BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **29-04-2025**
CORAM
THE HONOURABLE MRS JUSTICE J. NISHA BANU
AND
THE HONOURABLE MRS JUSTICE S.SRIMATHY

WMP(MD) NO. 7833 of 2024 in W.P.(MD)No.16950 of 2012

Indra Ganesan Educational and Charitable Trust
Rep. by its Chairman, No.72, West Bouliward Road,
Tiruchirappalli - 620 012

Petitioner(s)

Vs

1.The Deputy Commissioner
Commercial Taxes, Trichy Town, Trichy.

2.The Assistant Commissioner [CT] [FACT], Srirangam
Assessment Circle, Trichy-20.

3.The Authorised Officer, Axis Bank, 3rd Floor, No.82,
Dr.Radhakrishnan Salai, Chennai.

4.The Branch Manager, Axis Bank, No.75/E-1, Salai
Road, Thillai Nagar, Tiruchirappalli 620 018.

Respondent(s)

For Petitioner(s): Mr.V. Panneer Selvam
For Respondent(s): Mr.R.Suresh Kumar,
Additional Government Pleader for R1 & R2

Prayer: To clarify the order made in W.P.(MD).No.16950 of 2012 dated 14.11.2016.

ORDER

(Order of the Court was made by the Hon'ble S.Srimathy J.)

The present writ miscellaneous petition is filed seeking clarification of the order dated 14.11.2016 passed in W.P.(MD)No.16950 of 2012.

2. The writ petition was filed inter alia praying for writ of Certiorarified Mandamus to quash the order dated 25.10.2010 passed by the 3rd respondent and consequential order dated 24.11.2010 passed by the 4th respondent and direct the respondent bank to execute sale deed in favour of the petitioner free from the encumbrance including clearance of sale tax Rs.1,19,73,498/- in respect of the property bearing S.F.No.378/2 and 378/3 measuring 2 acres and 12.75 cents including the plant and machineries situated at K.Kallukudi Village, Trichy.

3. The Hon'ble Division Bench had heard the rival submissions and passed an order wherein it is held as under:

> "*24. The petitioner while submitting the Tender Form, has indicated that the Bank should pay the demand of sales tax directly as per their notice dated 13.03.2010 published in Daily Thanthi and subject to that, the Tender is filed and the sales tax dues must be paid by the Bank out of the sale proceeds. The Bank, after receipt of the communication of the Sales Tax Authorities, calling upon them to pay the sales tax arrears, also took a stand that their dues will prevail over the sales tax arrears and even in the Auction-Sale proceedings [the contents of which have been extracted in paragraph 4 of this order], the Bank had clearly given assurance that they will take care of the sales tax issue and in the light of the said assurance only, the petitioner has paid the entire bid amount and requested the respondents 3 and 4 to execute the Sale Deed*

free of all encumbrances which include the sales tax arrears. However, the Bank, in their impugned communications dated 25.10.2010 and 24.11.2010, had made a turn around stating that the request/demand made by the petitioner cannot be acted upon as he has purchased the properties knowing pretty well about the attachment from the Sales Tax Department and they are prepared to execute the Sale Deed, subject to the incorporation of the clause regarding sales tax arrears. In the considered opinion of the Court, the stand taken by the respondents 3 and 4 is wholly untenable as the borrower submitted his bid subject to the clearance of the sales tax arrears/dues by them and the communication and the reply dated 10.03.2010 and 15.04.2010 sent by the Axis Bank to the Commercial Tax Authority would also indicate that they have taken a consistent stand that their claim will have priority over the sales tax arrears and even in the Auction Sale proceedings also, a positive assurance has been given to the borrower that the said issue will be taken care of by the Bank. Therefore, the respondents 3 and 4 cannot resile from that promise or undertaking. In the light of the above stand / position taken by the respondents 3 and 4, two options are available to them, viz.,

[1] The Bank shall execute the Sale Deed in favour of the petitioner free of all encumbrances; or in the alternative
[2] shall return the entire sale consideration to the petitioner, with or without interest and in the event of their refund of the amount without any interest, the petitioner / Auction purchaser is at liberty to approach the competent Civil Forum to claim interest.

25. In the result, the writ petition is disposed of and the respondents 3 and 4 - M/s. Axis Bank, is at liberty to execute the Sale Deed in favour of the petitioner in respect of the auction property free of all encumbrances which include the sales tax arrears claimed by the respondents 1 and 2 ; or in the alternative, refund the sale consideration with or without interest to the *petitioner and in the event of the amount being refunded without interest, the petitioner / auction purchaser is at liberty to invoke the common law remedy and recover the same. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed."*

4.Aggrieved over the above referred to order, the bank had preferred SLP to Hon'ble Supreme Court and the same was dismissed. Thereafter also the bank failed to implement the order even though the order was passed as early as 2016. Hence, they preferred contempt petition. While hearing the contempt petition, the respondent bank had submitted that they would prefer clarification petition praying to clarify the order. Thereafter also the bank had not filed a clarification petition. Hence the petitioner had preferred the present clarification petition.

