

2023:BHC-OS:5955-DB



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**WRIT PETITION (L) NO.1747 OF 2023**ANJALI
TUSHAR
ASWALEDigitally signed by
ANJALI TUSHAR
ASWALE
Date: 2023.07.04
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Ronak Industries)
Through its Partner Raj Goyal)
G-2, Chirag Udyog Bhavan,)
Golden Industrial Estate,)
Somnath, Dabhel,)
Daman-396210)

.... Petitioner

Versus

1. Assistant Commissioner)
Central Excise & Customs,)
Division II, Daman First)
Floor 'D' Type building,)
Somnath, Dabhel, Daman)
2. Assistant Commissioner,)
CGST & Central Excise,)
Division V. Daman, 7th Floor,)
RCP Building, Vapi.)
3. The Bank of Baroda)
Meher Chambers,)
Ground Floor, Dr. Sundarlal)
Behl Marg, Opp. Petrol Pump)
Ballard Estate,)
Mumbai – 400 001)
4. The Sub Registrar)
Below PWD Div-1 Building,)
Near Fatima School,)
Fort Area, Moti Daman,)

Daman - 396 210	)	
5. The Mamlatdar	)	
Mamlatadar Office,	)	
Dholar, Moti Daman,	)	
Daman – 396 220	)	 Respondents

Ms. Savita Nangare i/b. Ms. Pooja Kharat, for Petitioner.

Mr. J.B. Mishra, Advocate for Respondent Nos. 1 & 2.

Mr. Anant Bamne i/b. M/s. A.R. Bamne & Co., Advocate for Respondent No.3.

Mr. H.S. Venegaonkar, Advocate for Respondent Nos. 4 & 5.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.
DATE : JUNE 28, 2023**

JUDGMENT (Per B. P. COLABAWALLA, J.)

1. Leave granted to the Petitioner to correct the typographical mistake in prayer clause (b) of the Petition. In place of Respondent No.6, it should be “**Respondent No.4**”. The correction shall be carried out forthwith in front of the Associate. Re-verification is dispensed with.

2. Rule. With the consent of contesting parties, rule made returnable forthwith and heard finally.

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3. The Petitioner has filed the present Writ Petition seeking a direction inter alia to remove the lien/charge/encumbrance/mutation entry of Respondent No.1 and 2 from the records of Respondent No.4 and 5 in respect of the immovable property bearing Survey No.366/5 admeasuring 1200 sq.mtrs Plot No.16, and Survey No.366/6 admeasuring 1200 sq.mtrs Plot No.17, totally admeasuring 2400 sq.mtrs and structures thereon along with plant and machinery lying at the Premier Industrial Estate, Kachigam, within the village panchayat jurisdiction of Kachigam, Taluka Daman, sub-district and district of Daman pin code 396 215 (for short the '**Secured Asset**') and to direct Respondent No. 4 to accept and register the document of sale/sale certificate issued by Respondent No.3 in favour of the Petitioner.

4. It is the case of the Petitioner that the Petitioner came to know about the said Secured Asset through the Free Press Journal newspaper wherein a Sale Notice [dated 27th June 2022] was published for sale of the Secured Asset under the provisions of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short the "**SARFAESI Act**") r/w *The Enforcement of Security Interest Rules, 2002* (for short the "**said**

Rules”) at a reserve price of Rs. 3.59 crores. The Petitioner took inspection of the Secured Asset on 14th July 2022 along with the officers of Respondent No.3 and subsequently participated in the e-auction held on 8th August 2022.

5. The learned counsel for the Petitioner submitted that prior to participating in the said e-auction, the Petitioner was not informed about any charges/lien/encumbrances of Respondent No.1 and 2 on the said Secured Asset. She also submitted that the Petitioner had taken inspection of the records of Respondent No.3 before participating in the said e-auction. However, the Petitioner did not notice any encumbrances/lien/charges of Respondent No. 1 and 2.

