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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4188 OF 2014

1. M/s Sonoma Management Partners]
Pvt. Ltd. incorporated under the Companies Act]
 I of 1956 having its registered office at 4th floor]
 Plexus Complex (above the World of Titan) ITI]
 road Aundh, Pune 411 007, Maharashtra]

2. Mr Pravin Jain, Chief Executive Officer]
 and Managing Director, 128 Sindh Society,]
 Aundh, Pune 411 007, Maharashtra]

...Petitioners

VS

1. Bank of Maharashtra]
 through its Chairman & Managing]
 Director, Lokmangal, 1501, Shivajinagar]
 Pune 411 005, Maharashtra]

2. Bank of Baroda, through its Chairman]
 & Managing Director, Baroda Corporate]
 Centre, C-26, G-Block, Bandra-Kurla]
 Complex, Bandra (East) Mumbai 400 051]
 And]
 Baroda House, Mandvi, Vadodara 390 006]

3. State of Maharashtra, through its]
 Secretary, Revenue Department,]
 Mantralaya Mumbai 400 032]

4. The Sales Tax Department through]
 its Deputy Commissioner Vikrikar Bhavan]
 178/A, Pavai Naka, Raviwar Peth, Satara]
 - 415 001]

...Respondents.

.....

Mr. Rafique Dada, Sr. counsel along with Mr Ravi Kadam, Sr.
 Counsel a/w Dr. Birendra Saraf, Mr Jai Chhabria & Ms Ayushi
 Anandpara i/b M/s Federal & Rashmikant for the Petitioners.

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Mr. Karl Shroff a/w Mrs Hema Desai, Mr Vijay L. Hinge i/b
Singhi & Co. for Respondent Nos.1 and 2.
Ms Sushma Bhende AGP for Respondent No.3.
Mr Ashok Kotangle, Spl. Counsel for Respondent No.4.

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**CORAM : S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**

Reserved On : 20th October, 2016.

Pronounced On : 22nd November, 2016.

JUDGMENT [PER B. P. COLABAWALLA J]:

1. Rule. Respondents waive service. By consent of parties, rule is made returnable forthwith and heard finally.

2. By this Writ Petition under Article 226 of the Constitution of India, the Petitioners have sought a writ of mandamus or any other appropriate order or direction against Respondent Nos.1 and 2 to pay over to Respondent No.3 or Respondent No.4 the sale proceeds of the property, more particularly described in Exh "B" to the Petition (for short **"the said property"**) and direct Respondent Nos.3 and 4 to issue a "no claim certificate" and or "discharge certificate" to the Petitioners. The Petitioners have also sought a mandamus directing Respondent Nos.3 and 4 to forbear and refrain from, in any manner,

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asserting any charge on the property more particularly described in Exh "B" to the Petition and/or from taking any coercive steps in respect of said property for recovery of any Sales Tax dues of one M/s Weiler International Electronics Pvt. Ltd. (for short "**the Defaulter Company**"). At the very outset, we must mention that though these directions have been sought in the Petition, Mr Dada, learned Sr. Counsel appearing on behalf of the Petitioners, pressed only prayer clause (b) of the Petition, namely, that Respondent Nos.3 and 4 be directed to refrain from asserting any charge on the property more particularly described in Exh "B" to the Petition and from taking any coercive steps against the said property for the recovery of any alleged Sales Tax dues.

3. The aforesaid directions are sought by the Petitioners, in view of the fact that the Petitioners have purchased the said property pursuant to a sale conducted by Respondent Nos.1 and 2 (Nationalized Banks) under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the "**SARFAESI Act**") and the rules framed thereunder. In a nutshell, it is the case of the Petitioners that the alleged Sales Tax dues of the Defaulter Company were never disclosed to the Petitioners by Respondent Nos.1 and 2 whilst

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conducting the sale and in fact even the 7/12 extract relating to the said property, only reflected the dues of the sales tax to the extent of Rs.18,38,709/-. This amount, without prejudice to its rights and contentions, the Petitioners are willing to pay. It is the case of the Petitioners that the alleged Sales Tax dues of the Defaulter Company amounting to approximately Rs.28 Crores was brought to their notice long after they had already purchased the said property under the provisions of the SARFAESI Act. It is in these facts and circumstances, that it is the contention of the Petitioners that the Sales Tax Authorities cannot enforce their alleged charge on the said property purchased by the Petitioners, and if at all the Sales Tax have any charge, it would have to be recovered from the sale proceeds which lie in the hands of Respondent Nos.1 and 2. It is in this backdrop, that the present Writ Petition has been filed.

