

i) The 6th respondent is directed to remove the attachment order issued by the 7th respondent vide order dated 01.08.2016 and 27.09.2017, immediately upon production of this order copy, so as to reflect no encumbrance against the subject property for which the sale certificate was issued by the petitioner;

ii) Thereafter, the 6th respondent is directed to register the sale certificate issued by the petitioner;

iii) In the event if there is any excess amount over and above the dues of the petitioner, it is needless to state here that 7th respondent being a second charge holder, entitled over the said excess sale proceeds which can be utilised to settle the outstanding tax dues of the 2nd and 3rd respondents.

9. This writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is also closed.

**03.09.2024**

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Index : Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No

To

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**KRISHNAN RAMASAMY, J.**

KKN

**W.P.No.20296 of 2024**
**and**
**W.M.P.No.22222 of 2024**

**03.09.2024**