
(2004) 01 KL CK 0038

In the High Court Of Kerala

Case No : O.P. No's. 24528 and 36313 of 2000, 2082 of 2002, 8855 of 2003,
W.P. (C) No's. 23634, 33352 and 36608 of 2003

State Bank of Travancore

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 12-01-2004

Acts Referred:

Constitution of India, 1950 — Article 372(1)
Finance Act, 1999 — Section 26B
Kerala General Sales Tax Act, 1963 — Section 23, 23(1), 26B
Transfer of Property Act, 1882 — Section 100, 58

Citation : (2005) 142 STC 266

Hon'ble Judges : G. Sivarajan, J

Bench : Single Bench

Advocate : K.K. John, for the Appellant; Sojan James, Government Pleader for respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—In all these writ petitions the sole question that arises for consideration is as to whether the State of Kerala has got any priority in the matter of recovery of the sales tax dues from the defaulters over the equitable mortgages created by such defaulters earlier in favour of the petitioner-banks.

2. Writ Petition Nos. 24528 of 2000, 2082 of 2002, 23634 of 2003 and 36608 of 2003 are filed by the State Bank of Travancore, Writ Petition No. 36313 of 2000 is filed by the Vijaya Bank, Writ Petition No. 8855 of 2003 is filed by the Alleppey District Co-operative Bank Ltd. and Writ Petition No. 33352 of 2003 is filed by the Allahabad Bank.

3. Though facts of individual cases have not much relevance so far as the question mentioned above, the facts may be briefly stated: In O.P. No. 24528 of 2000 filed by the State Bank of Travancore, the third respondent, a public limited company, availed loan to the tune of Rs. 60 lakhs during 1985 and 1986, inter

alia, pledging the machineries as securities towards the advances made. The third respondent committed default in repaying the loan. The petitioner then filed a Civil Suit, O.S. No. 363 before the Sub-Court, Manjeri on November 20, 1993 for recovery of a sum of Rs. 1,39,56,017 with interest. The suit was later transferred to the Debt Recovery Tribunal, Chennai and later numbered as T.A. No. 1103 of 1997. While so, the hypothecated properties were attached by the second respondent for realisation of arrears of sales tax due from the third respondent. The petitioner then approached the first respondent for stay of the proceedings. The first respondent informed the petitioner that there is no stay against the proceedings and that the State has prior charge over the items. Hence the writ petition.

4. The second respondent filed a counter-affidavit. He had mentioned therein three RRC Nos. 1999 and 2000 and the amount due shown at Rs. 1,37,762. Besides, 8 requisitions from the District Labour Officer, Malappuram on which the District Collector directed recovery by revenue recovery proceedings. The movables were attached and kept in safe custody. This Court by way of interim order stayed further proceedings. The details of the dues by way of arrears due to the Labour Department is Rs. 3,09,209.

5. In O.P. No. 2082 of 2002 filed by the State Bank of Travancore equitable mortgage is created by respondents Nos. 3 to 6 on July 6, 1993 and later the second respondent-company created equitable mortgage. The State Bank of Travancore filed T.A. No. 630 of 1998 before the Debt Recovery Tribunal, Chennai for recovery of Rs. 1,86,77,016.91 which is now pending before the Debt Recovery Tribunal, Ernakulam. While so, the first respondent attached the properties for realisation of arrears of sales tax due from the second respondent-company. In the counter-affidavit filed by the first respondent details of the dues to the State is mentioned and contended that the State has got first charge over the properties for arrears of sales tax fallen due before the bank loan amount.

6. In W.P. (C) No. 23634 of 2003, the petitioner-bank financed the fourth respondent and her husband to a limit of rupees one crore and fifty lakhs on the basis of equitable mortgage created on September 9, 1994. The petitioner obtained a decree in O.A. No. 210 of 1998 on August 1, 1997. The State on the alleged sales tax dues of the fourth respondent's husband initiated revenue recovery proceedings and attached the properties as per exhibit P3 on November 8, 2001. The petitioner filed objection before the Collector, but without success.

