IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2024

CORAM

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

WP No.157 of 2024

ICICI Bank Ltd.
rep. by its Senior Manager
Cho Pillai : Petitioner

Vs

1.The Assistant Commissioner of Income Tax,
ITO Non-Corporate Ward, 12(1)
Non-Corporate Range 12, Chennai BSNL Building
Tower 2, II Floor, 16 Greams Road,
Thousand Lights, Chennai

2.D.Satish

3.S.Jayakrishnan

4.The Joint-I Sub Registrar
Chennai North, Chennai 108 : Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the first respondent to remove the order of Attachments vide letter No.ITBA/COM/F/17/2021-22/1032569169 (1) and Letter No.ITBA/ COM/F/17/2021- 22/1032569593 (1) both dated 21.04.2021 issued by the first respondent addressed to the fourth respondent and direct the fourth respondent to register sale Certificate dated 26.09.2023 issued by the Petitioner

For Petitioner	:	Mr.K.Balamurali for Mr.V.Suresh
For Respondent No.1	:	Dr.B.Ramasamy
For Respondent No.4	:	Mr.K.Karthik Jegannath Government Advocate

Respondents 2 and 3 – not ready in notice

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.K.Balamurali, learned counsel for the petitioner; Dr.B.Ramasamy, learned counsel for the first respondent; and Mr.K.Karthik Jegannath, learned Government Advocate for the fourth respondent.

2. The petitioner seeks directions to remove the order of attachment dated 21.04.2021 over the property of the borrower, which according to the petitioner, is mortgaged and is a secured asset. He further seeks directions against the fourth respondent to register the sale certificate dated 26.09.2023.

3. The petitioner is a creditor of respondents 2 and 3. The account of the borrowers was declared as a non-performing asset and notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the Act of 2002) was issued on 17.07.2018.

4. The property (secured asset) was mortgaged in the year 2016. The security is registered with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI). As such, the petitioner is entitled to the benefit of Section 26E of the Act of 2002. The first respondent has attached the said property for recovery of its dues i.e. the tax due for the assessment year 2017-18.

5. It is not a matter of debate that the petitioner being a secured creditor and the security being registered with CERSAI would have a priority charge under Section 26E of the Act of 2002.

6. A Full Bench of this court in the case of *Assistant Commissioner (CT) Anna Salai-III Assessment Circle vs Indian*

Overseas Bank and Another (AIR 2017 Mad 67 (FB)) has framed the following issues for consideration:

> "a) As to whether the Financial Institution, which is a secured creditor, or the department of the Government concerned, would have the 'Priority Charge" over the mortgaged property in question, with regard to the tax and other dues.
>
> b) As to the status and the rights of a third party purchaser of the mortgaged property in question."

7. The Full Bench of this Court answered the reference and held that the rights of the secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority.

8. The Full Bench of the Bombay High Court in the case of *Jalgaon Janta Sahakari Bank Ltd. and another vs Joint Commissioner of Sales Tax and another (2022 Online SCC Bom 1767)* held that the

secured creditor would have the priority charge, as contemplated under Section 26E of the SARFAESI Act, 2002, in case the same is registered under Section 26B of the SARFAESI Act, 2002. The secured creditor in this petition claims that its security is registered under Section 26B of the SARFAESI Act, 2002.

9. In view of the Full Bench judgments, as referred to above, it is held that the secured creditor has priority charge over the claims of the Sales Tax, Commercial Tax and Income Tax.

10. In case auction is held by the secured creditor and the sale certificate is not registered, then the Registering Authority may register the same, notwithstanding the attachment of Sales Tax, Income Tax or Commercial Tax Departments.

11. In case the auction sale is conducted by the secured creditor and it has received excess amount than its dues, then it is liable to remit the excess amount to the Departments. However, if it has not received the amount in excess of the amount due and payable to it, then it is not required to remit any amount to the Departments and

the Departments cannot sustain prosecution against the Authorised Officer or the Officer of the secured creditor for not remitting the amount.

12. The writ petition is accordingly allowed. There shall be no order as to costs. Consequently, WMP No.171 of 2024 is closed.

(S.V.G., CJ.) **(D.B.C., J.)**
13.03.2024

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

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