
(1980) 01 MAD CK 0031
In the Madras High Court
Case No : A.A.O. No. 708 of 1977

Union of India

APPELLANT

Vs

R.K. Raghavan alias R.K. Selvaraj and Others

RESPONDENT

Date of Decision : 03-01-1980

Acts Referred:

Income Tax Act, 1961 — Rule 11(6), 16, 16(1), 178, 226(4)

Citation : (1980) 18 CTR 40

Hon'ble Judges : T. Sathiadev, J

Bench : Single Bench

Advocate : Rangaswamy, for the Appellant; Masilamani, for the Respondent

Judgement

Sathiadev, J.—The Appeal is preferred against the order made by I Additional Sub-Judge, Pondicherry, in E.A. No. 5 of 1977 in E.P. No.

217 of 1974 on a petition filed under Order 21 r. 90 and s. 151 of the CPC to set aside the sale held on 16-12-1976 on the ground of material irregularity.

2. The appellant herein is Union of India represented by ITO, Pondicherry, who was the petitioner in the Court below and the two respondents

herein the respondents therein. In the petition, it was claimed that one Madam Garnier was doing business in automobiles and she died in

September, 1967 bequeathing her property to the second respondent and three others. She was in arrears of Income Tax amounting to Rs.

10,00,000/-, and the only Immovable property left behind is Door No. 4, St. Lawrence Street, Pondicherry. When the department took steps to

bring the property to sale, it filed O.P. No. 21 of 1975 in the same Court against second respondent and three others, who are legal

representatives of deceased Madam Garnier, for permission to bring the property to sale and the Court declared that State has the first charge

over the property, and permitted it to bring the property to sale, and this petition was ordered on 24-10-75. While so, first respondent herein had

filed on 1-7-1974 E.P. No. 217 of 1974, claiming that he is the mortgage under mortgage dated 22-12-1960, and hence he has a right to bring

the property to sale. The Executing Court, after granting permission to first respondent to bid, auctioned the property on 16-12-1976, in which the

degree-holder/first respondent himself purchased the property for Rs. 44,100/- whereas the property is worth much more. Inspite of the legal

representatives of the Income Tax defaulter having been served with notices and put on notice about the claim for arrears of Income Tax, the

proceedings taken in execution by first respondent, being contrary to the provisions of the IT Act, 1961, the sale conducted, would seriously affect

the right of the petitioner, and therefore it deserves to be set aside.

3. Second respondent remained absent and it was the first respondent who contended that under mortgage dated 22-12-1960 a sum of Rs.

20,000/- is payable by Madam Garnier, and that under French Law, and as held in *Susama Bala v. Bibuti Bhusan* the mortgage deed itself is a

decree, and it having the force of a decree, he has the right to directly file E.P. No. 217 of 1974, and therefore Court auction sale was held after

due publication, and hence petitioner has no right to challenge the sale nor to claim preference over the claim of a secured creditor, and more

particularly when IT Act had come into force only in 1964, whereas the mortgage was created as early as 22-12-1960

4. Court below placing reliance in *Suraj Prasad Gupta and Another v. Chartered Bank, Kanpur and Another* has come to the conclusion that first

respondent being the mortgagee and a secured creditor is entitled to priority over tax amount that may be claimed by petitioner, and the decree

obtained not being ""decree for the payment of money"", the Court auction sale used not be set aside. It also took note of the fact that long before

Madam Garnier became an Income Tax assessee under the provisions of the Indian IT Act, 1961, first respondent having secured a mortgaged

which in law, is a mortgage decree, and ranked as secured creditor, and there being no irregularities made out in the auction sale, the sale held on

16-12-1976 deserves to be confirmed, and hence directed sale certificate to be issued. Aggrieved with this order, this appeal is preferred by

petitioner, Union of India, represented by ITO Pondicherry. Subsequent to the order, a sale certificate was issued on 5-9-1977 and this appeal

was filed on 15-11-1977.

