

APHC010245862024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

**Bench
Sr.No:-1
[3483]**

WRIT PETITION NO: 12247 of 2024

Central Bank of India

...Petitioner

Vs.

The State of Andhra Pradesh and others

...Respondents

Advocate for Petitioner

: Sri Mettu Srinivas Reddy

Advocate for Respondents

: GP for Commercial Tax

**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE RAVI CHEEMALAPATI**

DATE : 21.05.2025

PER DHIRAJ SINGH THAKUR, CJ :

With a view to understand the background in which the present controversy has arisen, it is necessary to briefly state the material facts.

2. The petitioner – Central Bank of India advanced certain loans to M/s Sri Rajarajeswari Raw and Boiled Rice Mill – respondent No.3 herein, which is a firm in which respondent Nos.4 to 6 are the partners. Loan was advanced to the aforementioned respondents for which certain security documents as also mortgage deeds were executed in favour of the Bank mortgaging certain properties in the year 2014.

3. Upon failure on the part of the partnership firm and the partners to repay the loan amount, proceedings for recovery of the said amount were initiated before the Debts Recovery Tribunal, Hyderabad, under the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter, referred to as “the RDB Act”). A decree was passed in favour of the petitioner Bank on 22.07.2022 and a recovery certificate, dated 06.09.2022, issued for recovery of an amount of Rs.79,74,57,988.09/-. Failure on the part of the unofficial respondents to pay the decretal amount led the Recovery Officer to issue an order of attachment, dated 27.02.2023, attaching the secured properties.

The petitioner Bank obtained the requisite valuation reports in regard to the assets mortgaged with the petitioner and the value of the property was assessed at approximately Rs.39.89 Crores and the distress sale value was calculated at approximately Rs.29.89 Crores.

4. The petitioner alleges that some of the properties which are otherwise mortgaged with the petitioner Bank and are under attachment by the Recovery Officer are sought to be sold by virtue of the order which is impugned in the present petition, dated 02.04.2024, issued under the A.P. Value Added Tax Act, 2005 (for short, “the A.P. VAT Act, 2005”). It is stated that the Commercial Tax Officer had finalized the assessments by levying a demand of Rs.15,02,102/- for the year 2015-16 by virtue of its order, dated 31.12.2019 and an amount of Rs.13,91,168/- for the assessment year 2016-17 on 05.11.2020.

5. In the light of the aforementioned facts, learned counsel for the petitioner would submit that the Bank has priority over all other debts and Government dues including revenues, taxes due to the Central Government or State Government in terms of Section 31-B of the RDB Act. Reference was also made to Section 34 of the RDB Act to bring home the point that the provisions of the RDB Act would have overriding effect over any other law for the time being in force. For facility of reference, Section 31(b) which was incorporated in the RDB Act with effect from 01.09.2016 *vide* Act No.44 of 2016 is reproduced hereunder:

“31B. Priority to secured creditors.—Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.”

It would also be pertinent to reproduce Section 34 of the RDB Act which provides as under:

“34. Act to have overriding effect.—(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

It is not out of place to mention that while Section 34 always existed from the time the Act of 1993 was enacted, yet Section 31-B came to be inserted with effect from 01.09.2016 by amendment Act No.44 of 2016.

6. Learned counsel for respondent No.2, on the other hand, would submit that in terms of Section 26 of the A.P. Value Added Tax Act, 2005, the

Commercial Taxes Department would have a preferential claim over the assets of a VAT Dealer or a turnover tax Dealer or for that matter, any other dealer, and that the Government would have the first charge over the property of such a Dealer. For purposes of reference, Section 26 of the A.P. Value Added Tax Act, 2005 is reproduced hereunder:

“26. Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, including deferred tax which is treated as a loan extended by the Government to the dealer, penalty, interest and any other sum payable by a VAT dealer or TOT dealer or any other dealer under the Act, shall be the first charge on the property of the VAT dealer or TOT dealer or any other dealer as the case may be.”

7. The issue that falls for our consideration is whether, in the instant case, is it the Bank that has the priority over the secured asset, in terms of Section 31-B r/w Section 34 of the RDB Act or the respondent No.2, who in terms of Section 26 of the Value Added Tax Act claims a first charge over the property of the unofficial respondent Nos.3 to 6.

8. Counsel for the petitioner has placed reliance upon **Central Bank of India vs. State of Kerala and others**¹, to state that the issues which arose in the above case and the ratio of the decision so rendered would govern the present case as well.

9. The issue that was being considered by the Apex Court in the case of **Central Bank of India(supra)** was whether the provisions of Section 38-C of the Bombay Sales Tax Act, 1959 and Section 26-B of the Kerala General

¹ (2009) 4 SCC 94

Sales Tax Act, 1963 and similar other provisions contained in other state legislations by which first charge had been created on the dealer or such other person liable to pay sales tax was inconsistent with the provisions contained in the RDB Act, 1993, for recovery of debt and whether by virtue of the non obstante clause contained in Section 34(1) of DRT Act and Section 35 of the Securitisation Act, the two Central legislations would have primacy over State legislations.