7. In W.P. (C) No. 36608 of 2003, the petitioner financed a partnership firm on the equitable mortgage of property created by a partner on October 20, 1986. The bank obtained a decree in O.S. No. 194 of 1995 from the Sub-court, Kollam on November 30, 2000. The Tahsildar advertised the decree schedule property for recovery of arrears of sales tax due from the firm and the sale was posted to June 12, 2001. The petitioner filed a claim petition which was summarily dismissed on June 11, 2001. The appeal and revision filed were also dismissed. The property was posted for sale on November 29, 2003.

8. In W.P. (C) No. 33352 of 2003 the petitioner-bank obtained a mortgage decree on October 24, 1995 in O.S. No. 173 of 1993 from the Sub-court, Kochi for recovery of a sum of Rs. 10,75,404 with interest at 20.75 per cent per annum besides Rs. 94,163. Petitioner filed O.A. No. 47 of 1999 before the Debt Recovery Tribunal for execution. The respondents initiated recovery proceedings for realisation of arrears of sales tax against the defaulter-assessee by attaching the decree schedule properties. According to the petitioner Section 26B of the Kerala General Sales Tax Act, 1963 cannot frustrate a decree and the statutory charge on the property is subject only to the prior charge created in favour of the bank.

9. In W.P. (C) No. 36313 of 2000 the third respondent availed a loan from the bank after creating equitable mortgage of his properties besides other guarantees. The third respondent committed default. Petitioner filed a suit, O.S. No. 516 of 1992 before the Sub-court, Palakkad and obtained a decree on January 28, 1993 for a sum of Rs. 5,55,555.72 with future interest. As per order dated April 8, 1994 in LA. No. 1767 of 1993 a final decree was also passed permitting sale of the mortgaged properties. The amount due to the petitioner came to Rs. 8.5 lakhs. The second respondent attached the said properties for the alleged sales tax dues of the third and fourth respondents and the property was fixed for sale on December 23, 2000. In the counter-affidavit filed by the State, it was contended that a sum of Rs. 10,21,938 + interest is due from the third and fourth respondents and the Government is having a first charge over the property of the defaulter.

10. In O.P. No. 8855 of 2003 the petitioner is the Alleppey District Co-operative Bank. The fourth respondent availed a loan from the petitioner by creating an equitable mortgage of her immovable properties on January 8, 1996. The fourth respondent defaulted payments. The petitioner was taking steps to file arbitration case u/s 69 of the Kerala Co-operative Societies Act. The third respondent took action under the Revenue Recovery Act for sale of the said properties for recovery of arrears of sales tax due from the fourth respondent. Petitioner filed a claim petition. Thereafter the writ petition.

11. Shri K.C. John, learned Senior Counsel appearing for the State Bank of Travancore, submits that in respect of equitable mortgages created by a person in favour of the bank prior to the liability to the State has arisen, the State cannot claim any priority over the debts due to the banks for recovery of the debts due to the State. Senior Counsel further submits that at any rate in cases where the bank had obtained a decree based on the equitable mortgage created by the parties, the State cannot claim any priority over the debts due to the bank with respect to which a decree has been passed by the Civil Court. In support of the above, Senior Counsel relied on the decision of the Supreme Court in *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others*, . He also relied on the decision of the Supreme Court in *The Bank of Bihar Vs. The State of Bihar and Others*, . Senior Counsel also submits that the amendment of the Kerala General Sales Tax Act by which Section 26B is incorporated by the Finance Act,

1999 with effect from April 1, 1999 has no retrospective operation. Senior Counsel also pointed out that Section 26B inserted by Finance Act, 1999 with effect from April 1, 1999 does not have the effect of getting over the decree of a civil court passed earlier.

12. Similar contentions are urged by Shri D. Krishna Prasad, learned Counsel appearing for the petitioner in Writ Petition No. 36313 of 2000, Shri T.R. Ramachandran Nair, learned Counsel appearing for the petitioner in Writ Petition No. 8855 of 2003 and Shri P.K. Ravindran Puzhakkara, learned Counsel appearing for the petitioner in Writ Petition No. 33352 of 2003.