5. Mr. Rangaswamy, counsel for appellant contends that merely because there was a mortgagage in favour of the first respondent on 22-12-1960,

it does not mean that after service of notice on Madam Garnier and thereafter on her legal representatives demanding arrears of tax, the Executing

Court cannot proceed with execution of the mortgage decree by virtue of the prescription in r. 16(1) of Sch. II to the Act. A mortgage decree is in

essence only a money decree, and the rule as framed brings within its fold an execution taken pursuant to a mortgage decree to realise the amount

in satisfaction of the mortgage claim. Even though IT Act was made applicable to the territory of Pondicherry only in 1964, and the huge tax

amount payable by her had accrued due subsequently, after notice had been served on the defaulters on a certificate issued under s. 222 of the IT

Act, the Civil Court is deprived of its jurisdiction to proceed in execution of a decree in which the defaulter is involved. When O.P. No. 21 of

1975, was allowed on 24-10-1975 2nd respondent and the other three legal representatives being fully aware of the demand made on them for

recovery of Income Tax, the property belonging to them, cannot be subject to any execution proceedings, and therefore petitioner/appellant therein

has the jurisdiction to maintain an application u/s 151 and under order 21 r. 90 of the CPC and seek the necessary relief. The petition was filed in

January, 1977 and therefore even though auction might have been held on 16-12-1976, the Execution Court has no jurisdiction to confirm the sale.

Rather he would contend that when a notice is issued u/r 2 of Sch. II, u/r 51, it dates back and becomes effective from the date of service, and

thereafter whatever be the order of an Executing Court, they will be only invalid.

6. Mr. Masilamani, counsel for respondent contends that nowhere in the IT Act there is any provision made that the tax demanded from a defaulter

will supersede the claim of a mortgagee and the priority to which a secured creditor is entitled to, cannot be destroyed by relying upon rules found

in Sch. II to the Act. Mortgage under French Law does not contemplate the filing

of a suit for a mortgage decree to be obtained, and even on the day when the mortgage deed was executed, it became an executable decree, and what was further required to be done by the mortgagee was to file an execution petition and at that stage. IT Department cannot interdict the process taken by the Executing Court. The contention that a mortgage decree is a money decree is a negation of the established concept, that a mortgage decree is in essence a right to proceed against security and as a secured creditor the right of the mortgagee ranks higher than the claim of the State for recovery of taxes.

7. Mr. Masilamani in support of his contention refers to s. 48 of Transfer of Property Act, wherein it is provided that the rights of persons acquired

earlier cannot be superseded by rights subsequently created and whatever had been done subsequently will be subject to the rights previously

created. It is not disputable, according to him, that on 22-12-1960 a mortgage was created in favour of first respondent by Madam Garnier for

Rs. 20,000/-. It is now alleged that the amount due to the first respondent is Rs. 1,20,000/-. To substantiate his contention that the State can have

no precedence over the claims of a secured creditor, he refers to the passage in Mulla's T.P. Act, Vth Edition at page 230 which is as follows :

(5) Government debt - Apart from statutory provisions to the contrary, a debt owed to the Government or any local authority is no exception to

the rule of priority and is not entitled to precedence over a prior secured debt. It is only with regard to payment of unsecured debts that such debts

have priority.

Therefore he claims that it is only as against unsecured creditor, the claim of the Crown State can have precedence, but when the claim is of a

secured creditor, claim for recovery of tax cannot have any precedence. To show that even in IT Act this concept has been recognised he resorts

to s. 178 which deals with a company in liquidation and proviso to sub-clause (3) is to the effect that nothing in the said sub-section shall debar the

liquidator ""for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government

on the date of liquidation"". Equally, he relies upon the following passage at page 870 of VI Edition of Kanga's Law and Practice of the Income

Tax, which is to the following effect :

Until the liquidator has set aside an amount to meet the tax liability, he should not part with any of the assets except for paying secured creditors

entitled to priority over Government dues. However, this section does not confer on the Government any higher priority than that enjoyed under

the company law.

To show that the right to claim tax is subject to the rights of a secured creditor. Merely because rules have since been made under IT Act of 1961

in Sch. II, of the procedure that will have to be followed for recovery of tax by the TRO, they cannot override established law or even what is

found in the Act itself.

8. He refers to the decision rendered in Builders Supply Corporation v. Union of India and Others which dealt with the scope of s. 46(2) of the

Indian IT Act 1922, wherein it was held that ""The Government of India is entitled to claim priority for arrears of Income Tax due to it from a citizen

over debts from him to unsecured creditors"" and that s. 46 does not in terms displace the application of the doctrine of tax dues. The Supreme

Court, in the said decision referred to the Full Bench decision of this Court in Manickam Chettiar v. ITO Madurai, wherein it was held that s. 46 of

IT Act 1922 is not exhaustive of the remedies of Crown, and it does not preclude an application being filed u/s 151 of the CPC by the department

for recovery of tax arrears in a matter that was pending before Court. It was therefore held that as against claims of unsecured creditors, the State

will be entitled to priority for recovery of tax which according to Mr. Masilamani, would necessarily mean that the priority claim of the secured

creditor has thus been recognised.

