

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION NO.12038 OF 2017 (GM-RES)

BETWEEN:

BANK OF INDIA,
MANGALURU BRANCH,
HAMPANAKATTA,
MANGALURU - 575 002
REPRESENTED BY ITS
AUTHORIZED OFFICER
JAGADESH PATNAIK.

...PETITIONER

(BY SHRI M MOHAMED IBRAHIM, ADVOCATE)

AND:

1. THE SECRETARY TO THE
GOVERNMENT,
REVENUE DEPARTMENT,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BENGALURU - 560 001.
2. THE DEPUTY COMMISSIONER
AND DISTRICT MAGISTRATE,
DAKSHINA KANNADA DISTRICT,
MANGALURU - 575 001.

...RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP)

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY THE RESPONDENT IN ITS FILE DATED 26.12.2015 AT ANNEXURE-G.

THIS WRIT PETITION COMING ON FOR DISPOSAL, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The Petitioner-Bank is before this Court under Article 226 of the Constitution of India assailing the order bearing No.MAG(2)CR436/2015-16/160651/C4 dated 26.12.2015 passed by the second respondent rejecting the application of the petitioner under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act).

2. Heard Shri M.Mohamed Ibrahim, learned counsel for the petitioner and Smt.Rashmi Patel, learned High Court Government Pleader for Respondent Nos.1 and 2.

3. Perused the writ petition papers.

4. Learned counsel for the petitioner would submit that the petitioner sanctioned loan to one M/s. V-

Hypermart, a Partnership firm by sanction letter dated 27.11.2012. As the borrower defaulted in repayment, the petitioner initiated recovery action by issuing notice under Section 13(2) of the SARFAESI Act on 08.01.2015. Thereafter, it is submitted that possession notice in respect of the secured assets under Section 13(4) was issued on 18.04.2015. The petitioner filed an application under Section 14 of SARFAESI Act before the first respondent seeking assistance in taking possession of the secured assets. The said application is rejected under the impugned order dated 26.12.2015 vide Annexure-G on the premise that the secured assets are attached under the Karnataka Protection of Interest of Deposit in Financial Establishment Act, 2004 (for short, 2004 Act). Challenging the same, the Petitioner-Bank is before this Court in this Writ Petition.

5. Learned counsel for the petitioner would contend that the attachment under 2004 Act would not have any priority over the actions of the Petitioner-Bank. It is

submitted that the Petitioner-Bank initiated recovery action by issuing 13(2) notice prior to the attachment under 2004 Act. It is also submitted referring to Section 26-E of the 2002 Act relates to the priority of secured creditors, and stipulates that, notwithstanding anything contained in any other law for the time being in force, after the registration of a security interest, the debts due to any secured creditor shall be paid in priority over all other debts. In that regard, learned counsel for the petitioner relies on the decision reported in **2022 SCC OnLine Sc 227 (Punjab National Bank Vs. Union of India and others)**.

6. The learned counsel also contends that the 2002 Act gets priority over the 2004 Act and the same is answered by the Hon'ble Apex Court in S.L.P. (Civil) appeal No.11250 of 2016 disposed of on 25.11.2016 (UCO Bank and another Vs. Dipak Debbarma and others). More particularly, the learned counsel would refer to paragraph

No.18 of the said judgment. Thus, he prays for allowing the writ petition.

7. The learned HCGP would contend that the secured property is attached under 2004 Act prior to filing of the application under Section 14 of the Act. Therefore, she submits that the Petitioner-Bank would not get any priority. Thus, she prays for dismissal of the writ petition.

8. The Petitioner-Bank filed an application under Section 14 of 2002 Act seeking assistance in taking possession of the secured assets. The second respondent-Deputy Commissioner is obliged to consider the said application in terms of Section 14 of the Act. The attachment of the secured property under 2004 Act would have no priority over the claim of the Petitioner-Bank. Section 26-E of the 2002 Act makes it clear that notwithstanding anything contained in any other law for the time being in force, after the registration of a security interest, the debts due to any secured creditor shall be paid

in priority over all other debts. Admittedly, the secured assets were registered in the year 2012 itself prior to the attachment of the secured property under 2004 Act, i.e., on 23.06.2015. The Hon'ble Apex Court in Punjab National Bank (supra) while considering the priority of the Bank claim under SARFAESI Act vis-à-vis the Customs Act and in that circumstances at para No.48 and 50, it is held as follows:

48. In view of the above, we are of the firm opinion that the arguments of the learned counsel for the Appellant, on the second issue, hold merit. Evidently, prior to insertion of Section 11E in the Central Excise Act, 1944 w.e.f. 08.04.2011, there was no provision in the Act of 1944 inter alia, providing for First Charge on the property of the Assessee or any person under the Act of 1944. Therefore, in the event like in the present case, where the land, building, plant machinery, etc. have been mortgaged/hypothecated to a secured creditor, having regard to the provisions contained in section 2(zc) to (zf) of SARFAESI Act, 2002, read with provisions contained in Section 13 of the SARFAESI Act, 2002, the Secured Creditor will have a First

Charge on the Secured Assets. Moreover, section 35 of the SARFAESI Act, 2002 inter alia, provides that the provisions of the SARFAESI Act, shall have overriding effect on all other laws. It is further pertinent to note that even the provisions contained in Section 11E of the Central Excise Act, 1944 are subject to the provisions contained in the SARFAESI Act, 2002.

49. xxxxx

50. *Moreover, the submission that the validity of the confiscation order cannot be called into question merely on account of the Appellant being a secured creditor is misplaced and irrelevant to the issue at hand. The contention that a confiscation order cannot be quashed merely because a security interest is created in respect of the very same property is not worthy of acceptance. However, what is required to be appreciated is that, in the present case, the confiscation order is not being quashed merely because a security interest is created in respect of the very same property. On the contrary, the confiscation orders, in the present case, deserve to be quashed because the confiscation orders themselves lack any statutory backing, as they were rooted in a provision that stood omitted on the day of the passing of the orders. Hence, it is this inherent defect in the confiscation orders that paves*

way for its quashing and not merely the fact that a security interest is created in respect of the very same property that the confiscation orders dealt with.

A reading of the above decision of the Hon'ble Apex Court makes it clear that the Bank would have priority over all other claims.

9. 2004 Act is a State Act whereas 2002 Act is a Central Act, which would make way for the Bank to realize its dues by bringing the mortgage property for sale. The Hon'ble Apex Court in UCO Bank (supra) at paragraph Nos.18 and 19 has held as follows:

18. The Act of 2002 is relatable to the Entry of banking which is included in List I of the Seventh Schedule. Sale of mortgaged property by a bank is an inseparable and integral part of the business of banking. The object of the State Act, as already noted, is an attempt to consolidate the land revenue law in the State and also to provide measures of agrarian reforms. The field of encroachment made by the State legislature is in the area of banking. So long there did not exist any parallel Central Act

dealing with sale of secured assets and referable to Entry 45 of List I, the State Act, including Section 187, operated validly. However, the moment Parliament stepped in by enacting such a law traceable to Entry 45 and dealing exclusively with activities relating to sale of secured assets, the State law, to the extent that it is inconsistent with the Act of 2002, must give way. The dominant legislation being the Parliamentary legislation, the provisions of the Tripura Act of 1960, pro tanto, (Section 187) would be invalid. It is the provisions of the Act of 2002, which do not contain any embargo on the category of persons to whom mortgaged property can be sold by the bank for realisation of its dues that will prevail over the provisions contained in Section 187 of the Tripura Act of 1960.

19. The decision of this Court in Central Bank of India vs. State of Kerala and Ors.[8], holding that the provisions of the Bombay Sales Tax Act, 1959 and the Kerala General Sales Tax Act, 1963 providing for a first charge on the property of the person liable to pay sales tax, in favour of the State, is not inconsistent with the provisions contained in the Recovery of Debts Due to Banks and Financial Institutions, Act 1993 (for short the "DRT Act") and also the Act of 2002 must be understood by noticing the absence of any specific provision in either of the Central enactments containing a similar/parallel

provision of a first charge in favour of the bank. The judgment of this Court holding the State enactments to be valid and the Central enactments not to have any overriding effect, proceeds on the said basis i.e. absence of any provision creating a first charge in favour of the bank in either of the Central enactments.

10. For the reasons stated above, I pass the following:

ORDER

- i) The Writ Petition is allowed.
- ii) The impugned order at Annexure-G bearing No.MAG(2)CR436/2015-16/160651/C4 dated 26.12.2015 passed by the second respondent is hereby quashed.
- iii) The second respondent-Deputy Commissioner is directed to consider the application of the Petitioner-Bank filed under Section 14 of the SARFAESI Act without reference to the attachment under 2004 Act and pass appropriate order.

**Sd/-
JUDGE**