5. The clarification that is sought by the petitioner is whether the bank ought to discharge the Sales Tax liability before executing the sale deed to the petitioner / auction purchaser.

6. The issue that the bank's secured loan has priority charge over the other loans, taxes etc. is settled law. The loan of the bank ought to be settled, then if there is any excess amount then the other loans may be settled with the said

amount. The First Bench of this Court is W.P.No.19742 of 2021 batch vide order dated 27.09.2023 had held as under:

> "*7. 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.*
>
> *8. In case auction is held by the secured creditors and the sale certificates are not placed and/or registered, then the Registering Authority may register the same, notwithstanding the attachment of Sales Tax, Income Tax or Commercial Tax Departments.*
>
> *9. In case the auction sale is conducted by the secured creditor and they have received excess amount than their dues, then they are liable to remit the excess amount to the Departments. However, if they have not received the amount in excess of the amount due and payable to them, then they are 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."*

7. In another judgment rendered in W.P.No.15451 of 2024 in the case of ***M/s. Tamilnadu Mercantile Bank Vs. the Sub Registrar and another*** reported in ***2024-2-WLR654*** the Hon'ble Division Bench had held as under:

> "*19.In this case, admittedly the property has been duly conveyed in favour of the auction purchaser for valid sale consideration and in view of Section 26E, the attachment in favour of the 2nd respondent cannot continue to subsist, especially when nothing is remaining for the 2nd respondent to claim in and over the subject property.*

20.With regard to registration of the Sale Certificate, we see no justification on the part of the 1st respondent, Sub Registrar to refuse registration of the Sale Certificate. In fact, even in cases where an attachment order is subsisting, the Sub Registrar cannot refuse registration, as even according to the learned Additional Advocate General, the attachment would run with the property and therefore, the Sub-Registrar cannot refuse registration on the ground that there is an earlier attachment which is subsisting over the subject property. Therefore, insofar as this part of the prayer in the writ petition, there can be no second opinion that the petitioner is entitled to registration of the Sale Certificate in favour of the auction purchaser Mrs. Kala Ramu.

21.With regard to deletion of the entry, namely, the attachment in favour of the 2nd respondent, we do not find any provisions in the Registration Act which permit the registering authorities to delete an entry which is already finding place in the Encumbrance Register/Certificate. However, in terms of the customary practice and well settled procedure, the Registrar is duty bound to cause a contra entry stating that the said attachment in favour of the 2nd respondent stands raised in view of the exercise of the priority right by the Petitioner Bank by bringing the property for sale in public auction and consequently, conveying the said property in favour of the auction purchaser, Mrs.Kala Ramu. Insofar as this limb of the prayer, we therefore direct the 1st respondent to make an entry in the Encumbrance Records to reflect in the Encumbrance Certificate, notifying that the attachment in favour of the 2nd respondent in entry, Document No.04 of 2022 dated 05.01.2022, stands cancelled in view of the auction sale conducted by the Petitioner Bank in favour of Mrs.Kala Ramu on 31.08.2023 and consequent registration of the sale certificate which is also being ordered in this writ petition.

22.In fine, the writ petition is disposed of in the manner following:

(i) The 1st respondent shall register the Sale Certificate dated 04.10.2023,

issued by the petitioner Bank, within a period of two weeks from the date of receipt of a copy of this order.

(ii) The 1st respondent shall cause an entry in the Encumbrance Certificate cancelling the attachment order in favour of the 2nd respondent in Document No.04 of 2022 dated 05.01.2022, simultaneous to the registration of the Sale Certificate in favour of the auction purchaser as directed in Clause (i) herein above.

(iii) There shall be no order as to costs."

8. From the above judgments it is clear that the bank has first charge and they had priority over other loans. Even the crown debt is subsequent to the bank debt. Therefore, in the present case the bank is bound to register the sale deed without any encumbrance. The sales tax due cannot be deducted from the sale amount. The bank has priority to appropriate its loan. If there is any excess amount, then alone the sales tax department has right to claim from the excess amount.

9. With the above said clarification, the writ miscellaneous petition is allowed. No costs.

(J.NISHA BANU J.) (S.SRIMATHY J.)
29-04-2025

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To

1. The Deputy Commissioner
Commercial Taxes,
Trichy Town,
Trichy

2. The Assistant Commissioner (CT) (FACT)
Srirangam Assessment Circle,
Trichy-20