

(2009) 06 MAD CK 0188

In the Madras High Court

Case No : Writ Petition No. 6020 of 2009

Indian Bank

APPELLANT

Vs

The Sub Registrar and Others

RESPONDENT

Date of Decision : 12-06-2009

Acts Referred:

Constitution of India, 1950 — Article 272, 372(1)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4)
Tamil Nadu General Sales Tax Act, 1959 — Section 24, 26, 31, 31A, 33

Citation : (2010) 28 VST 100

Hon'ble Judges : S.J. Mukhopadhaya, J;N. Kirubakaran, J

Bench : Division Bench

Advocate : B. Murugavel, for the Appellant; A. Edwin Prabhakar, AGP, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—This writ petition has been preferred by the petitioner, Indian, Bank, (hereinafter referred to as the "Bank"), a nationalised bank, for issuance of a writ of mandamus directing the 1st respondent to entertain and register the sale certificate issued in favour of the petitioner-Bank in respect of the property being ground and premises situated at Door No. 103 on the Western Row of New Aavadi Road, Kilpauk, Chennai 600 010 bearing Plot No. A-45, Kilpauk Garden Road and comprised in R.S. No. 77/5.

2. According to the petitioner-Bank, it sanctioned over draft facility of Rs. 40 lakhs each to respondents 4 and 5 in their individual names on 14th Aug., 1990. As security to the due repayment of loan, respondents 4 and 5 created equitable mortgage over their one half undivided share each on the land measuring about one ground and 2105 sq.ft., together with building thereon situate on the western row of New Aavadi Road by depositing the title deeds on 30th Jan., 1991. Whiles, the 2nd respondent has issued a B-6 notice dated 6th Dec., 2001 to the petitioner on account of respondents 3 to 5, and on receipt of the notice, the petitioner sent a reply dated 2nd Jan., 2002. Since respondents 3 to 5 have

committed default in repayment of loan, the petitioner-Bank had initiated recovery proceeding in O.A. No. 1046/2000 (new O.A. No. 1165/2001) against respondents 3 to 5 before the Debts Recovery Tribunal ? II, Chennai, (hereinafter referred to as "Tribunal") for recovery of a sum of Rs. 4,93,77,443.33 with further interest @ 18.50% p.a. with quarterly rest and costs and the said suit is pending.

3. Counsel for the petitioner submitted that respondents 4 and 5 having taken loan from the petitioner and having mortgaged the property as secured asset on 29th Jan., 1991, the 2nd respondent has no jurisdiction to issue the impugned B-6 notice dated 6th Dec., 2001 nor can direct the petitioner to make the payment of the rent payable for the portion of the building and plot by the petitioner, which belong to respondents 4 and 5.

It appears that the 2nd respondent issued a subsequent notice on 8th March, 2002, asking the Bank to make payment to them, failing which to attach the property on the ground that the 2nd respondent has priority over all the properties of the other respondents. The petitioner-Bank had again sent a reply through Counsel on 16th March, 2002 stating that it is a secured creditor and has paramount charge over the secured asset to it. Two writ petitions, W.P. Nos. 31572 and 31573 of 2002 were preferred by the petitioner against such notice, which are still pending.

4. Further case of the Bank is that the Bank has already initiated proceeding u/s 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act. Notice u/s 13(2) was issued on the respondents on 30th Aug., 2002 and having not received proper reply, the Bank had taken steps u/s 13(4) by taking possession of the assets on 12th Sept., 2006. Subsequently, the Bank has brought the secured property for public sale and the same was sold on 25th March, 2008 to the petitioner-Bank and the sale was confirmed. Thereafter, a sale certificate has been issued in respect of the secured asset in favour of the petitioner-Bank, which has been produced before the 1st respondent for registration. At that juncture, the 1st respondent has orally refused to register the sale certificate on the ground that there was an order for attachment and against registration of any document in respect of the mortgaged property vide document No. 25/07 on 13th Dec., 2007 at the instance of the 2nd respondent.

5. In spite of notice, respondents 3 to 5 have not appeared. Though Counsel for respondents 1 and 2 appeared, but no separate counter affidavit has been filed. Learned Counsel appearing on behalf of the 2nd respondent submitted that there being due under the Tamil Nadu General Sales Tax Act (hereinafter referred to as "GST Act"), action has been taken u/s 24 of the GST Act and notice under Form-6 has been issued against the assessee.