13. Shri Raju Joseph, learned Special Government Pleader appearing for the State, submits that the question involved in these cases is squarely covered by the decisions of the Supreme Court in *State of Madhya Pradesh and Another Vs. State Bank of Indore and Others*, *State Bank of Bikaner and Jaipur Vs. National Iron and Steel Rolling Corporation and Others*, and also in *Delhi Auto and General Finance Private Limited Vs. Tax Recovery Officer, Income Tax and Others*, rendered even prior to the insertion of Section 26B to the Act. Special Government Pleader also relied on the decision of the Madras High Court in *Central Bank of India v. State of Tamil Nadu* 1999] 113 STC 145 MAD and submits that there is no repugnancy with reference to the Transfer of Property Act. Special Government Pleader finally relied on the decision of a division Bench of this Court in *Indian Bank's case* (W.A. No. 74 of 2003 Reported in [2005] 142 STC 281 SC.

14. The priority of crown debts over other debts (secured or unsecured) in the context of the provisions of Section 23(1) of the Kerala General Sales Tax Act was considered by a two-Judge Bench of the Supreme Court in *Delhi Auto and General Finance Pvt. Ltd. v. Tax Recovery Officer* [1999] 114 STC 273 KER. Section 23(1) of the Kerala General Sales Tax Act reads thus :

"23. Payment and recovery of tax.--(1) The tax assessed or any other amount demanded under this Act shall be paid in such manner and in such instalments, if any, and within such time, as may be specified in the notice of demand, not being less than twenty-one days from the date of service of the notice. If default is made in paying according to the notice of demand, the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or other amount under this Act :

Provided that the time-limit of twenty-one days for a notice under this sub-section shall not apply to casual traders."

The Supreme Court was dealing with two civil appeals. In one case the arbitrator has passed an award in favour of the appellant.

The Supreme Court held that even if it is assumed for the sake of argument that a charge was created by the award made by the arbitrator, it cannot be said to

be effective in law and that the charge becomes effective only when the award is made a rule of the court which was done on November 24, 1970, whereas the attachment by the Tax Recovery Officer under the provisions of Schedule II to the Income Tax Act was earlier, i.e., on November 4, 1970 and in that view, the High Court was right in taking the view that the crown debt has priority. In the second case the appellant instituted a suit against third party; the matter was referred to arbitration; the arbitrator passed an award in 1966 in which it is, inter alia, stated to have created a charge. This was contested by the borrower and finally a compromise arrived at. The court made the award rule of the court in terms of the compromise order dated November 24, 1966. Construing the clause in the order it was held that the decree did not create a charge. The borrower failed to pay the sales tax arrears due to the State of Kerala. In January, 1971 a demand notice was served upon the defaulter as contemplated u/s 23(1) of the Act. The borrower did not pay the tax. The Supreme Court with reference to the provisions of Section 23(1) of the Act held that the State's debt has priority over the debts of the appellant.

15. Section 26B was subsequently inserted in the Act by the Finance Act, 1999 with effect from April 1, 1999 which reads as follows :

"26-B. Tax payable to be first charge on the property.--Notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax, penalty, interest and any other amount, if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or such person."

16. A similar provision--Section 11-AAAA of the Rajasthan Sales Tax Act, 1954--which creates a first charge on the property of a dealer under the said Act came up for consideration before a three-Judge Bench of the Supreme Court in State Bank of Bikaner and Jaipur Vs. National Iron and Steel Rolling Corporation and Others, . The brief facts are :

The appellant-Bank financed a partnership firm. The firm and the partners created mortgage of the factory by a deed of mortgage dated October 18, 1977. The partners created a pledge of the plant and machinery installed. For default in repayment of the loan amounts the bank filed a suit. During the pendency of the suit the Commercial Tax Officer, Bharatpur got himself impleaded on the ground that he had a prior claim for the recovery of a sum of Rs. 11,99,122 as sales tax from respondent No. 1 and was entitled to realise it by sale of the mortgaged property. The property of respondent No. 1 was sold in public auction as per orders of court and the sale proceeds deposited in the court. The trial court by its judgment and decree dated May 18, 1990 accepted the claim of the Commercial Tax Officer; the High Court dismissed the revision filed by the bank. Section 11-AAAA of the Rajasthan Act reads as follows :

"11-AAAA. Liability under this Act to be the first charge.--Notwithstanding anything to the contrary contained in any law for the time being in force, any

amount of tax, penalty, interest and any other sum, if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or such person."