6. Be that as it may, in the said e-auction held on 8th August 2022, the Petitioner was declared as the highest and successful bidder at a price of Rs. 4.55 crores and thus the Petitioner deposited the required 25% of the bid amount [i.e. Rs. 1,13,75,000/-] with Respondent No.3 by 10th August 2022. The Petitioner was required to deposit the balance 75% of the bid amount within 15 days from the date of the auction as per the provisions of the SARFAESI Act. Since the Petitioner had applied for a loan with Yes Bank Ltd. [for making payment of the balance 75% of the bid amount to Respondent No.3], it

intimated Respondent No.3 that Yes Bank Ltd. required certain clarifications from Respondent No.3 for sanctioning the loan. One of the clarifications that Yes Bank Ltd. needed from Respondent No.3 was whether the Secured Asset was free from encumbrances and that there were no statutory dues pending against the said Secured Asset. In response to the query raised by Yes Bank Ltd., Respondent No.3, vide email dated 21st September 2022, confirmed that there were no encumbrances and neither were there any pending statutory dues against the Secured Asset. Based on Respondent No.3's confirmation, Yes Bank Ltd. disbursed a loan of Rs. 3 crores to the Petitioner on 22nd September 2022 and accordingly the Petitioner remitted the balance 75% of the bid amount of Rs. 3,41,25,000/- on 22nd September 2022 to Respondent No.3. Respondent No.3 has confirmed receipt of 100% of the bid amount and has also issued a Sale Certificate to the Petitioner on 27th September 2022. Thereafter, the Petitioner has collected the original documents and taken physical possession of the Secured Asset from Respondent No.3.

7. Upon issuance of the Sale Certificate, the Petitioner visited the office of Respondent No.4 for registering the said Sale Certificate. It is at that time the Petitioner found that Respondent No.1, through their

letter dated 24th February 2020, had registered entries in the records of Respondent No.4 for their pending dues of Rs. 9,24,344/-. The Petitioner also found that Respondent No.1 has created a mutation entry in the records of Respondent No.5 pursuant to the said letter dated 24th February 2020.

8. In these circumstances, the Petitioner sought an explanation from Respondent No.3 about the said encumbrance. In response thereto, Respondent No.3 assured the Petitioner that Respondent No.3 has a priority over the dues of Respondent No. 1, and therefore, Respondent No.4 and 5 must register the Sale Certificate/Sale Deed issued in favour of the Petitioner. Respondent No.3 also issued a letter dated 6th October 2022 to the Respondent No.4 and 5 intimating that the Secured Asset was sold under the provisions of SARFAESI Act and by virtue of Section 26-E thereof, and Section 31-B of the *Recovery of Debt and Bankruptcy Act, 1993*, Respondent No.3 had a priority over the dues of the Respondent No.1 and 2.

9. Subsequently, the Petitioner applied for registration of the Sale Certificate with Respondent No.4 through the online mode and sought appointment to register the Sale Certificate. Again, at this juncture, Respondent No.4 raised another query stating that

Respondent No.2 has directed Respondent No.4 not to register any transaction in respect of the Secured Asset [vide letter dated 7th July 2022] as an amount of Rs.1,34,61,909/- towards GST duty, penalty and interest is due to be recovered from M/s Goldstar Polymer Pvt. Ltd. (***Borrower***).

10. In view of the above circumstances, the Petitioner has been unable to get the Sale Certificate issued in its favour registered as required by law. The Petitioner has therefore submitted that Yes Bank Ltd. [from whom the Petitioner has availed credit facilities against the Secured Asset], may charge penalty to the Petitioner for non-submission of the registered Sale Certificate with the said Bank. It is under these circumstances the Petitioner has filed the present Petition to remove the charges/lien/encumbrances and mutation entry of Respondent No.1 and 2 from the records of the Respondent No. 4 and 5 and for a direction to register the Sale Certificate/Sale Deed issued by Respondent No.3 to the Petitioner.

