HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MAIN CASE NO.: W.P. No.15275 of 2023

PROCEEDING SHEET

Sl. No.	DATE	ORDER	OFFICE NOTE
2	28.06.2023	**CMR, J & TRR, J** **I.A.No.1 of 2023** Heard learned counsel for the petitioner and Sri. P. Shreyas Reddy, learned Government Pleader for Commercial Taxes-II. The petitioner is Central Bank of India. It is alleged that the 3rd respondent has borrowed money from the Bank and the 4th and 5th respondents, being partners of the 3rd respondent stood as guarantors to the said loan availed by the 3rd respondent and both the 3rd respondent, being the principal borrower and 4th and 5th respondents as guarantors have mortgaged their immovable properties as a security for realization of the said debt amount. It is stated that the 3rd respondent committed default in repayment of the borrowed amount along with the interest accrued thereon and at present a sum of Rs.28,85,26,535/- is due to be paid to the petitioner. Therefore, the Bank has filed O.A.No.160 of 2020 for recovery of the said amount before the Debt Recovery Tribunal-I in Hyderabad under Section 19 of the Recovery Of Debts And Bankruptcy Act, 1993 (for short "RDB Act") and the same is pending disposal. While so, the 2nd respondent, alleging that the 3rd respondent fell in arrears of payment of taxes due under A.P.VAT & CST Acts to a tune of Rs.2,60,69,490/-, has sought to sell the properties of the respondents 3 to 5 in the public auction	

for realization of the said tax dues from the 3rd respondent. The said auction is scheduled to be held on 01.07.2023. Therefore, the petitioner - Bank has filed the instant Writ Petition questioning the said auction scheduled to be held on 01.07.2023. Along with the said writ petition, the present Interlocutory Application is filed seeking stay of the said auction.

Learned counsel for the petitioner would submit that under Section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") the Bank, being the secured creditor, has got priority over all the other debts and also revenues including taxes, cesses and other debts payable to the Central Government or State Government or local authorities. He would also submit that even under Section 31B of the RDB Act, the same priority is available to the petitioner. Therefore, he would submit if the auction is allowed to go on 01.07.2023, the petitioner - Bank would be put to loss and as it could not recover the debt due from respondent Nos. 3 to 5 and the said auction is also not valid in view of the priority that is available to the Bank as secured creditor under Section 26E of the SARFAESI Act and also Section 31B of the RDB Act.

Learned Government Pleader for Commercial Taxes-II would contend that as per Section 17 of the Andhra Pradesh Revenue Recovery Act, the State got right to recover the revenue and it has got the first charge of all the dues and it is entitled to recover the dues from the 3rd respondent by bringing the properties of the respondents for sale to realize the said due amount.

As can be seen from the Section 26E of the SARFAESI Act and Section 31B of the RDB Act, both the provisions contain *non obstante* clause which indicates that the said provisions got overriding effect on all the other laws in force, whereas Section 17 of Andhra Pradesh Revenue Recovery Act does not contain any such *non obstante* clause giving overriding effect on every other laws. As per Section 26E of the SARFAESI Act and Section 31B of the RDB Act, the Bank, being the secured creditor, got priority over all other dues and other revenues including taxes payable to the Central Government or State Government or local authorities.

Therefore, in view of the said provisions of law that are now relied on by both the parties, the controversy relating to priority of the petitioner -Bank as a secured creditor has to be decided in the main Writ Petition. It requires elaborate hearing on that legal issue by both the sides. *Prima facie* we are satisfied that by virtue of Section 26E of the SARFAESI Act and Section 31B of the RDB Act, the petitioner – Bank, being the secured creditor, got priority over all other revenues, taxes etc., payable to the State Government and local authorities. So, till the said controversy is resolved in the main Writ Petition, we are of the considered view that there shall be stay of auction, which is scheduled to be held on Saturday i.e., 01.07.2023. At the same time, we have also taken note of the submissions made by learned Government Pleader for Commercial Taxes-II that if stay of auction is granted and if the petitioner- Bank brings all the properties to sale that the 2nd respondent would not be in a position to realize the arrears of tax, which is due to the State from 3rd respondent.

Therefore, there shall be a direction to the petitioner - Bank also not to further proceed with the sale of the said properties till the controversy is resolved in the main Writ Petition. *Status Quo* in respect of the property as on today shall be maintained by both the parties, till the controversy is resolved in the main Writ Petition. In our considered view, it will protect the interest of both the parties.

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Let the matter be posted finally after two (2) weeks for filing of counter-affidavit of the respondent and for final hearing.

CMR, J

TRR, J

AKN/DSV