The effect of the above provision on an existing mortgage in respect of the property of the dealer or the person liable to pay sales tax or other sums under the Rajasthan Sales Tax Act was considered by the Supreme Court. The provisions of Section 100 as also Section 58 of the Transfer of Property Act regarding the meaning of "charge" and "mortgage" and the earlier decision of the Supreme Court in *Dattatreya Shanker Mote and Others Vs. Anand Chintaman Datar and Others*, which took the view that a charge is a wider term as it includes also a mortgage and therefore the phrase "transfer of property" refers to the transfer of entire interest in the property and it does not cover the transfer of only an interest in the property by way of a mortgage were noted. The Supreme Court thereafter considered the question whether the statutory first charge which is created u/s 11-A of the Rajasthan Sales Tax Act over the property of the dealer or a person liable to pay sales tax and/or other dues under the Rajasthan Sales Tax Act, is created in respect of the entire interest in the property or only the mortgagor's interest in the property when the dealer has created a mortgage on the property. In other words, will the statutory first charge have priority over an earlier mortgage was considered. The counsel for the bank urged before the Supreme Court that at the time when the statutory first charge came into existence, there was already a mortgage in respect of the same property and therefore, the only property which was possessed by the dealer and/or person liable to pay tax or other dues under the Rajasthan Sales Tax Act, was equity of redemption in respect of that property. In other words, the contention was that the first charge would operate only on the equity of redemption. This contention was not accepted by the Supreme Court. The Supreme Court observed thus:

"...Where a mortgage is created in respect of any property, undoubtedly, an interest in the property is carved out in favour of the mortgagee. The mortgagor is entitled to redeem his property on payment of the mortgage dues. This does not, however, mean that the property ceases to be the property of the mortgagor. The title to the property remains with the mortgagor. Therefore, when a statutory first charge is created on the property of the dealer, the property subjected to the first charge is the entire property of the dealer. The interest of the mortgagee is not excluded from the first charge. The first charge, therefore, which is created u/s 11-A of the Rajasthan Sales Tax Act will operate on the property as a whole and not only on the equity of redemption as urged by Mr. Tarkunde."

The Supreme Court further held as follows :

"In the present case, the Section creates a first charge on the property, thus clearly giving priority to the statutory charge over all other charges on the property including a mortgage. The submission, therefore, that the statutory first

charge created by Section 11-AAAA of the Rajasthan Sales Tax Act can operate only over the equity of redemption, cannot be accepted. The charge operates on the entire property of the dealer including the interest of the mortgagee therein.

Looked at a little differently, the statute has created a first charge on the property of the dealer. What is meant by a "first charge" ? Does it have precedence over an earlier mortgage? Now, as set out in *Dattatreya Shanker Mote and Others Vs. Anand Chintaman Datar and Others*, , a charge is a wider term than a mortgage. It would cover within its ambit a mortgage also. Therefore, when a first charge is created by operation of law over any property, that charge will have precedence over an existing mortgage."

