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C.R.P.No.4230 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/2/2025

C O R A M

The Hon'ble **Ms.JUSTICE P.T.ASHA**

C.R.P.No.4230 of 2019

a n d

C.M.P.No.27618 of 2019

State Bank of India
rep. By its Chief Manager
Having its Corporate Office at
Madame Cama, Mumbai and
Branches among other places at
Second Floor, Office Complex Building
SBI LHO Campus, No.65 St Marks Road
Bengaluru 560 001
Karnataka Estate.

...

Petitioner

Vs

1. M/s. Vishva Cottex
rep. By its Proprietor
Mrs.Mitalben B.Bodar
"Anjani" No.1 Mayur Nagar
Amin Marg Near Rudraksh Building
Kalavad Road, Rajkot,
Gujarat State.
2. M/s. Aegan Industrial Private Limited
rep. By its Managing Director
Mr.Thiyagarajan Arun Kumar
Having Office & Factory at
No.280 Bommanallur 638 673.
Palani Highway, Dharapuram Taluk
Thirupur District
Tamil Nadu.

...

Respondents



C.R.P.No.4230 of 2017

PRAYER: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11/11/2019 passed in I.A.No.2 of 2019 in I.A.No.111 of 2016 in O.S.No.207 of 2016 on the file of III Additional District and Sessions Judge, Thiruppur at Dharapuram.

For petitioner	...	Mr.Elayaraja for M/s. Ramalingam & Associates
For respondents	...	Mr.M.Guruprasad for R.1
		Not ready in notice for R.2.

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ORDER

The petitioner before this Court is a third party in the suit in O.S.No.207 of 2016 on the file of III Additional District and Sessions Court, Tiruppur at Dharapuram.

2. The revision is filed challenging the dismissal of the application filed by the petitioner herein for raising an order of attachment passed on 7/10/2016 and made absolute on 7/11/2016 in I.A.No.2 of 2019 in I.A.No.111 of 2016 in O.S.No.207 of 2016 and which has also been



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recorded on the file of the Sub-Registrar, Dharapuram, on 24/10/2016.

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3. The brief facts preceding the filing of the Civil Revision Petition is herein below set out.

The first respondent herein had filed the suit in O.S.No.207 of 2016 against the second respondent herein for recovery of a sum of Rs.45,35,350/- with subsequent monthly compound interest at 24% p.a., from the date of suit till the date of payment. The above amount fallen due for the supply of the cotton bales by the first respondent to the second respondent. The first respondent would contend that payments were not received and therefore, this suit.

4. Pending the above suit, first respondent had filed I.A.No.111 of 2016, seeking a direction to the second respondent to furnish security to the tune of Rs.48 lakhs and failing which to attach the properties which have been described in A and B Schedules to the petition. Since security was not furnished, the first respondent had obtained an ex parte order of attachment before the judgment in respect of the properties set out in the schedule to the



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petition. It appears that the said property had been mortgaged in favour of the respondent Bank on 18/6/2010. SARFAESI proceeding had been initiated and the properties were brought to sale on 26/10/2018. It is in the interregnum that the order of attachment had been granted by the learned Additional District Judge, Dharapuram. The petitioner would submit that original title deeds in respect of the properties in question was in the custody of the petitioner, the same having been handed over by the second respondent to them with an intent to create an equitable mortgage. The second respondent had also executed a memorandum, evidencing the deposit of title deeds on 18/6/2010, which was also registered on the file of the Sub-Registrar, Dharapuram, as Document No.6608 of 2010.

5. The petitioner herein would further submit that since the second respondent had failed to repay the loan, the account was classified as NPA and the petitioner Bank had initiated proceedings under the SARFAESI Act by issuing notice under Section 13 (2) of the Act and initiating measures under Section 13 (4) of the SARFAESI Act. Thereafter, the property in question was brought to auction, as per the sale notice, dated 20/9/2018 and sold as a single lot in the auction held on 26/10/2018. Out of the auction



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sale, the petitioner Bank had recovered a sum of Rs.47.45 crores. The petitioner would submit that the total amount due from the second respondent was a sum of Rs.70,23,53,605/- as on 16/9/2018 and the sale of the property has only covered a portion of the amounts that were due.

6. On coming to learn about the attachment, the petitioner Bank had taken out an application in I.A.No.2 of 2019, to raise the order of attachment of the immovable properties.

7. The petitioner's aforesaid application was countered by the first respondent/plaintiff by contending that if the attachment order is raised, first respondent would have no other remedy to collect the amount that falls due to him and he would be put to great prejudice as well as hardship. The learned District and Sessions Judge, Tirupur had proceeded to dismiss the said application.

8. The learned Judge admitted that the properties were already mortgaged by the second respondent with the petitioner Bank. The learned Judge also came forward with the novel reasoning that although the



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petitioner Bank was to be paid a total sum of Rs.70,23,53,605/- and only a sum of Rs.47.45 crores had been recovered through the auction that first respondent herein has also filed a suit for recovery of Rs.45,35,350/-. Therefore, the learned Judge proceeded to raise the order of attachment on condition that the petitioner Bank deposits a sum of Rs.50 lakhs as security on behalf of the second respondent. Challenging this order, petitioner is before this Court.

9. When the matter had come up today, learned counsel appearing for the first respondent informed the Court that the suit had been decreed by judgment and decree dated 4/3/2021 and hence, nothing survives for consideration in the revision. However, Mr.Ilayaraja counsel for the petitioner would submit that even if the suit is dismissed, the order of attachment has to necessarily be raised or else the petitioner would be put to irreparable loss and hardship.

10. Heard the learned counsel appearing on either side.

11. Admittedly, the mortgage executed by the second respondent in



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favour of the petitioner Bank was much prior to the suit in question and the consequent attachment. The suit has been filed on 7/10/2016, the petitioner in exercise of his rights as mortgaged the properties had brought the same to sale on 26/10/2018. Even on the date when the attachment was made, the secured creditor, viz., the Bank not only had a higher priority in respect of the property than the first respondent but the original documents were also in the possession of the Bank. The first respondent is an unsecured creditor whose claim takes a lower priority than that of the secured creditor. That apart, the mortgages have all been registered and before effecting attachment an onus is cast upon the petitioner before filing an attachment application to verify the title in respect of the property. Had such an exercise been done and the encumbrance produced for the scrutiny of the Court, the order of attachment itself would not have been made. The learned Judge, after coming to the conclusion that the petitioner has a higher right has totally been misdirected into passing the conditional order even after the sale of the property, the petitioner's outstanding has not been cleared and it is a little over half of the amount that has been realised.

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12. Therefore, though the suit has been disposed of, order of attachment, cannot continue independent of the disposal of the suit and has to be necessarily raised so as to enable the Bank to exercise its right as an absolute mortgagee. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

14/2/2025

mvs.

To

1. III Additional District and Sessions Judge, Thiruppur at Dharapuram.
2. M/s. Vishva Cottex
Mrs.Mitalben B.Bodar - Proprietor
“Anjani” No.1 Mayur Nagar
Amin Marg Near Rudraksh Building
Kalavad Road, Rajkot,
Gujarat State.
2. M/s. Aegan Industrial Private Limited
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