IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM

THE HON'BLE MR.JUSTICE **KRISHNAN RAMASAMY**

WP No.22361 of 2024
and WMP Nos.24356 and 24358 of 2024

Ms.City Union Bank Limited
Mount Road Branch, Rep. by its Chief Manager,
Mr.G.V.Sivakumar, No.706, Thousand Lights
Mount Road, Chennai-600 006. ...Petitioner

-vs-

1. Income Tax Officer,
   Ward-2(4), Tirupur,
   Bsnl Building, Rayapuram Main Road,
   Tirupur-641 601.

2. The Sub Registrar,
   Kaniyur, Madthukulam,
   Udumalpet.

3. M/s.Bharath Paper Boards,
   Rep. by its Partner, Mr.M.S.A.Sankharalingham,
   No.275, K.K.Pudur, Myvadi Road,
   Myvadi, Udumalpet 642 111.

4. M.S.A.Sankharalingham
5. A.Jyothi .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st Respondent and quash the impugned order of attachment in F.O.R.M NO.I.T.C.P.16 in TRC No.TRO1 COIMBATORE/ AAHFB0139L/2021-22/100000191667 dated 05.05.2021 as illegal, arbitrary and violation of the principles of natural justice and consequently direct the 2nd Respondent to strike the name of the 1st Respondent from the EC with respect to the property as mentioned in F.O.R.M NO.I.T.C.P.16 in TRC No. TRO 1 COIMBATORE/AAHFB0139L/2021-22/100000191667 dated 05.05.2021.

For Petitioner	:	Mr.Sivaraman R.
For Respondents	:	Dr.B.Ramaswamy Senior Standing Counsel for R-1

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ORDER

The writ petition is filed challenging the attachment order dated 05.05.2021 passed by the first respondent and consequently, to direct the second respondent to strike off the name of the first respondent from the

Encumbrance Certificate with respect to the property as mentioned in the attachment order.

2. The learned counsel for the petitioner bank submits that the third respondent borrowed money from the petitioner bank for which the property of the fifth respondent, who is a guarantor, was provided as security and the Memorandum of Deposit of title deeds dated 06.02.2017 was also registered in favour of the petitioner. The learned counsel submits that when enquired with the second respondent with regard to the encumbrance of the property, the petitioner came to know that there is an attachment by the 1st respondent, Income Tax Department as per the Encumbrance Certificate dated 01.06.2017.

3. The main grievance of the petitioner is that the petitioner is the first charge holder of the property since the property was mortgaged by way of deposit of title deeds on 06.02.2017, whereas the charge created by the first respondent was on 01.06.2017 and therefore, the petitioner is entitled as a priority mortgagor. The learned counsel submits that the petitioner bank is

not in a position to bring the property for sale, since the Income Tax Department has passed the impugned order of attachment and unless the said attachment order of the first respondent is not raised, the property cannot be brought for sale under public auction and the petitioner, being the first charge holder, has priority over the property and therefore, the learned counsel seeks for appropriate orders to be passed in the writ petition by lifting the attachment.

4. Per contra, Dr.B.Ramasamy, learned senior standing counsel appearing for the first respondent/Revenue would fairly submit the attachment order was issued against the third respondent on account of their default to pay the amount due to the Income Tax Department, however, before the charge was created in respect of the property by the Department on 01.06.2017, it was mortgaged with the petitioner bank for the credit facilities extended by them to respondents 3 to 5 on 06.02.2017 and therefore, only after the entire outstanding dues are settled to the petitioner bank out of the sale proceeds of the property, the Income Tax Department would be entitled to get their dues settled out of the remaining amount, if

any. He, therefore, submits that appropriate orders may be passed for bringing the property for sale and after settling the dues of the petitioner bank, the balance amount is to be made available to the first respondent and to that extent, the charge created by the first respondent with the second respondent will be covered.

5. I have given due consideration to the submissions made by the learned counsel for the petitioner and the learned senior standing counsel for the first respondent.

6. The issue in the present case is that the petitioner is facing difficulties in selling the property in view of the charge that has been created by the Income Tax Department as appeared in the encumbrance certificate and therefore, no one is willing to participate in the public auction. In view of the aforesaid submission of Dr.B.Ramasamy, learned senior standing counsel for the Revenue, this Court is inclined to pass the following order:

(a) The petitioner is, hereby, declared as the first charge holder since the charge was created as early as on 06.02.2017 and the first respondent is declared as the second charge holder, since their charge was created as early as on 01.06.2017.

(b) The petitioner can bring the property for sale, for which the first respondent has no objection and out of the sale proceeds, the outstanding dues of the petitioner may first be settled and thereafter, the balance has to be paid to the first respondent;

(c) It is made clear that the first respondent will be entitled to hold charge, only after the entire dues of the petitioner bank is settled out of the sale proceeds of the property.

With the aforesaid observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

13.08.2024

Index : Yes/No
Neutral Citation : Yes/No
sra
Note: Issue on 16.08.2024.
To

1. The Income Tax Officer,
   Ward-2(4), Tirupur,
   Bsnl Building, Rayapuram Main Road,
   Tirupur-641 601.

2. The Sub Registrar,
   Kaniyur, Madthukulam,
   Udumalpet.

KRISHNAN RAMASAMY, J.

(sra)

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