4. The brief facts giving rise to the present controversy are as under:-

- (a) Petitioner No.1 is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 and has purchased the said property. Petitioner No.2 is the CEO and Managing Director of Petitioner No.1.

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For the sake of convenience, they are collectively referred to as the Petitioners. Respondent No.1 is the Bank of Maharashtra and Respondent No.2 is the Bank of Baroda, who had both granted financial assistance to the Defaulter Company. Respondent No.3 is the State of Maharashtra and Respondent No.4 is the Sales Tax Department, through the Deputy Commissioner, Satara. It is the case of Respondent No.4 that the Defaulter Company has huge Sales Tax dues outstanding to the extent of approximately Rs.28 Crores.

- (b) It is not in dispute that the Defaulter Company had taken financial assistance from Respondent Nos.1 and 2. Since the Defaulter Company could not repay the financial assistance taken, the authorized officer of Respondent No.1 (leader of the consortium along with Respondent No.2) issued a Public Notice dated 14 December, 2009 declaring that Respondent Nos.1 and 2 had taken physical possession of the said property, belonging to the Defaulter Company, in exercise of powers under Section 13(4) of the SARFAESI Act. Thereafter, Respondent No.1 issued a Public Auction Notice dated 31 December, 2009

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inviting offers for sale of the said property on **“as is where is basis”**. The reserve price fixed for sale of the said property was at Rs.12 Crores and the Earnest Money Deposit was fixed at Rs.1.02 Crores. As no bids were received pursuant to the aforesaid notice, another Public Notice dated 20 February, 2010 was issued for sale of the said property. However, now the reserve price was fixed at Rs.11 Crores. No bids were received even with reference to this Public Notice.

- (c) It is thereafter averred in the Petition that in the third week of August 2010, the Petitioners learnt that the said property of the Defaulter Company was in the process of being sold by Respondent Nos.1 and 2 under the provisions of SARFAESI Act. Accordingly, on or about 26 August, 2010, the representatives of the Petitioners met with the Authorized Officer of Respondent No.1 to conduct an inquiry and ascertain the facts with regard to sale of the said property. It was at this time the Petitioners were informed that earlier the sale of the said property had failed and the banks were once again in the process of auctioning the same and the reserve price was

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fixed at Rs.11 Crores and the bids for the auction were to be submitted to the Authorized Officer on or before 1 September, 2010.

- (d) Considering that Respondent Nos.1 and 2 have taken physical possession of the said property, the Petitioners inquired from Respondent Nos.1 and 2, whether there was any encumbrance on the said property. It is stated in the Petition that the Authorized Officer categorically informed the Petitioners' representative that only the secured assets of the Defaulter Company were to be sold and not the Defaulter Company's dues. It was further assured to the Petitioners that except the mortgage in favour of Respondent Nos.1 and 2, there were no liabilities or other encumbrance on the said property whatsoever. The Petitioners were also furnished with a valuation Report carried out for the purposes of the auction sale. This valuation indicated the market value of the said property and the reserve price was fixed without any liability or encumbrances attached to it. It is, on the basis of these representations, that the Petitioners decided to participate in the auction sale and bid for the

said property.

(e) Accordingly, on 1 September, 2010, the Petitioners placed their bid for purchasing the said property at a price of Rs.11,00,29,000/- and submitted their EMD of Rs.1.10 Lacs. Since, the Petitioners were the highest bidders, they were declared as the successful bidder and a formal 'letter of acceptance' was also issued by Respondent No.1. This acceptance letter called upon the Petitioners to make a further payment of 25% of the said price (Rs.2,75,07,250/-) immediately. Further, the EMD was to be adjusted against this amount of Rs.2,75,07,250/-. It is not in dispute that the Petitioners have duly complied with the aforesaid directions by depositing the aforesaid amount.

