
(2015) 10 MAD CK 0244
In the Madras High Court
Case No : W.P. No. 17363 of 2015

R.S. Perumal

APPELLANT

Vs

The Sub Registrar, Chennai and Others

RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Constitution of India, 1950 — Article 372
Income Tax Act, 1961 — Section 218
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)

Citation : (2015) 10 MAD CK 0244

Hon'ble Judges : M.M. Sundresh, J.

Bench : Single Bench

Advocate : S. Sethuraman, for the Appellant; P. Rajalakshmi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The defaulter/borrower mortgaged the property in favour of the Bank while getting loan. This is a registered mortgage. On his default, proceedings were initiated by issuance of Notice under Section 13(2) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, on 23.01.2007. It was followed by a sale notice. The sale was effected on 30.10.2010. In the mean while, the second respondent attached the property of the defaulter for non-payment of income tax arrears. Though the sale was confirmed in the year 2010, the sale certificate was issued on 10.04.2014. However, it was not registered on the ground that there is an order of attachment by the second respondent dated 04.03.2008. Under those circumstances, the petitioner has come forward with the present writ petition.

2. The learned counsel appearing for the petitioner submitted that the mortgage was effected in the year 2003. The Bank was a secured creditor. The order of attachment was passed by the second respondent on 04.03.2008. Though the sale certificate was issued on 10.11.2014 pursuant to the confirmation of sale

dated 30.10.2010 and as the mortgage being earlier, the first respondent cannot refuse to register the same. In any case, the first respondent cannot have any power to refuse registration by taking note of the subsequent order of attachment dated 04.03.2008. In support of the submission, reliance has been placed on the Judgment of the Apex Court in the case of the Stock Exchange, Bombay vs. V.S. Kandalgaonkar & Ors. in Civil Appeal No. 4354 of 203 dated 25.09.2014.

3. Mr. T. Pramodkumar Chopda, learned counsel for the second respondent submitted that the attachment order was passed on 04.03.2008 and the property was brought for auction on 30.10.2010; the sale certificate was issued only on 10.11.2014; there is a priority for debt recovery by the second respondent; the defaulter and the Bank are not parties to this proceedings; the defaulter has already initiated proceedings before the Debt Recovery Tribunal in S.A. No. 5 of 2015 and an order was passed that the issuance of the sale certificate would be subject to the further orders that can be passed. Therefore, no interference is required.

4. Admittedly, the petitioner has purchased the property from the Bank in pursuant to the proceedings initiated under SARFAESI Act. Thus, prima facie, he is the bona fide purchaser for a valid consideration. The said consideration was also paid a long time back. The mortgage was effected in the year 2003. There is nothing on record to show that even prior to the mortgage, there was a proceeding. It appears that proceedings have been initiated only on 24.03.2006. Even that date is subsequent to the mortgage. Thus, it is clear that the proceedings are subsequent.

5. Though Mr. T. Pdrmodkumar Chopda, learned counsel appearing for the second respondent placed reliance on Section 218 of the Income Tax Act 1961, the same does not have any adverse application. It is prospective in nature. It is also with respect to alienation at the behest of the assessee. Even such alienation has got its own exception. Thus, neither the proviso nor the main provision has any application to the case on hand. Merely because, the attachment order was passed on 04.03.2008 and prior to the confirmation of sale and the sale certificate, the same would not nullify them. The second respondent does not have any preferential treatment towards the recovery of arrears as there is no crown debt as against the secured creditor. There is a difference between the secured creditor and non-secured creditor. Admittedly, in the case on hand, the Bank became a secured creditor.

6. In the case of Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others, , the Apex Court has held as follows:

"10. However, the Crown"s preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a

mortgagee or pledge of goods or a secured creditor. It is only in cases where the Crown's right and that of the subject meet at one and the same time that the Crown is in general preferred. Where the right of the subject is complete and perfect before that of the King commences, the rule does not apply, for there is no point of time at which the two rights are at conflict, nor can there be a question which of the two ought to prevail in a case where one, that of the subject, has prevailed already. In *Giles v. Grover* [(1832) 131 ER 563 : 9 Bing 128] it has been held that the Crown has no precedence over a pledge of goods. In *The Bank of Bihar Vs. The State of Bihar and Others*, the principle has been recognised by this Court holding that the rights of the pawnee who has parted with money in favour of the pawnor on the security of the goods cannot be extinguished even by lawful seizure of goods by making money available to other creditors of the pawnor without the claim of the pawnee being first fully satisfied. Rashbehary Ghose states in *Law of Mortgage* (TLL, 7th Edn. P. 386) - "It seems a government debt in India is not entitled to precedence over a prior secured debt." What has been argued before us is that the moment the Stock Exchange has a lien over the member's securities, it would have precedence over income tax dues. We find there is force in this submission."

Following the said ratio in the decision referred supra by the learned counsel for the petitioner, it has been held in the following manner:

"24. The first thing to be noticed is that the Income Tax Act does not provide for any paramountcy of dues by way of income tax. This is why the Court in *Dena Bank's* case (supra) held that Government dues only have priority over unsecured debts and in so holding the Court referred to a judgment in *Giles vs. Grover* (1832) (131) English Reports 563 in which it has been held that the Crown has no precedence over a pledge of goods. In the present case, the common law of England qua Crown debts became applicable by virtue of Article 372 of the Constitution which states that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force until altered or repealed by a competent legislature or other competent authority. In fact, in *Collector of Aurangabad and Another Vs. Central Bank of India and Another*, after referring to various authorities held that the claim of the Government to priority for arrears of income tax dues stems from the English common law doctrine of priority of Crown debts and has been given judicial recognition in British India prior to 1950 and was therefore "law in force" in the territory of India before the Constitution and was continued by Article 372 of the Constitution.

25. In the present case, as has been noted above, the lien possessed by the Stock Exchange makes it a secured creditor. That being the case, it is clear that whether the lien under Rule 43 is a statutory lien or is a lien arising out of agreement does not make much of a difference as the Stock Exchange, being a secured creditor, would have priority over Government dues."

7. Thus, the petitioner has made out a case both on facts and on law and the

ratio laid down would be applicable to the facts involved herein. However, as submitted by Mr. T. Pramodkumar Chopda, learned counsel appearing for the second respondent, the issuance of sale certificate would be subject to the result of the pending proceedings in S.A. No. 5 of 2015 in which the petitioner is also a party. Accordingly, the writ petition stands allowed by directing the first respondent to register the sale certificate presented by the petitioner which is kept pending and return the same subject to other compliance if any, within a period of four weeks, from the date of receipt of a copy of this order. No costs.