In the case arising from Kerala, a suit had been preferred by the Central Bank of India before a civil Court for recovery of approximately Rupees Twelve Lakhs advanced to Kerala Refineries (P) Ltd. The borrower, who had executed a mortgage in regard to the immovable properties for securing repayment, but had failed to discharge its liability. This suit was later on transferred to the Debt Recovery Tribunal, which decreed the same. The recovery certificate was issued in favour of the bank, whereafter the Recovery Officer issued a Notice for sale of the movable and immovable properties of the borrower.

At that stage, jurisdictional Tahsildar issued a notice to the borrower for recovery of the arrears of Sales Tax and also informing the borrower that its movable and immovable properties had been attached and that steps were being taken to sell the attached property by way of public auction. The Tahsildar claimed that by virtue of Section 26-B of the Kerala Act, 1963 as amended by Act No.23 of 1999, the State Government had got a first charge over the attached properties. The bank challenged the Notice of the Tahsildar

by way of petition under Article 226, which was dismissed by the learned single Judge which order was upheld also by a Division Bench. The Apex Court dealing with the issue, in particular reference to Section 34 of the DRT Act and Section 26-B of the Kerala General Sales Tax Act, 1963, held that there was no provision in either DRT Act or SARFAESI Act created a first charge in favour of the banks, financial institutions or secured creditors for the properties of the borrower. The Apex Court held:

“116. The non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act give overriding effect to the provisions of those Acts only if there is anything inconsistent contained in any other law or instrument having effect by virtue of any other law. In other words, if there is no provision in the other enactments which are inconsistent with the DRT Act or Securitisation Act, the provisions contained in those Acts cannot override other legislations. Section 38C of the Bombay Act and Section 26B of the Kerala Act also contain non obstante clauses and give statutory recognition to the priority of State's charge over other debts, which was recognized by Indian High Courts even before 1950. In other words, these sections and similar provisions contained in other State legislations not only create first charge on the property of the dealer or any other person liable to pay sales tax, etc. but also give them overriding effect over other laws.”

10. The Apex Court held that the effect of non obstante clause contained among others under Section 34 (1) of the DRT Act vis-a-vis Section 26-B of the Kerala Act could be given only if there was a specific provision in the enactment, creating first charge in favour of the banks, financial institutions and other secured creators. The Apex Court held thus:

“130. Undisputedly, the two enactments do not contain provision similar to Workmen's Compensation Act, etc. In the absence of any specific provision to that effect, it is not possible to read any conflict or inconsistency or overlapping between the provisions of the DRT Act and Securitisation Act on the one hand and Section 38C of the Bombay Act and Section 26B of the Kerala Act on the other and the non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the

Securitisation Act cannot be invoked for declaring that the first charge created under the State legislation will not operate qua or affect the proceedings initiated by banks, financial institutions and other secured creditors for recovery of their dues or enforcement of security interest, as the case may be.

131. The Court could have given effect to the non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act vis a vis Section 38C of the Bombay Act and Section 26B of the Kerala Act and similar other State legislations only if there was a specific provision in the two enactments creating first charge in favour of the banks, financial institutions and other secured creditors but as the Parliament has not made any such provision in either of the enactments, the first charge created by the State legislations on the property of the dealer or any other person, liable to pay sales tax etc., cannot be destroyed by implication or inference, notwithstanding the fact that banks, etc. fall in the category of secured creditors.”

11. Finally, the Apex Court in paragraph 158 held that the DRT Act and the Securitisation Act did not create a first charge in favour of the banks. It was held:

“158. On the basis of above discussion, we hold that the DRT Act and Securitisation Act do not create first charge in favour of banks, financial institutions and other secured creditors and the provisions contained in Section 38C of the Bombay Act and Section 26B of the Kerala Act are not inconsistent with the provisions of the DRT Act and Securitisation Act so as to attract non obstante clauses contained in Section 34(1) of the DRT Act or Section 35 of the Securitisation Act.”

12. It is not out of place here to mention that at the time when the judgment was rendered by the Apex Court in the case of **Central Bank of India(supra)**, Section 31-B was nowhere in existence, which was incorporated only by way of Act No.44 of 2016 with effect from 01.09.2016.

13. Learned counsel for the respondent State does not dispute the said legal position.

14. Applying the ratio of the judgment supra to the facts of the present case, it can be seen that now there is a specific provision providing for priority in favour of the secured creditors, to realize the secured debts, due and payable to them, over all other debts and Government dues, we have no hesitation to hold that the right of the petitioner Bank to recover its dues by sale of the secured asset would have priority over the arrears which were sought to be recovered by the respondent State under the provisions of the A.P. Value Added Tax Act, 2005.

15. Be that as it may, the present writ petition is allowed.

No order as to costs. Pending miscellaneous applications, if any, in this petition, shall stand closed.

DHIRAJ SINGH THAKUR, CJ.

RAVI CHEEMALAPATI, J.

AKN/SSN