(f) Thereafter, Respondent No.1, by its letter dated 15 September, 2010, requested the Petitioners to make the balance payment of Rs.8.25 Crores on or before 30 September, 2010. This letter further states that on payment of full consideration, a Sale Certificate in terms and in the form prescribed by the SARFAESI Act would be

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issued by Respondent No.1 in favour of the Petitioners. In compliance with the requisitions contained in this letter, the Petitioners, on 22 September, 2010, made the balance payment of the purchase price. On receiving the the full consideration, Respondent No.1 (on behalf of itself and Respondent No.2) also executed a Sale Certificate on **“as is where is basis”** and **“what is where is basis”** in favour of the Petitioners.

- (g) The Petitioners thereafter requested Respondent Nos.1 and 2 to execute the conveyance in their favour. The draft conveyance was deliberated upon and finally the conveyance was duly executed and registered in the office of the Sub-Registrar, Khandala on 10th March, 2011. It is, at the time of this registration, that the Petitioners for the very first time perused the 7/12 extract of the said property and learnt that there was an encumbrance of the Sales Tax to the extent of Rs.18,38,709/-. Though this encumbrance was not disclosed to the Petitioners and they contemplated taking legal steps against Respondent Nos.1 and 2, the Petitioners finally decided that keeping in mind the

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magnitude of the investment already made, they would accept the conveyance with the encumbrance of the Sales Tax to the extent of Rs.18,38,709/-.

- (h) After execution of the conveyance, the Petitioners legitimately expected their names to be mutated in the property and revenue records. It is at this time the Petitioners learnt of certain property tax dues amounting to Rs.10.05 Lacs. To avoid further complications the Petitioners also cleared these property tax dues, without prejudice to their rights and contentions. Despite this, the Petitioners' name was still not mutated in the 7/12 extracts or revenue records of the said property. The Petitioners, therefore, caused an inquiry to be made with the Talathi's office. The Talathi's Office informed the Petitioners that in order to have their name mutated in the 7/12 extract, the Petitioners would have to obtain a "no claim certificate" from Respondent No.4 (Sales Tax Department). Accordingly, the Petitioners addressed a letter dated 26 August, 2011 to Respondent No.4 setting out the material facts and seeking a "no claim certificate". It is, at this stage, that the Petitioners were shocked to

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learn about the claim of Respondent No.4 amounting to Rs.28 Crores. Thereafter, the Petitioners made several applications under the Right to Information Act, 2005 without any success.

(i) In these circumstances, the Petitioners initiated appropriate proceedings before the Revenue Authorities for recording their names in the revenue record without the aforesaid liability. These proceedings finally culminated in an order passed by the Talathi's Office wherein the Petitioners' application was allowed and the Petitioners' name was entered in the 7/12 extract subject to the encumbrance of Rs.18,38,709/- of the Sales Tax Department.

(j) Being aggrieved by this, Respondent No.4 challenged the same by way of appellate proceedings and a stay order was obtained before the Additional Collector, Satara. In the aforesaid appellate proceedings, that the Sales Tax Department submitted a list of documents including the correspondence addressed by Respondent No.4 to Respondent No.1. This entire list of documents was

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furnished to the Petitioners only on 5 June, 2013 and which is set out by the Petitioners in paragraph 4 (xvi) of the Petition.

- (k) Faced with this situation, the Petitioners were forced with no option but to run from pillar to post and try and sort out the issue with Respondent Nos.1 and 2. However, without attempting to set right the wrong, Respondent Nos.1 & 2 purported to foist the responsibility of paying the sales tax upon the Petitioners. To make the matters worse, Respondent No.4 purported to issue another notice to the Defaulter Company dated 7 December, 2013 *inter alia* informing that a further amount of Rs.6.65 Crores was due as an arrears of sales tax and payable by the Defaulter Company. The notice *inter alia* stated that in the event of non-payment, appropriate steps under the Maharashtra Land Revenue Code, 1966 would be initiated against the Defaulter Company.