11. In this factual backdrop, the learned counsel for the Petitioner submitted that Respondent No.3 has sold the Secured Asset under the provisions of the SARFAESI Act, and thus, as per Section 26-

E thereof, a Secured Creditor who has registered the security interest or other creditor who has registered the attachment order in his favour with CERSAI, shall have priority over the claims of other creditors having a subsequent security interest created over the property in question. The learned counsel submitted that mortgage of the Secured Asset was created in favour of Respondent No.3 by one Mr. Prem Prakash Sarogi on 14th December 2007 for securing an aggregate loan limit of Rs. 809 lakhs granted to M/s Goldstar Polymers Ltd. (Borrower). Respondent No.3 has registered its security interest over the Secured Asset on CERSAI on 24th February 2012 and has also filed a CERSAI report downloaded from the website portal of CERSAI which evidences the said fact. The learned counsel of Petitioner has also placed reliance on a judgment delivered by the full bench of this court in the case of ***Jalgaon Janta Sahakari Bank Ltd. and Anr. Vs Joint Commissioner of Sales Tax Nodal 9, Mumbai and Anr. [2022 (5) Mh.L.J. 691]*** in support of the proposition that the dues of Respondent No.3 would have priority over the dues of Respondent Nos.1 & 2 and that they would have to stand in queue after the realisation of the dues of the secured creditor (i.e. Respondent No.3).

12. In addition to the aforesaid argument, the learned counsel

of the Petitioner further submitted that Respondent No.1 and 2 have not registered their claim and/or attachment order under Section 26B(4) of the SARFAESI Act which is also a mandatory requirement for Respondent No.1 and 2 to claim priority over the sale proceeds of the Secured Asset. She submitted that section 26C(2) provides that:

“(2) Where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and this Chapter, the claim of such secured creditor or other creditor holding attachment order shall have priority over any subsequent security interest created upon such property and any transfer by way of sale, lease or assignment or licence of such property or attachment order subsequent to such registration, shall be subject to such claim:

Provided that nothing contained in this sub-section shall apply to transactions carried on by the borrower in the ordinary course of business.”

13. Thus, as Respondent No.1 and 2 have not registered their claim/attachment order with CERSAI, Respondent No.1 and 2 cannot claim priority over dues of Respondent No.3, was the submission of the Petitioner. In support of this proposition, the counsel for the Petitioner has again relied upon the full bench decision of this court in the case of ***Jalgaon Janta Sahakari Bank Ltd. and Anr. (supra)***, and more particularly, paragraphs 189 to 192 thereof. Further, the learned counsel for the Petitioner also placed reliance on a judgment of the Hon’ble

Supreme Court in the case of ***Punjab National Bank vs Union of India and Ors. [2022] 7 SCC 260*** to contend that the dues of the secured creditor would have priority over the dues of Respondent Nos.1 & 2 herein. For all the aforesaid reasons, the learned counsel for the Petitioner submitted that the above Writ Petition be allowed in terms of prayer clauses (a), (b) and (d) respectively.

14. The learned counsel for Respondent No.3 has supported the arguments of the Petitioner and further submitted that Respondent No.1 and 2 are claiming arrears of revenue payable by the M/s Goldstar Polymer Pvt. Ltd., which is a private limited company a separate legal entity from its directors. He submitted that the Secured Asset belonged to and was owned by Mr. Prem Prakash Sarogi and not by M/s Goldstar Polymer Pvt. Ltd. and therefore Respondent No.1 and 2 are not entitled to recover the arrears of dues payable by Goldstar Polymer Pvt. Ltd. from the properties of Mr. Prem Prakash Sarogi. Consequently, Respondent No. 1 and 2 could not have recorded their liens/charge in the records of Respondent No. 4 and 5, was the submission.

15. The learned counsel for Respondent No.1 and 2 (the Revenue), fairly submitted that in the facts of the present case, since the

charge of Respondent No.3 over the Secured Asset is registered with CERSAI prior to the attachment of Respondent No.1 and 2, in light of the Judgment of this Court in the case of ***Jalgaon Janta Sahakari Bank Ltd. and Anr. Vs Joint Commissioner of Sales Tax Nodal 9, Mumbai and Anr. [2022 (5) Mh.L.J. 691]***, Respondent No.3, by virtue of Section 26-E of the SARFAESI Act, 2002, would get priority over the dues of Respondent No.1 & 2. He, however, submitted that Respondent No.3 is required to remit the surplus proceeds recovered from the sale of the Secured Asset, if any, to Respondent No.1 and 2.