17. Another two-Judge Bench of the Supreme Court in *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others*, considered the priority or precedence of State debts in the context of the provisions of the Karnataka Sales Tax Act, 1957 and Section 158(1) and Section 190 of the Karnataka Land Revenue Act, 1964. In that case, Dena Bank, the appellant therein, filed a suit for recovery of certain sum with interest against a partnership firm and its partners. The suit was based, inter alia, on a mortgage by deposit of title deeds made by the partnership firm and its partners on April 24, 1969. The plaintiff sought for enforcement of the mortgage security. During the pendency of the suit the State of Karnataka tried to attach and sell the mortgaged properties for recovery of sales tax arrears due and payable by the partnership firm. The arrears of sales tax related to assessment years 1957-58, 1966-67 to 1969-70 under the State Act and to assessment years 1958-59 to 1964-65 and 1967-68 to 1969-70 under the Central Act. The State of Karnataka purchased the property in auction held on April 30, 1976. The State of Karnataka was impleaded as a defendant in the suit. The trial Court found that the averments are proved and the bank entitled to a decree. The charge created on suit properties by mortgage was also held proved. It was also held that the State could not have attached and sold the said properties belonging to partners for recovery of sales tax dues against the firm. However, the suit was directed to be dismissed for technical reason. The bank preferred appeal before the High Court. During the course of hearing of the appeal on January 27, 1992 a compromise was entered into between the bank and the borrowers which provided for a mode of payment of the decretal amount as agreed upon between the parties. The State of Karnataka was not a party to the compromise and therefore it contested the appeal. However, the High Court recorded the compromise and passed a decree in terms thereof by judgment dated August 3, 1992. The operative portion of the judgment states that the sales tax arrears due to the State from the first respondent partnership, shall have preference over the plaintiffs claim and the suit was decreed subject to the condition that the sales tax arrears including the penalty, if any, due under the Sales Tax Act from the first respondent and its partners shall have preference over the plaintiffs claim, and the plaintiff shall have to first pay the amount recovered during the course of execution to the State towards the sales tax arrears and the other amount due under the Sales Tax Act from the first

respondent and its partners and thereafter the plaintiff is entitled to adjust the remaining amount towards the amount due under the decree. The bank went in appeal to the Supreme Court. The Supreme Court considered the question whether the recovery of sales tax dues amounting to crown debt, shall have precedence over the right of the bank to proceed against the property of the borrowers mortgaged in favour of the bank.

18. The Supreme Court then considered the common law doctrine of priority or precedence of crown debts with reference to Halsbury's Laws of England, Fourth Edition, Volume 8, para 1076 at page 666 as follows :

"Quando Jus domini regis et subditi concurrunt jus regis praeferri debet.--Where the title of the King and the title of a subject concur, the King's title must be preferred. In this case detur digniori is the "rule.Where the titles of the King and of a subject concur, the King takes the wholewhere the King's title and that of a subject concur, or are in conflict, the King's title is to be preferred."

The Supreme Court observed that this common law doctrine of priority of State's debts has been recognised by the High Courts of India as applicable in British India before 1950 and hence the doctrine has been treated as "law in force" within the meaning of article 372(1) of Constitution and with reference to the Bombay, Madras and other High Courts and the Constitution Bench decision of the Supreme Court in Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, the principles were stated thus:

"The principle of priority of Government debts is founded on the rule of necessity and of public policy. The basic justification for the claim for priority of State debts rests on the well-recognised principle that the State is entitled to raise money by taxation because, unless adequate revenue is received by the State, it would not be able to function as a sovereign Government at all. It is essential that as a sovereign, the State should be able to discharge its primary governmental functions and in order to be able to discharge such functions efficiently, it must be in possession of necessary funds and this consideration emphasises the necessity and the wisdom of conceding to the State, the right to claim priority in respect of its tax dues. [See Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, . In the same case the Constitution Bench has noticed a consensus of judicial opinion that the arrears of tax due to the State can claim priority over private debts and that this rule of common law amounts to law in force in the territory of British India at the relevant time within the meaning of article 372(1) of the Constitution of India and therefore continues to be in force thereafter. On the very principle on which the rule is founded, the priority would be available only to such debts as are incurred by the subjects of the Crown by reference to the State's sovereign power of compulsory exaction and would not extend to charges for commercial services or obligation incurred by the subjects to the State pursuant to commercial transactions. Having reviewed the available judicial

pronouncements their Lordships have summed up the law as under :

1. There is a consensus of judicial opinion that the arrears of tax due to the State can claim priority over private debts.
2. The common law doctrine about priority of Crown debts which was recognised by Indian High Courts prior to 1950 constitutes "law in force" within the meaning of Article 372(1) and continues to be in force.
3. The basic justification for the claim for priority of State debts, is the rule of necessity and the wisdom of conceding to the State the right to claim priority in respect of its tax dues."