9. He then relies upon a full Bench decision of this Court relating to the scope of s. 46(2) of the IT Act, 1922, wherein, in a case arising under a

mortgage, it was held that when a receiver is appointed the amounts recovered by him, till appropriated by orders of Court towards the mortgage

debt, it is only a fund in Court in medio, and the Court has the power to give directions about the disbursement of the collections made by the

receiver pending the suit and hence the state has a right to move the Court for collection of the arrears of tax due and payable by the mortgagor.

Relying upon the reasoning adopted therein, he contends that the right of mortgagee is preserved over the security against the claim of State for

recovery of arrears of tax payable by the Mortgagor.

10. He then lays considerable reliance on the decision in Surai Prasad Gupta and Another v. Chartered Bank, Kanpur and Another of the

Allahabad High Court wherein it has been held that a bar on a civil Court issuing process against assessee's property, does not apply to a decree

for sale of mortgaged property. It was held therein that there be no substantive provision in the IT Act for superseding or overriding the claims of a

secured creditor, and Sch.II being confined only to procedure, the expression ""decree for the payment of money"" in r. 16(1) has to be given only a

restricted meaning confining it to a simple money decree, and it cannot include a decree for sale in enforcement of a mortgage decree passed u/o

34 r. 5 of the Code of Civil Procedure. In this decision, neither the Full Bench decision of this Court in Manickam Chettiar's case nor any other

decision, is referred to.

11. Regarding claim of priority by IT Department for realisation of arrears of amount division Bench of this Court in Somasundaram Mills Private

Ltd. v. Union of India & another in a case that arose under IT Act, 1922, held that the priority can be claimed only when the assets are in the

possession of the Executing Court and that it should be belonging to the judgment debtor. But, if the property had become the property of the

decree-holder, the claim of priority cannot be enforced. According to Mr. Masilamani, even when mortgage was executed on 22-12-1960, there

is a mortgage decree in his favour, and for this purpose he relied upon the decision in Susama Bala v. Bibhuti Bhusan, wherein a Full Bench of the

Court held that grosses copy of a notarial mortgage bond executed under French Law has the force of a decree. In a recent decision of this Court

reported in Mahalakshmi v. P. S. Rajeshwari Alias Shanthi it has been held that when the mortgage was created, at a time where the French Law

was in force, it straight way become an executable decree and such a substantive right can be enforced by moving Executing Court for recovery of

the amounts.

12. Hence, the contention of Mr. Masilamani is that, first respondent as mortgagee/decreed holder/court-auction-purchaser, has a priority claim

over tax arrears of the judgment debtor and her legal representatives, and therefore, the execution proceedings taken in E.P. No. 217 of 1974

culminating in sale certificate being cannot be challenged in these proceedings, even though it may be claimed that under Indian IT Act of 1961,

which had come into force in Pondicherry territory only in 1964, notices have been served under Rule 2 on the defaulting assessee mortgagor,

even prior to first respondent filing E.P. on 1-7-1974.

13. Mr. Rangaswamy, counsel for appellant contends that the reliance on decisions rendered u/s 46(2) of IT Act 1922 can have no application

subsequent to what has been provided u/s 222 of IT Act, 1961. The ITO has the power to issue a certificate to the TRO specifying the amount of

arrears of tax due from the assessee and thereafter the TRO has the power to adopt any one or more modes mentioned therein like attachment

and sale of assessee's moveable or Immovable properties, arrest the assessee and detain him in prison or of appointing a receiver to manage the

properties of the assessee. The TRO has the power to issue a notice u/r of Sc. II, and on service effected, it will be deemed to be effective from

the date of service on the defaulting assessee, as provided u/r 51, and therefore in this case after a notice had been served, the Civil Court has no

jurisdiction to proceed with the execution proceedings initiated in E.P. No. 217 of 1974, which was only on 1-7-1974. When the present petition

was filed both under order 21 r. 90 and s. 151 CPC in Jan., 1977, there is no jurisdiction in the Executing Court to confirm the sale. Thereafter, it

is only for the TRO to bring the property to sale in which it will be open to the first respondent herein to seek his reliefs, as provided under the

rules. On the claim that when a decree is obtained under a mortgage, the decree holder is a secured creditor and therefore the arrears of tax

cannot be claimed by invoking r. 16(1) of Sch II is basically incorrect, because a Full Bench of this Court has held that mortgage decree is a

money decree.