16. We have heard the learned counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. The facts in the present case are really undisputed. On 14th December 2007 the Secured Asset was mortgaged with Respondent No.3 by Mr. Prem Prakash Sarogi as a guarantor for the facilities granted to M/s Goldstar Polymer Pvt. Ltd. (the Borrower) to Respondent No.3. This mortgage was created long before any attachment was levied on the Secured Asset by Respondent Nos. 1 and/or 2. Respondent No.3 also registered its security interest over the Secured Asset with CERSAI on 24th February 2012. Since the dues of

Respondent No.3 were not paid, they, to recover dues, sold the Secured Asset to the Petitioner under the provisions of the SARFAESI Act, 2002 for valuable consideration and issued a Sale Certificate in favour of the Petitioner. The problem has arisen because Respondent No.4 has refused to register the said Sale Certificate because of the lien/charge/encumbrance/mutation entry of Respondent No.1 and 2 recorded in the records of Respondent No.4 and 5 in respect of the Secured Asset. It is because of this that the Petitioner inter alia seeks removal of the lien/charges/encumbrance/mutation entry, if any, registered with Respondent No.5 by Respondent Nos. 1 & 2, and to direct Respondent No.4 to record/register the Sale Certificate/Sale Deed [issued by Respondent No.3 to the Petitioner], under the provisions of the Registration Act, 1908 as free from any encumbrances of Respondent Nos. 1 and 2.

17. After going through the papers and proceedings in the above Writ Petition, and after hearing counsel for the respective parties, we find that issue raised in the present Petition is squarely covered by the decision of the Full Bench of this Court in the case of ***Jalgaon Janta Sahakari Bank Ltd. and Anr. Vs Joint Commissioner of Sales Tax Nodal 9, Mumbai and Anr. [2022 (5) Mh.L.J.***

691]. In this decision, the Full Bench has clearly held that if the security interest of the secured creditor is registered with CERSAI, then the secured creditor would get priority over the dues of the Government. The relevant portion of this Full Bench decision reads thus:-

“84.The next query that would obviously follow is: whether the word ‘priority’ appearing in section 26E of the SARFAESI Act, i.e., “...paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority”, was used without a purpose? This reply has to be in the negative.

85. Priority means precedence or going before (Black’s Law Dictionary). In the present context, it would mean the right to enforce a claim in preference to others. In view of the splurge of ‘first charge’ used in multiple legislation, the Parliament advisedly used the word ‘priority over all other dues’ in the SARFAESI Act to obviate any confusion as to inter-se distribution of proceeds received from sale of properties of the borrower/dealer. If a secured asset has been disposed of by sale by taking recourse to the Security Interest (Enforcement) Rules, 2002 it would appear to be reasonable to hold, particularly having regard to the non-obstante clauses in sections 31 B and section 26, that the dues of the secured creditor shall have ‘priority’ over all other including all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

86. A debt that is secured or which, by reason of the provisions of a statute, becomes a ‘first charge’ on the property, in view of the plain language of Article 372 of the Constitution, must be held to prevail over a Crown debt, which is an unsecured one. The law, as it stands even today, is that a Crown debt enjoys no priority over secured debts. This principle has been repeatedly reaffirmed including, inter alia, in the decision of the Supreme Court reported in (2000) 5 SCC 694 (Dena Bank vs. Bhikhabhai Prabhudas Parekh & Co.) where the Court observed:

“10. 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 good 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* it has been held that the Crown has no precedence over a pledge of goods. In *Bank of Bihar v. State of Bihar* the principle has been realized 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* (TLL, 7th Edn., p. 386) – ‘It seems a government debt in India is not entitled to precedence over a prior secured debt’.”

87. It would also not be inapposite to draw guidance from the decision of the Supreme Court reported in (2006) 10 SCC 452 (*ICICI Bank Ltd. vs. SIDCO Leathers Ltd.*) where the Court ruled as follows:

“41. While enacting a statute, Parliament cannot be presumed to have taken away a right in property. Right to property is a constitutional right. Right to recover the money lent by enforcing a mortgage would also be a right to enforce an interest in the property. The provisions of the Transfer of Property Act provide for different types of charges. In terms of Section 48 of the Transfer of Property Act claim of the first charge-holder

shall prevail over the claim of the second charge-holder and in a given case where the debts due to both, the first charge-holder and the second charge-holder, are to be realized from the property belonging to the mortgagor, the first charge-holder will have to be repaid first. There is no dispute as regards the said legal position.