Thereafter the Supreme Court observed as follows :

"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 goods conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pledgee 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) 131All ER 563; 9 Bing 128, it has been held that the Crown has no precedence over a pledgee 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* (T.L.L., Seventh Edition, page 386)--"It seems a Government debt in India is not entitled to precedence over a prior secured debt"."

Then the Supreme Court noted that the High Court proceeded to rely on certain provisions contained in Chapter XVI of the Karnataka Land Revenue Act, 1964 as also the provisions contained in Sections 13 and 15 of the Karnataka Sales Tax Act, 1957 for holding that the arrears of sales tax would be entitled to a preference even over the debt secured by mortgage in favour of the appellant. Section 158 of the Karnataka Land Revenue Act, 1964 provided that the claim of the State Government to any moneys recoverable under the provisions of this Chapter shall have precedence over any other debt, demand or claim whatsoever whether in respect of mortgage, judgment-decree, execution or attachment, or otherwise howsoever, against any land or the holder thereof. It further provided that in all cases the land revenue for the current revenue year, of land for agricultural purposes, if not otherwise discharged, shall be recoverable in

preference to all other claims, from the crop of such land. Section 13(1) of the Karnataka Sales Tax Act, 1957 provided -that "the tax or any other amount due under this Act shall be paid in such manner in such instalments, subject to such conditions, on payment of such interest and within such time, as may be prescribed". Sub-section (3) provided that "any tax assessed, or any other amount due under this Act from a dealer or any other person may without prejudice to any other mode of collection be recovered, as if it were an arrear of land revenue".

19. It is seen that the Supreme Court has relied on the provisions of Section 158 of the Karnataka Land Revenue Act, 1964 which clearly provides that the claim of the State Government to any moneys recoverable under the provisions of Chapter XVI thereof shall have precedence over any other debt, demand or claim whatsoever including in respect of mortgage, judgment-decree, execution or attachment. The Supreme Court held that the effect of Section 158 is to accord a primacy to all the moneys recoverable under Chapter XVI which will include sales tax arrears.

20. A three-Judge Bench of the Supreme Court in State of Madhya Pradesh and Another Vs. State Bank of Indore and Others, had considered the question with reference to Section 33-C inserted into the Madhya Pradesh General Sales Tax Act, 1958 which reads thus :

"33-C. Tax to be first charge.--Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax and/or penalty, if any, payable by a dealer or other person under this Act shall be a first charge on the property of the dealer or such person."

In that case, in respect of sales tax dues, the State claimed a first charge u/s 33-C upon the machinery in priority to the charge held by the bank. The trial court and the High Court did not accept the State's submission in that behalf. The High Court took the view that the bank's charge on the machinery was created on September 5, 1974, i.e., prior to the enforcement of Section 33-C and the subsequent loans taken on January 23, 1979 and January 25, 1979 did not alter the position in favour of the State. The High Court took the view that the charge created once remained valid and operative till repayment of the loan as borrowed. The Supreme Court considered the matter thus :

"Section 33-C creates a statutory first charge that prevails over any charge that may be in existence. Therefore, the charge thereby created in favour of the State in respect of the sales tax dues of the second respondent prevailed over the charge created in favour of the bank in respect of the loan taken by the second respondent. There is no question of retrospectively here, as, on the date when it was introduced, Section 33-C operated in respect of all charges that were then in force and gave sales tax dues precedence over them. This position in law is discussed in detail in the judgment of this Court in Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others, ."

21. So far as the present case is concerned I have already extracted the provisions of Section 26B of the Act which is *pari materia* with the provisions of Section 11-AAAA of the Rajasthan Sales Tax Act, 1954 considered by the Supreme Court in *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others*, discussed *supra* (sic) and therefore the said decision would squarely apply to the facts of the present cases. The decision of the Supreme Court in *State of Madhya Pradesh and Another Vs. State Bank of Indore and Others*, which considered an identical provision Section 33-C in the Madhya Pradesh General Sales Tax Act is also to the same effect.

