**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO.5083 OF 2024**

Cholamandalam Investment and Finance company Limited, having its registered Ofifce at Dare House, 2 N.S.C. Bose Road, Parrys, Chennai – 600 001 and one of its Branches at Shankar Nagar, Nagpur acting through one of its Authorised Officer having authority to file the application which includes the authority to verify and sign the application.

**... PETITIONER**

**VERSUS**

1. The State of Maharashtra, through its Secretary, Ministry of Finance/Revenue, Mantralaya, Mumbai – 32.

2. Joint Sub Registrar-1/2, Collectorate Complex, Amravati.

3. Sales Tax Department, acting through its Sales Tax Officer, VAT-C-007, Amravati – 708, State GST Bhavan, Divisional Commissioner Office Compound, Bypass Road, Amravati.

4. The Collector, Amravati.

**... RESPONDENTS**

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Shri M. Anilkumar Shankarlal, Advocate for the petitioner.
Shri P.P. Pendke, Assistant Government Pleader for the State.

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**CORAM : SMT. M.S. JAWALKAR AND PRAVIN S. PATIL, JJ.**
**DATE : 18.06.2025.**

**ORAL JUDGMENT :** (Per : Smt. M.S. Jawalkar, J.)

Heard. **RULE**. Rule is made returnable forthwith.

2. The matter is taken up for final disposal by consent of the parties.

3. By this petition, the petitioner is seeking quashment of the attachment notice dated 31.07.2023 in respect of the property no.2 issued by respondent no.3 Sales Tax Department, acting through its Sales Tax Officer VAT, Amravati (for short 'the Department') and to withdraw the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (for short hereinafter referred to as 'CERSAI') registration. The petitioner is further seeking direction to respondent nos.1 and 3 to remove the charge of the property at Sr. No.2 in paragraph 4 of the petition from the Revenue Records. The petitioner is also seeking direction to respondent no.2 to register the Sale Certificate on receipt of Stamp Duty and Registration Charges forthwith.

4. It is the submission of the petitioner that the question

involved in this matter is already covered by the judgments of this Court.

5. The petitioner Bank has sanctioned the loan amount of Rs.2.95 crores and as there was default of repayment, the petitioner Bank after giving notice, registered its notice of auction with charge on CERSAI on 10.11.2017. The intimating Bank has issued auction notice on 25.07.2023. Thereafter, on 31.07.2023, the Officers of the Sales Tax Department (VAT), Amravati issued notice to the Intimating Bank that there were dues pending with the Goods and Service Tax worth Rs.15,37,219/- to be recovered from the Debtor. However, the said auction was failed. Again the notice of auction was issued on 27.02.2024.

6. On 18.03.2024 the Auction was finalized and the petitioner Bank has accepted the offer of Mrs.Sapana Praveen Duggad. The letter dated 18.03.2024 is kept on record. However, the sale-deed could not be registered as there was charge shown in the 7/12 extract by the respondent no.3 the Department.

7. It is to be noted that the Sales Tax Department registered the Charge with CERSAI on 30.01.2024. This Court in ***Writ Petition No.12724 of 2023 (Janaseva Sahakari Bank Ltd. vs. State of***

***Maharashtra and ors.) dated 22.07.2024*** dealt with the amended provisions of Section 26-E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short hereinafter referred to as "the Act'). In the said matter, the Goods and Service Tax Department and Maharashtra Value Added Tax Department (MVAT) have not registered their Security Interest with CERSAI and the petitioner Bank has registered their Security Interest on 17.03.2017. In view of the Section 26-E of the Act, it is held that, the attachment order issued by the Sales Tax Department cannot be sustainable as the Creditor Bank has already registered the Security Interest with CERSAI, much prior to the order of attachment.

8. This Court held in the case of ***Janaseva Sahakari Bank Ltd. vs. State of Maharashtra and ors.)*** in paragraph 23 as under :

> *"23. There is no dispute that the Petitioner-Bank has, as on 17th March 2017, registered the Security Interest with CERSAI. So also, there is no dispute that the respondents (GST Department and MVACT) have not registered with the CERSAI. Section 26-E of the SARFAESI Act reads as under :-*
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> > *"26-E. Priority to secured creditors. – Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central*

> *Government or State Government or local authority."*

9. Relying on the judgment of the Full Bench of this Court in the case of J***algaon Janta Sahakari Bank ltd and anr vs. Joint Commissioner of Sale Tax Nodal, and anr. 2022(5) Mh.L.J.691,*** this Court in the case of ***Janaseva Sahakari Bank Ltd. vs. State of Maharashtra and ors. (supra)*** held in paragraph in 26 as under :

> *"26. The Respondents (GST Department and MVAT) have not registered their Security Interest with CERSAI. The Petitioner – Bank ON 17TH March, 2017, have registered their Security Interest with CERSAI. The amended Section 26D, makes it mandatory for secured creditors to registered their security interest, to be entitled to exercise the rights of enforcement of securities."*

10. The Hon'ble Supreme Court in the case of ***ICICI Bank Ltd. vs. SIDCO Leathers Ltd. (2006) 10 SCC 452*** has ruled as under :

> *"41. While enacting a statute, Parliament cannot be presumed to have taken away a right in property. Right to property is a constitutional right. Right to recover the money lent by enforcing a mortgage would also be a right to enforce an interest in the property. The provisions of the Transfer of Property Act provide for different types of charges. In terms of Section 48 of the Transfer of Property Act claim of the first charge-holder shall prevail over the claim of the second charge-holder and in a given case where the debts due to both, the first charge-holder and the second charge-holder, are to be realized from the property belonging to the mortgagor, the first charge-holder will have to be repaid first. There is*

*no dispute as regards the said legal position."*

11. In view of the aforestated legal position, the petitioner's claim regarding security interest has to be satisfied on priority, and if any amount is over and above, the said recoverable loan amount, can be diverted to the Goods and Sales Tax Department. As such, the petition is allowed in terms of prayer clauses (c), (d) and (e), which are reproduced as under-

> "(c) quash and set aside the Attachment notice dated 31.07.2023 in respect of the property no.2 issued by the respondent no.3 and further direct the respondent no.3 to withdraw the CERSAI Registration ;
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> (d) direct the Respondent no. 1 and 3 to remove the Charge of the property at Sr. No.2 in para 4 of the petition from the Revenue Records ;
>
> (e) direct the Respondent No.2 to Register the Sale Certificate on receipt of Stamp Duty and Registration Charges forthwith."

12. In addition to that, it is directed to the petitioner Bank to act as per their own Communication dated 22.08.2023 and after satisfaction of the due, shall remit the surplus, if any, to respondent no.3 Sales Tax Department, acting through its Sales Tax Officer, VAT, Amravati.

13. The petitioner Bank is at liberty to consider and settle the matter by waiving the interest on the amount, if any, and if possible, to

deposit some amount to the State.

14. Rule is made absolute in aforestated terms.

**(PRAVIN S. PATIL, J.)** **(SMT. M.S. JAWALKAR, J.)**

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