42. Such a valuable right, having regard to the legal position as obtaining in common law as also under the provisions of the Transfer of Property Act, must be deemed to have been known to Parliament. Thus, while enacting the Companies Act, Parliament cannot be held to have intended to deprive the first charge-holder of the said right. Such a valuable right, therefore, must be held to have been kept preserved. [See *Workmen v. Firestone Tyre and Rubber Co. of India (P) Ltd.*, (1973) 1 SCC 813].

43. If Parliament while amending the provisions of the Companies Act intended to take away such a valuable right of the first charge-holder, we see no reason why it could not have stated so explicitly. Deprivation of legal right existing in favour of a person cannot be presumed in construing the statute. It is in fact the other way round and thus, a contrary presumption shall have to be raised.

44. Section 529(1) of the Companies Act speaks about the respective rights of the secured creditors which would mean the respective rights of secured creditors vis-à-vis unsecured creditors. It does not envisage respective rights amongst the secured creditors. Merely because Section 529 does not specifically provide for the rights of priorities over the mortgaged assets, that, in our opinion, would not mean that the provisions of Section 48 of the Transfer of Property Act in relation to a company, which has undergone liquidation, shall stand obliterated.

45. If we were to accept that inter se priority of secured creditors gets obliterated by merely responding to a public notice wherein it is

specifically stated that on his failure to do so, he will be excluded from the benefits of the dividends that may be distributed by the Official Liquidator, the same would lead to deprivation of the secured creditor of his right over the security and would bring him on par with an unsecured creditor. The logical sequitur of such an inference would be that even unsecured creditors would be placed on par with the secured creditors. This could not have been the intendment of the legislation."

88. Bare perusal of the 2016 Amending Act would show that the dues of the Central/State Governments were in the specific contemplation of the Parliament while it amended the RDDB Act and the SARFAESI Act, both of which make specific reference to debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority and ordains that the dues of a secured creditor will have 'priority', i.e., take precedence. Significantly, the statute goes quite far and it is not only revenues, taxes, cesses and other rates payable to the State Government or any local authority but also those payable to the Central Government that would have to stand in the queue after the secured creditor for payment of its dues.

89. The effect of using the word 'priority' in section 26E of the SARFAESI Act, according to us, is this. The rights accorded to 'first charge' holders by Central as well as State legislation having been known to the Parliament, in such a situation, what the Parliament intended by exercising its legislative power by introducing amendments in the SARFAESI Act, more particularly by incorporating section 26E therein, was to explicitly make the valuable right of the 'first charge' holder, subordinate to the dues of a second creditor. The rights of such of the first charge holders accorded by several legislations enacted by the State, having regard to the language in which section 26E is couched, would rank subordinate to the right of the secured creditor as defined in section 2(1)(zd) subject, of course, to compliance with the other provisions of the statute. Acceptance of the contra-arguments of learned counsel for the State/respondents would undo what the Parliament has chosen to do.

92. In view of the foregoing discussion, we have no hesitation to hold that the dues of a secured creditor (subject of course to

CERSAI registration) and subject to proceedings under the I & B Code would rank superior to the dues of the relevant department of the State Government.”

(emphasis supplied)

Further, we are of the view that since Respondent No.1 and 2 have not registered their claim/attachment order with CERSAI, Respondent No.1 and/or 2 cannot claim priority over dues of Respondent No.3. This has also been clearly laid down in the full bench decision of this court in the case of ***Jalgaon Janta Sahakari Bank Ltd. and Anr. (supra)***, and more particularly, paragraphs 189 to 192 thereof, which read thus:

“189. In the case at hand, we have seen that the secured creditor had registered the security interest with CERSAI on 25th October 2017. Post enforcement of Chapter IV-A of the SARFAESI Act, under sub-section (4) of section 26B of the SARFAESI Act, the department of the Government which professes to recover any tax or other Government dues, is enjoined to register such claim with CERSAI.

190. It does not appear that the respondent no. 1 registered its claim or attachment over the secured asset with CERSAI, post enforcement of Chapter IV-A of the SARFAESI Act. Sub-section (2) of section 26C provides that any attachment order subsequent to the registration of the security interest with CERSAI, shall be subject to such prior registered claim.