5. In this factual background, Mr Dada, learned Sr. Counsel appearing on behalf of the Petitioners submitted that the chronology of the aforesaid facts clearly disclose that the Petitioners had no

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notice or knowledge of the alleged sales tax dues to the extent of Rs.28 Crores. He submitted that the alleged dues of the sales tax were never disclosed to the Petitioners either by Respondent No.1 and or Respondent No.2. Mr Dada submitted that these encumbrances would have a vital bearing on the market value of the property. He submitted that the market value of the property was approximately Rs.11 Crores and it would be absurd to make the Petitioners to pay an additional sum of Rs.28 Crores to the Sales Tax Department to ensure that the alleged encumbrances on the said property are removed. At the highest, Mr Dada submitted that the Petitioners would be liable for the sales tax dues to the extent of Rs.18,38,709/- and which was reflected in the 7/12 extract annexed to the conveyance. Admittedly, the dues of the sales tax to the extent of Rs.28 Crores was disclosed for the first time to the Petitioners much after they had already purchased the property and the conveyance had been executed in their favour. This being the factual position, Mr Dada submitted that the Sales Tax Authorities cannot enforce their alleged charge against the said property which has been legitimately purchased by the Petitioners without notice of the alleged dues of the Sales Tax Department and/or their statutory charge under Section 38C of the Bombay Sales Tax Act, 1969 (**"BST Act"**). In support of the aforesaid propositions, Mr Dada relied upon

the following decisions:

- (i) **M/s National Steel and Agro Industries Ltd. Vs. The State of Maharashtra and Ors.¹ and**
- (ii) **Sherwood Resorts Pvt. Ltd. & Anr. Vs The State of Maharashtra.²**

6. For all the aforesaid reasons, Mr Dada submitted that the Sales Tax Department (Respondent No.4) be directed to refrain from recovering its dues by enforcing its alleged charge on the said property legitimately purchased by the Petitioners and without any notice of the dues of Sales Tax Department.

7. On the other hand, Mr Kotangle, Special Counsel appointed for Respondent No.4, submitted that Respondent No.4 was fully justified in enforcing its charge against the said property. Mr Kotangle, submitted that the terms of sale of the said property would indicate the same was done on an **“as is where is and whatever is basis”**. It is not as if said property vested in the Petitioners, free from all encumbrances. If the vesting was with encumbrances and continued, then it was not open for the Petitioners, to contend that the Sales Tax Authorities could not recover their dues by enforcing their charge on the said property. Mr Kotangle invited our attention

1 Writ Petition No.2608 of 2014 decided on 12 February, 2015

2 Writ Petition No.2086 of 2015 decided on 16 October, 2015.

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to Sections 38(4), 38(5), 38C of the BST Act. Relying upon the aforesaid provisions, Mr Kotangle submitted that once the sales tax dues were in arrears and they were always payable, then it is a charge on the properties of the dealer or any other person within the meaning of Section 38C of BST Act. This would enable the Sales Tax Department to go after the properties of the Defaulter Company and recover the sales tax dues.

8. In addition to the aforesaid argument, Mr Kotangle submitted that the dues of the sales tax were brought to the notice of the 1st Respondent bank on 11 August, 2010. This was before the sale of the said property was conducted by it and therefore, the Sales Tax Authorities had acted with due diligence and cannot be faulted for not bringing to the notice of the concerned persons that huge amounts of Sales Tax dues were outstanding by the Defaulter Company. In support of his submissions, Mr Kotangle relied upon a decision of the Supreme Court in the case of **Central Bank of India Vs. State of Kerala and Ors.**³

9. Mr Shroff, learned Counsel appearing on behalf of Respondent Nos.1 and 2 (the Nationalized Banks) submitted that the

³ (2009) 21 VST 505 (SC)

banks have sold the said property to the Petitioners on “**as is where is and whatever is basis**”. He submitted that this being the position, the Petitioners ought to have made their own inquiry to ascertain whether there were any encumbrances on the said property. Not having done so, the Petitioners today cannot contend that the claim of the Sales Tax Authorities cannot be enforced against the said property.