14. It will be useful first to take up the point as to what is contemplated u/r 16(1) of Sc. II to the Act, which is as follows :

Where a notice has been served on a defaulter u/r 2, the defaulter, or his representative in interest shall not be competent to mortgage, charge,

lease or otherwise deal with any property belonging to him, except with the permission of the TRO, nor shall any Civil Court issue any process

against such property in execution of a decree for the payment of money"".

Mr. Masilamani claims that the words ""for the payment of money"" can be referable only to a simple money decree and mortgage decree is outside

its scope. Mr. Rangaswamy, counsel the appellant contends that even a mortgage decree will come within the expression above referred to,

because essentially a mortgage decree is for recovery of money, and to realise the amount borrowed on furnishing security, mortgagee is enabled

to bring the same security to sale in court auction, and ultimately what he realises is the amount due under the mortgage. In this view, even in the

case of a mortgage decree it will be only ""a decree for payment of money"" and to substantiate this contention he relies upon the following four

decisions : In Hart v. Tara Prasanna Mukherji in dealing with a mortgage decree and when the state came for rateable distribution of sale proceeds

u/s 295 of the CPC of 1882, it was held that when mortgages seeks to realise the amount from the mortgaged property and from the mortgagor

personally, it is ""a decree for money"" within the meaning of the term used in s. 295. A Full Bench of this Court dealing with ss 230, 258 and 295 of

the Code of Civil Procedure, 1882, held that ""a mortgage decree even when the remedy otherwise does not exist or has become barred by

limitation, would be a money decree within the meaning of s. 230 and therefore of ss. 258 and 295 also of the Code of Civil Procedure."" The

contention was that a mortgage decree u/s 88 of the Transfer of Property Act cannot be termed as money decree. But this claim was repelled on

the ground that so far as the realisation of the debt from the mortgaged property goes, the process under-gone is to realise the money, through

Court and hence it is a "money decree. In Krishnan (Minor) by next friend Pathma Parvathi Ammal v. Venkatapathy Chetti a Division Bench

following the said Full Bench decision, held that a decree directing recovery of the decree amount by sale of properties but not directing payment

by the defendant is essentially a decree for money. Relying upon these binding decisions wherein it was held that a mortgage decree is essentially a

decree for the payment of money, quite rightly Mr. Rangaswamy contends that the decision rendered in Suraj Prasad Gupta and Another v.

Chartered Bank Kanpur, wherein no precedents have been referred to, cannot be of any assistance in understanding the scope of r. 16(1).

15. What is contemplated u/s 16(1) is to desist the Civil Court from issuing any process against a property belonging to a defaulter on whom a

notice has been issued u/s 2 being further proceeded with in execution of a "decree for payment of money". This rule cannot be invoked in cases

where the relief is for partition or possession, or for a mandatory injunction to be carried out or for specific performance of a contract or in a suit

for redemption and the like. Even in a mortgage claim, the decree is put into execution to bring the security to sale for the realisation of money due

and payable to the mortgaged. It would therefore be not inappropriate to hold that even in the case of a mortgage decree, r. 16(1) of Sch. II can

be invoked. What is sought to be recovered in the execution proceeding is the money payable by the defaulter, on whom a notice had been

already served u/r 2 of the Rules. In this case in fact O.P. 21 of 1975 had been filed by the petitioner department and an order had been passed

on 24-10-1975 in favour of petitioner and it is only thereafter the Court Auction had taken place on 16-12-1976, though the Executive Petition

was filed on 1-7-1974. Further much earlier notices for recovery of arrears had been served on the defaulter and her legal representatives.

16. Mr. Masilamani has contended for first respondent, that the execution of the decree had come to the stage of confirmation, and in fact

subsequent to the filing of the present petition, a sale certificate had been issued and therefore no relief can be secured in the present petition. What

had transpired subsequent to January, 1977 i.e. after filing of the present petition is irrelevant and cannot stand in the way of the petitioner, if it can

be established by the petitioner that subsequent to service of notice u/r 2 of the Rules, the Executing Court has no jurisdiction to further proceed

with the matter.