191. In our view, in the instant case, with the enforcement of Chapter IV-A of the SARFAESI Act, the claim of the respondent no.7 Bank, the secured creditor, was extolled to a higher pedestal and the subsequent act of recording a charge in the record of right of the secured asset cannot dilute the right of priority in payment, under sections 26C(2) and 26 of the SARFAESI Act. As a necessary corollary, the non-registration of the claim and/or attachment order by the respondent no.1 under section 26B(4) of the SARFAESI Act, can only be at the peril of the department. Mere recording of the purported charge in the

record of right of the secured asset, in the absence of the registration with CERSAI, in our considered view, cannot be to the detriment of the auction purchaser, though the auction sale was on "as is where is and as is what is basis".

192. Mr. Sen, learned senior advocate appearing for the petitioner submitted that in the event the Court is persuaded to allow the writ petition, it is necessary to extend the time to adjudicate the stamp duty on the sale certificate and register the same. There are provisions in the Maharashtra Stamp Act, 1958 (sections 31 and 32) and the Registration Act, 1908 (sections 23 and 25) which stipulate the time for tendering the instrument for adjudication, determination of stamp duty thereon and registration of the instrument from the date of its execution. Since the petitioner had instantaneously lodged the sale certificate for adjudication, we are inclined to direct that the time commencing from the lodging of the said sale certificate till the decision of this writ petition, be excluded from consideration in computing the statutory period for adjudication of the stamp duty and registration of the instrument."

18. Since the Full Bench decision of this Court in the case of ***Jalgaon Janta Sahakari Bank Ltd. and Anr. (supra)*** has rested the controversy of priority of the secured creditor viz-a-viz the dues of the Central Government or State Government or local authority under Section 26-E of the SARFAESI Act, 2002, the lien/charges/encumbrance/mutation entry, if any, registered with Respondent No.5 by Respondent Nos. 1 & 2 cannot be allowed to stand and Respondent No.4 would have to be directed to record/register the Sale Certificate/Sale Deed under the provisions of the Registration Act, 1908 as free from any encumbrances of the Respondent No. 1 and 2.

19. In view of the forgoing discussion, the Writ Petition is allowed, and Rule is made absolute in terms of prayer clauses (a) (b) & (d) which read thus:

“(a) this Hon’ble Court be pleased to issue writ of Mandamus and / or Certiorari and / or any writ in the nature of Mandamus and/or Certiorari and/ or any appropriate writ, order or direction, to quash and set aside letter dated 24th February 2020 (Exhibit-Q) issued by the Respondent No. 1 to the Respondent No.5 and quash and set aside encumbrance/mutation entry (Exhibit-R) registered by the Respondent No.5 pursuant to the said letter dated 24th February 2020 and/or to remove lien/charges, if any, filed by the Respondent No. 1 with the Respondent No.4 & 5 in respect of the said Property:

(b) this Hon’ble Court be pleased to issue writ of Mandamus and / or Certiorari and/or any writ in the nature of Mandamus and/or Certiorari and/ or any appropriate writ, order or direction, to quash and set aside the said letter dated 7th July 2022 (Exhibit-U) issued by the Respondent No.2 to the Respondent no. 4 & 5 and/or to remove lien/ charges/ encumbrance/ mutation entry, if any, registered with the Respondent no. 5 in pursuance of the said letter dated 7th July 2022 in respect of the said Property.

(d) this Hon’ble court be pleased to issue writ of Mandamus and / or Certiorari and/or any writ in the nature of Mandamus and/or Certiorari and/ or any appropriate writ, order or direction, to the Respondent No.4 to record/register the Sale Certificate/Sale Deed under the Registration Act, 1908 as free from any encumbrances of the Respondent No. 1 and 2.”

20. Respondent No.3, after appropriating its entire dues from the sale proceeds of the Secured Asset, shall remit the surplus, if any, to Respondent Nos.1 and 2.

21. The Writ Petition is accordingly disposed of. However, there shall be no order as to costs.

22. All concerned to act on an authenticated copy of this order duly authenticated by the Associate.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]