10. We have heard the learned counsel at length and have perused the papers and proceedings in the Writ Petition along with the annexures thereto. We have also given our anxious consideration to the relevant provisions. The SARFAESI Act is an Act which enables regulation of securitisation and reconstruction of financial assets and enforcement of security interest or matters incidental thereto. The term 'debt' is defined in section 2(ha) and the term “security interest” is defined under Section 2(zf) to mean right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes a mortgage, charge, hypothecation, assignment other than those specified in Section 31. The term “secured asset” is also defined in Section 2(zc) to mean the property on which the security interest is created. In turn, the words “secured debt” is defined in Section 2(ze) to mean a debt which is

secured by any security interest. The term “secured creditor” is also defined in Section 2(zd) and it is not in dispute that Respondent Nos.1 and 2 are the secured creditors as defined under the SARFAESI Act. Thereafter, Section 13 of the SARFAESI Act provides for enforcement of security interest and measures by which enforcement is permissible including upon failure of the borrower to discharge its liability in full of the secured creditor within the period specified under Section 13(2) by taking possession of the secured assets and transferring the same either by way of lease, assignment and/or sale. Section 13(6) stipulates that any transfer of secured assets (after taking over the possession) by the secured creditor shall vest in the transferee all rights in, or in relation to the secured asset transferred as if the transfer had been made by the owner of such secured asset. Looking to all these provisions, what becomes clear is that a secured creditor (Respondent Nos.1 and 2 in the present case) to realise their dues, can sell the secured assets without intervention of the Court and subject to other stipulations set out in the SARFAESI Act. It is on the basis of exercising powers under the provisions of the SARFAESI Act that Respondent No.1 (as leader of the consortium with Respondent No.2) issued a possession notice as well as a sale notice in respect of the said property. It is pursuant to this sale notice that the Petitioners have purchased the said property from

Respondent Nos.1 and 2.

11. What is important to note is that this entire purchase was done by the Petitioners before the alleged dues of the Sales Tax Authorities was brought to their notice. The chronology of events set out above clearly indicates that the Petitioners placed their bid for purchasing the said property on 1 September, 2010 along with their earnest money deposit. Thereafter, the sale was confirmed in favour of the Petitioners on 15 September, 2010, once the sale was confirmed the Petitioners on 22 September, 2010 paid the balance purchase price and thereafter a Sale Certificate was also issued in favour of the Petitioners on 23 September, 2010. Thereafter, a Deed of Conveyance was executed by Respondent No.1 in favour of the Petitioners in respect of the suit property and which was registered with the Registrar of Assurances on 10 March, 2011. It is, at the time of execution and registration of this Deed of Conveyance, that the Petitioners for the first time perused the 7/12 extract relating to the suit property and learnt that there was an encumbrance of the Sales Tax Department to the extent of Rs.18,38,709/-. As mentioned earlier, these dues of the Sales Tax, the Petitioners would have to pay / liquidate, if not already done so. As far as the dues of the Sales Tax to the extent of Rs.28 Crores are concerned, the same was brought to

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the notice of the Petitioners much thereafter. It is not even the case of the Sales Tax Department that the Petitioners had either informed or had constructive knowledge of their dues, save and except to the extent of Rs.18,38,709/-. This being the factual position, we find considerable force in the argument of Mr Dada that the Sales Tax dues (save and except to the extent of Rs.18,38,709/-) cannot be recovered by enforcing their alleged charge under Section 38C of the BST Act against the said property, legitimately purchased by the Petitioners and without having any notice of the alleged dues of the Sales Tax Authorities.

12. What is also important to note is that, it is not even the case of Sales Tax Authorities that the Petitioners are a dealer within the meaning of provisions of the BST Act or that the Petitioners have taken over the business of the dealer who is the defaulter of the Sales Tax Authorities. In fact, on a careful perusal of Section 19(4) of the BST Act, it is clear that where a dealer who is liable to pay tax under the BST Act, transfers or otherwise disposes of his business in whole or in part or effects any change in the ownership thereof, in consequence of which he is succeeded in the business or part thereof by any other person, the dealer and the person succeeding, shall jointly and severally be liable to pay the tax including any penalty

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and interest due from the dealer. This is admittedly not the case before us. The Petitioners are not the successor in business of the Defaulter Company. It has, in fact, merely purchased the said property which originally belonging to the Defaulter Company and which was mortgaged with Respondent Nos. 1 and 2. Since, the Defaulter Company did not pay its dues to Respondent Nos.1 and 2, they, exercising their rights under the provisions of the SARFAESI Act, sought to enforce their security interest and sell the secured asset (the said property) to the Petitioners. It is in these circumstances that the Petitioners have purchased the said property. They can by no stretch of the imagination be termed as a successor of the business of the Defaulter Company to enable the Sales Tax Authorities to recover their dues from the Petitioners by enforcing their alleged charge against the said property purchased by the Petitioners under the provisions of the SARFAESI Act.