17. Counsel for the department relies upon the decision in N. B. Films v. Daya Shanker, wherein it was held that no process could be issued by

the Executing Court pursuant to the decree against any property of the judgment debtor who had been served with a notice u/r 2, because of the

bar imposed u/r 16(1). It was held therein :

The English doctrine of precedence of Crown debts over private debts applies to India so that, in the absence of any provision in any statute to

the contrary, all revenue recoveries or state debts would get the precedence over the private debts and the only exception to this rule is to be

found in the case of secured creditor who has the prior right to recover the debt

by proceeding against such property. In this view of the matter, once a notice of due is issued and has the effect of restraining the defaulter to deal with the property, any further process in respect of such property from any Executing Court would lead to conflict of jurisdictions and unnecessary multiplicity of proceedings.

In *Srinivas Pandit v. Jagjeet Singh Sawhney and Another*, it is held that the effect of r. 16 is that as soon as it was brought to the notice of the

Court that a notice had been issued by the TRO it becomes the duty of the Court to desist from any further process for realising the money sought

to be realised in execution of the decree for the payment of money. To the same effect are the two decisions rendered by this Court in *TRO*,

Coimbatore v. V. A. Ramaswami and Others and *Union of India v. Ganesh Lal Bajaj*. In the earlier decision, execution proceedings had come to

the stage of issue of cheque. But when TRO moved for relief, it was held that the sale already confirmed has to be set aside because the

proceedings that have followed subsequent to the service of notice u/r 2, are not valid.

18. Though it is contended that what are provided u/Sch. II are only Procedural in nature and there is no provision made in the Act for moving the

Civil Court, it will be seen that s. 226(4) authorises ITO to apply to the Court in whose custody there is namely belonging to the assessee for

payment to department of the entire amount of such money or if it is more than the tax due, an amount sufficient to discharge the tax. Hence, when

the Act had authorised the department to move the Civil Court for collection of arrears of tax which is in Court, and payable by the defaulting

assessee and for recovering the amount rules had been made u/Sch II, the point taken that the proceedings are taken only under the rules and not

under the main provisions of the Act, necessarily fails.

19. One other aspect that required to be considered before a conclusion can be drawn is regarding the scope of r. 16(1). In the later part it is

provided that ""nor shall any Civil Court issue any process against such property"" and what is meant by ""process"", would be also relevant. The

meaning of the word ""process"" is stated in *Stroud's Dictionary Volume III*, 3rd Edition page 2315 as follows : ""process"" is the doing of something

in a proceeding in a Civil Court or Criminal Court and that which may be done

without the aid of Court is not a "process". At page 2316, it is stated "All the steps taken in execution-the seizure and the sale are in the natural meaning of the word comprehended in the term "Process".

20. In Jowitt's Dictionary of English Law (1959 Edition) at page 1417 it is stated; "Process is the proceedings in any action or prosecution, real or

personal, civil or criminal from the beginning to the end." Therefore, when there is an interdiction against a Civil Court from issuing any process in

execution of the decree it means that whatever be the stage of the proceeding, till full satisfaction is recorded, TRO can move the Executing Court

and thereafter it will be for the TRO to take the necessary steps, as provided under the Act. Whether he moved the Court at the earliest stage or

when the auction was to be conducted or even at the stage of confirmation as pointed out in TRO, Coimbatore v. V. A. Ramaswami and Others

even at the state when cheque is to be issued the Executing Court can be called upon to stop the further proceedings, and the sale held can be set

aside. Therefore, the fact that first respondent has secured a mortgage decree under French Law which was in force at that time would make no

difference, when he moves the Civil Court for executing the decree by the Civil Court for executing the decree by filing on 1-7-1974 E.P. No. 217

of 1977, and brings the property to sale for realisation of the payment of money. The TRO can then move the Executing Court to stay its "hands,

because, a mortgage decree having been held to be a money decree" by a Full Bench of this Court, the expression used in r. 16(1) "in execution of

a decree for the payment of money" will bring within its fold such a mortgage decree also.

21. As to what is to follow thereafter, I will presently deal with. Under Sch. II provision has been made enabling TRO to bring the property to

sale, and he is authorised to investigate the claims of persons in respect of the property for which a certificate has been issued. In the event of TRO

refusing to accept any claim or objection preferred, u/s 11(6), it is open to the aggrieved party to file a suit, and subject to the result of the suit, the

order of TRO shall be conclusive.