22. It can be seen from the said judgment that the three-Judge Bench had relied on the two-Judge Bench decision in *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others*, discussed *supra*. The Supreme Court in *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others*, has clearly discussed the common law doctrine of priority of State's debts which has been followed by the courts in India including the Constitution Bench decision of the Supreme Court in *Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others*, . Here it must be noted that the Supreme Court took the view that the State's debts has precedence over other debts solely on the basis of the provisions of Section 158 of the Karnataka Land Revenue Act, 1964 which I have already extracted in this judgment. The said provision, it must be noted, refers besides mortgage, judgment-decree, execution or attachment or otherwise (underlining Here italicised. given). This would show that even in cases where a judgment-decree was passed in a case based on a mortgage executed in favour of the bank the charge created by the provisions of the Act would prevail over such judgment-decree, execution or attachment only by virtue of the provisions of Section 158 of the Karnataka Land Revenue Act. Of course in *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others*, the position was slightly different and there was no occasion for the Supreme Court to consider a situation of a judgment-decree or execution proceedings pending at the time of commencement of the charge. In none of the decisions considered above the Supreme Court was directly concerned with a situation where the bank had obtained judgment-decree of a civil court at the time of commencement of a statutory charge in favour of the State in respect of sales tax dues. In the present writ petitions in some of the cases judgment-decree had already been passed on the basis of the mortgage created in favour of the bank and it was under execution. Though the three-Judge Bench of the Supreme Court in *State of Madhya Pradesh and Another Vs. State Bank of Indore and Others*, had endorsed the position of law stated by the Supreme Court in *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others*, there was no occasion for consideration of the legal position discussed in paragraph 10 in *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others*, .

23. Here, it must be noted that the Supreme Court in *Delhi Auto and General Finance Private Limited Vs. Tax Recovery Officer, Income Tax and Others*, had

with reference to the provisions of Section 23 of the Act held that the appellant therein did not have a priority for payment of the amount due to it over the sales tax amount due to the State from the borrower under the said Act. In that case the appellant filed a suit against its debtor for recovery of money. The matter was referred to arbitration. The arbitrator passed an award in the year 1966; the appellant applied for making the award a rule of the court; the borrower contested the same but ultimately there was a compromise between them and the court made the award a rule of the court in terms of the compromise by its order dated November 24, 1970. Meanwhile the borrower had failed to pay the sales tax arrears due to the State of Kerala; on January 12, 1971, a demand notice was served upon the said defaulter as contemplated by Section 23 of the Kerala General Sales Tax Act and the amount was not paid within twenty-one days of the service of the said notice. It was held that though the compromise decree used the word "charge" the decree did not really create a charge upon the properties as understood under the Transfer of Property Act, but merely continued the order of injunction restraining alienation. Upon failure by the defaulter to pay the sales tax arrears pursuant to the notice, a charge got automatically created upon the properties of the defaulter as provided by Section 23(1). It is in these circumstances the Supreme Court held that the appellant did not have a priority for payment of the amount due to him over the sales tax amount due to the State from the borrower under the Kerala General Sales Tax Act.

24. I have considered the rival submissions. The question involved is no longer *res integra*. The Supreme Court in clear terms has held in the decisions mentioned earlier that the State has got "a priority in the matter of recovery of debts due to it in view of the specific statutory charge created under the Kerala general sales tax enactment and that such priority of crown debts is notwithstanding the equitable mortgages created by the defaulters in favour of banks prior to the liability in favour of the State. Though the Supreme Court in *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others*, did not deal with a case where a decree has been passed on the equitable mortgage created by the defaulter in favour of the bank and the question was left open, the subsequent decision of the Supreme Court in *State of Madhya Pradesh and Another Vs. State Bank of Indore and Others*, covers the said question also where the Supreme Court has taken the view that even in cases where a decree has been obtained by the bank prior to the creation of the charge in favour of the State, still the State will have a priority over the debts due to the bank. The division Bench of this Court by the judgment in *W.A. No. 74 of 2003* (printed below), in the case of *Indian Bank*, relying upon the aforesaid decisions, rejected a similar contention taken by the State Bank.

25. In the light of the above authoritative pronouncements of the Supreme Court and the division Bench of this Court mentioned above, there is no merit in these writ petitions.

Writ petitions are accordingly dismissed.