13. In the view that we have taken, we are supported by a decision of the Supreme Court in the case of **State of Karnataka & Anr Vs. Shreyas Papers Pvt. Ltd.**⁴ On the issue of enforcement of charge, the Supreme Court at paragraphs 18 to 21 thereof (of the SCC report) opined thus:

4 2006 (1) SCC 615 : AIR 2006 SC 865

“18. The next limb of Mr Hegde's arguments was that since Section 13(2)(i) of the KST Act creates a charge on the property of the defaulting company, the charge would continue on the properties, even if it changes hands by transfer.

19. While the expression “charge” is not defined by the KST Act, this concept is well known in property law and has been defined by Section 100 of the Transfer of Property Act, 1882 (hereinafter “the TP Act”). Here “charge” is defined as:

“100. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

*Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, **save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.**”*

(emphasis supplied)

20. As the section itself unambiguously indicates, a charge may not be enforced against a transferee if she/he has had no notice of the same, unless by law, the requirement of such notice has been waived. This position has long been accepted by this Court in Dattatreya Shanker Mote v. Anand Chintaman Datar [(1974) 2 SCC 799, 811 (para 18)] and in Ahmedabad Municipal Corpn. of the City of Ahmedabad v. Haji Abdulgafur Haji Hussienbhai [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04(para 3)] (hereinafter “Ahmedabad Municipal Corpn.”). In this connection, we may refer to the latter judgment, which is particularly relevant for the present case.

21. Ahmedabad Municipal Corpn. [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04(para 3)] was a case where a person was in arrears of property tax, due under the Bombay Provincial Municipal Corporation Act, 1949. Consequently, the Municipal Corporation created a charge over the property of the defaulter. However, the property was sold in execution of a

mortgage decree. When the Municipal Corporation purported to exercise their charge over the property, the purchaser in court-auction filed a suit for a declaration that he was the owner of the property and that the arrears of municipal taxes due by the transferor were not recoverable from him by proceeding against the property purchased in the auction. In the appeal before this Court, the Municipal Corporation's main argument was that where the local law provided for the creation of a charge against a property for which municipal taxes were due, transferees of such properties were imputed with constructive knowledge of any charge created against the properties that they had purchased. This argument was, however, rejected. This Court held that while constructive notice was sufficient to satisfy the requirement of notice in the proviso to Section 100 of the TP Act, whether the transferee had constructive notice of the charge had to be determined on the facts and circumstances of the case. [Ibid., at SCC pp. 765-66 (para 12) : AIR pp. 1207-08(para 8)] In other words, this Court held that there could be no fixed presumption as to the transferee having constructive notice of the charge against the property. In fact, the principle laid down in Ahmedabad Municipal Corpn. [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04(para 3)] has been correctly applied in a sales tax case similar to the present case. [CTO v. R.K. Steels, (1998) 108 STC 161 (Mad)]

(emphasis supplied)

14. In the facts of the present case and considering this authoritative pronouncement of the Supreme Court, we have no hesitation in holding that the Petitioners, having no knowledge (either actual or constructive) of the dues of the Sales Tax Authorities before they purchased the said property, the Sale Tax Authorities cannot recover their dues from the Petitioners by enforcing their charge against the said property.

15. Faced with this situation, Mr Kontagale submitted that the ratio of the aforesaid Supreme Court decision cannot be applied to the facts of the present case as the provisions under consideration before the Supreme Court were that of the Karnataka Sales Tax Act, 1957 and not of the Bombay Sales Tax Act, 1959. On this ground, he sought to distinguish the judgment of the Supreme Court in the case of **Shreyas Papers Pvt. Ltd.**⁴ We find absolutely no merit in this contention. Firstly, the expression “charge”, just like in the Karnataka Sales Tax Act, 1957 is also not defined in the Bombay Sales Tax Act, 1959. Thus, on the issue of enforcement of the charge, the Supreme Court, while considering the provisions of Section 100 of the Transfer of Property Act, 1882, gave its findings in paragraph Nos.18 to 21 thereof. These findings are binding on us and we cannot distinguish the aforesaid decision on the specious ground that the same is rendered in the context of the provisions of the Karnataka Sales Tax Act, 1957. Secondly, even otherwise we find that this very judgment of the Supreme Court (**Shreyas Papers Pvt. Ltd.**⁴) has been relied upon by a Division Bench of this Court in the case of **M/s National Steel and Agro Industries Ltd. Vs. The State of Maharashtra and Ors.**¹ to which one of us (S. C. Dharmadhikari, J)