22. Hence, even a mortgagee-decree-holder whose execution proceedings in Civil Court had been interdicted by TRO, can make a claim before

him to substantiate his right to priority adjustment of his claim before any

amount could be adjusted towards realisation of arrears of tax. When such a remedy of recourse is available to mortgagee-decree-holder to canvas his priority claim on the ground that he is a secured creditor, which will have to be necessarily considered by the TRO u/r 11 (6), there could be no prejudice caused by the Civil Court being interdicted by virtue of r. 16(1) from proceeding with the execution proceedings initiated by mortgagee and the property sold by IT Department in a case where the property of a tax defaulter on whom a notice u/r 2 had been served, and whose property is brought to sale to realise the arrears of tax.

23. Regarding the existence of the mortgage and the amount actually due, there is an area of dispute between the parties. But presently in this proceeding, it cannot be decided otherwise, there being no materials to hold that there was no mortgage created on 22-12-1960 for recovery of the amount mentioned therein. Even on the aspect as to whether the present application is maintainable, there can be no doubt about its maintainability, in view of the Full Bench decision of this Court in *Manickam Chettiar v. ITO, Madurai* arising under IT Act, 1922 in which it was held that when "the Crown goes to the Court and says 'here is a debt which is due to me about which there can be no dispute'. I consider that under those circumstances, the Court can rightly invoke its powers u/s 151 C.P.C. in making the payment to the person entitled to it". This is precisely the view that was taken in *Srinivas Pandit v. S. Jagjeet Singh Sawney and Another* wherein also a petition was filed u/s 51 of the CPC and it was held that no such petition, relief can be granted relying upon the said Full Bench decision and also the decision of the Supreme Court in *Builders Supply Corporation v. Union of India and Others*.

24. For the foregoing reasons I hold that (1) the mortgage dated 22-12-1960 is a decree which can be put into execution straightway without any need for filing a suit to enforce it in view of the decisions rendered in *Susama Bala Sur Vs. Bibhuti Bhusan Mondal*, Short Notes. In the event of petitioner seeking to establish that there was no mortgage at all, it may in appropriate proceedings do so and for the purpose of present proceedings, the claim of first respondent of such a mortgage is not rebutted by any acceptable evidence :

(2) Hence, E.P. No. 217 of 1974 filed by first respondent on 1-7-1994 was an

execution proceeding instituted by first respondent to enforce his mortgage decree;

(3) Even though there was a Court auction on 16-12-1976, it is not a valid one because, much earlier to it, the mortgagor-defaulter-assessee and

the legal representatives had been served with notices of demand of arrears of tax, and having participated in the proceedings in O.P. No. 21 of

1975 knowledge being attributable the execution of the decree for payment of money will not be binding on IT Department;

(4) Execution taken for realisation of mortgage claim is a "decree for money", and hence in this case it will come within the ambit of r. 16(1) and

therefore the Civil Court cannot issue any process for realisation of the decree amount after the petition had been filed by petitioner;

(5) First respondent is no doubt a secured creditor, but still his claim based on a mortgage, is "a decree for money", within the meaning of r. 16(1);

(6) It is open to first respondent to file his claim before TRO u/r 11(6) when he brings the property to sale, claiming that he is a secured creditor

and out of the realisation, before the amounts are appropriated towards arrears of tax, he should be paid first, and such a claim will have to be

decided by TRO;

(7) The Court auction held on 16-12-1976 is therefore an invalid one since whatever execution proceedings had been taken sub-sequent to

service of r. 2 notice, is invalid;

(8) First respondent having a legal right to make his claim before TRO u/r 11(6) of Sch. II, it is for him to establish that he being a secured

creditor, under law, he is entitled to priority over tax arrears recoverable by the State, failing which he may institute a suit to sustain his claim.

25. Since the present application is taken out for setting aside the sale on 16-12-1976 on the ground that the Civil Court cannot further issue any

process in execution of the decree involved in E.P. No. 217 of 1974, now that I have held that the mortgage decree relied upon by first

respondent is one "for the payment of money", the aspect whether the first respondent will be entitled to priority of claim as a secured creditor over

and above the claims of the Income Tax Department is an aspect which would necessarily be considered by TRO, after the TRO brings the

property to sale, and before whom first respondent will have the right to file his

claim statement on this aspect. Hence this appeal is allowed. No costs.