6. From the proceeding in Rc No. 3349/2000 A3 dated 6th Dec., 2001, it appears that the Ambattur Assessment Circle of the Commercial Tax Department had

issued notice for payment of arrears under the GST Act on Tvl. Sri. Ragavendra Industries and Tvl. Sri. Balaji Industries u/s 26 of the said Act. It is not clear as to what is the stage of the proceeding against the assessee initiated under the GST Act. In absence of any counter affidavit filed by the 1st respondent, it is not clear as to why the 1st respondent refused to register the sale deed, if validly issued under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act.

In the present case, as we find that the matter is still pending before the 1st respondent for registration of the sale deed in question, and in absence of any affidavit, we are not inclined to give any specific finding or direction with regard to the registration of the same, but we may observe that with regard to the issues relating to priority of debts of State over the secured assets, this Court, vide its (unreported) judgment in W.P. No. 10246/07 (M. Nagarajan v. The Dy. Commercial Tax Officer and Anr.) dated 12th June, 2009, has observed and held as follows:

15. Having regard to the judicial pronouncements rendered by Courts and noticed above, we may sum up the law as under:

(i) Arrears of tax due to the State can claim priority over unsecured debts.

(ii) The common law doctrine about priority of Crown debts/State debts is recognised law in force within the meaning of Article 372(1) of the Constitution of India.

(iii) The doctrine will not apply if first charge by way of priority is not claimed under the statute.

(iv) The doctrine of first charge/priority of the State over the property will prevail over the private debt, which is an unsecured debt, but such doctrine of first charge/priority over the property cannot prevail over secured debts of a person. If the statute permits to have first charge/priority over the property having regard to the plain meaning of Article 272 of the Constitution of India, then only the State can claim priority over an unsecured debt.

16. So far as the present case is concerned, the claim of the State is based on Section 24 of the GST Act, which reads as follows:

24. Payment and recovery of tax.-

(1)....

(2) Any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or person and any fee due from him under this Act, shall, subject to the claim of the Government in respect of land revenue and the claim of the Land Development Bank in regard to the property mortgaged to it u/s 28(2) of the Tamil Nadu Co-operative Land Development Banks Act, 1934 (Tamil Nadu Act X of 1934) have priority over all other claims against the property of the said dealer or person and the same may without prejudice to any

other mode of collection be recovered-

(a) as land revenue ; or

(b) on application to any magistrate, by such Magistrate as if it were a fine imposed by him;

Provided that no proceedings for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax, other amount or fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, under Sections 31, 31-A, 33, 35, 36, 37 or 38.

17. The aforesaid provision fell for consideration before this court in the case of Tamil Nadu Mercantile Bank Ltd. v. Commercial Tax Officer, South Aavani Moola Veedhi Circle, C.T.O. Complex, Madurai in W.P. (MD) No. 10366/08. In the said case, the Court noticed that the provision of Section 24 is in contrast to the other enactments, such as Bombay Sales Tax Act and the Rajasthan Sales Tax Act, where first charge was created.

It will be evident from the Bombay Sales Tax Act, Rajasthan Sales Tax Act and the Kerala General Sales Tax Act that in all those Acts it was specifically mentioned that notwithstanding anything contrary contained in any law for the time being in force, any amount of tax, etc., due from a dealer or person under these Acts shall be the first charge in the property of the dealer. The rights of the State under the GST Act has to be seen in the context of the statutory provisions. All that the provision contemplates is that the tax assessed on or has become payable by, or any other amount due under the said Act from a dealer or person or any due from him under the said Act, shall be subject to the claim of the Land Development Bank in regard to the property mortgaged to it u/s 28(2) of the Tamil Nadu Cooperative Land Development Banks Act, 1934 and it will have priority over all other claims against the property of the said dealer or person to be recovered as land revenue. By so holding, the provision (Section 24 of GST Act) by itself does not create the first charge as under the other enactments and the claim of the State is to subserve the claim of the secured creditors, who, by the anterior charge created in its favour, has a superior claim over even the State's claim.

7. In view of the aforesaid observation of this Court, we are of the view that the 1st respondent should consider the matter in its proper perspective and decide the question of registration of the sale deed in question within one month from the date of receipt/production of a copy of this order. In case of any adverse decision, the 1st respondent will give specific reason, which should not be against the law laid down by the Supreme Court or this Court and quoted above.

The writ petition stands disposed of with the aforesaid observation and direction. But there shall be no order as to costs.