4 2006 (1) SCC 615 : AIR 2006 SC 865

1 Writ Petition No.2608 of 2014 decided on 12 February, 2015

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was a party. This decision was rendered in the context of the Bombay Sales Tax Act, 1959. We find that this exact argument was canvassed before the Division Bench in the case of **M/s National Steel and Agro. Industries Ltd.**¹ and after relying upon the very same paragraphs of the Supreme Court reproduced by us above, the same was repelled by this Court in paragraphs 35 and 36 of its decision

16. In fact, the decision of the Supreme Court in the case of **Shreyas Papers Pvt. Ltd.**⁴ has been followed by another Division Bench judgment of this Court in the case of **Sherwood Resorts Pvt. Ltd. & Anr. Vs The State of Maharashtra.**² to which both of us were parties. Over there also, exactly the same argument was canvassed on behalf of the Sales Tax Authorities and was repelled by this Court in paragraph 30 of the aforesaid decision. We, therefore, have no hesitation in holding that the Sales Tax Authorities (Respondent No.4) cannot recover the Sales Tax dues (except to the extent of Rs.18,38,709/-) from the Petitioners by enforcing their charge on the said property.

4 2006 (1) SCC 615 : AIR 2006 SC 865

2 Writ Petition No.2086 of 2015 decided on 16 October, 2015.

17. Having held so, we shall now deal with the judgment relied upon by Mr Kontangale in the case of **Central Bank of India Vs. State of Kerala and Ors.**³ On a careful perusal of this decision, we fail to see how the aforesaid decision supports the case of the Sales Tax Department. The issue that was being decided by the Supreme Court in the aforesaid decision was whether Section 38C of the BST Act, Section 26B of the Kerala General Sales Tax Act, 1963 and similar provisions contained in other State Legislations, by which a charge was created on the property of the dealer who was liable to pay the sales tax, are inconsistent with the provisions contained in the *Recovery of Debts Due to Banks and Financial Institutions Act, 1993* and the SARFAESI Act and whether these two Central Legislations would have primacy over such State Legislations. Whilst deciding this question, the Supreme Court *inter alia* held that there being no provision in the SARFAESI Act providing for a first charge in favour of the banks, Section 35 thereof could not be held to override Section 38C of the BST Act, that specifically stipulates that the liability under the BST Act shall have first charge. We find that the reliance placed on the aforesaid decision in the factual matrix before us is wholly inapposite. In any event, this decision of the Supreme Court was rendered prior to the

³ (2009) 21 VST 505 (SC)

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Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016. By virtue of this Amending Act *inter alia* the provisions of the SARFAESI Act have been amended and a specific section, namely, Section 26-E has been inserted which gives priority to secured creditors subject to the conditions and exceptions set out in said section. A similar provision has also been inserted in the RDDB Act, namely Section 31-B. This being the position, we find that the reliance placed on the aforesaid decision by Mr Kontangale is wholly misplaced.

18. For all the aforesaid reasons, we hold that the Sales Tax Authorities (Respondent No.4) cannot recover the dues of the Defaulter Company from the Petitioners (save and except to the extent of Rs.18,38,709/-) by enforcing their charge under Section 38C of the BST Act on the said property. However, it is clarified that our order and direction does not mean that the Sales Tax Authorities cannot proceed against the Defaulter Company (M/s Weiler International Electronics Pvt. Ltd.). Equally, we must clarify that we have not entered into any controversy regarding the priority the Sales Tax Authorities may have on the sale proceeds received from the sale of the said property to the Petitioners. The priority, if any, of the Sales Tax Authorities is not in issue before us, and therefore, we

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should not be understood to have rendered any finding in that regard. The issue of priorities between the Sales Tax Authorities and Respondent Nos.1 and 2 shall be decided in appropriate proceedings before the appropriate forum and in accordance with law. Rule is, accordingly, made absolute in the aforesaid terms. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B. P. COLABAWALLA J.)

(S. C. DHARMADHIKARI J)