



R

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 23RD DAY OF SEPTEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 103730 OF 2025 (GM-RES)

BETWEEN:

THE CANARA BANK
REPRESENTED BY THE DIVISIONAL MANAGER,
CANARA BANK REGIONAL OFFICE NO.4834/41,
2ND FLOOR, GEET GANGA BUILDING,
CIVIL HOSPITAL ROAD,
KRISHNA DEVARAYA CIRCLE, BELAGAVI.

...PETITIONER

(BY SRI. SANTOSH KUMAR B. MALLIGAWAD AND
SRI. B. DINKAR SHETTY, ADVOCATES)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY PRINCIPAL SECRETARY TO THE
GOVERNMENT FINANCE DEPARTMENT OF KARNATAKA,
VIDHANA SOUDHA, BANGALORE-01.
2. THE DEPUTY COMMISSIONER
COMMERCIAL TAX, COMMERCIAL TAX DEPARTMENT,
ENFORCEMENT 4TH FLOOR,
SUMOULYA SOUDHA, CLUB ROAD,
BELGAUM-590001.
3. THE ASSISTANT COMMISSIONER
COMMERCIAL TAX, COMMERCIAL TAX DEPARTMENT,
SOUTH ZONE, BELAGAVI-590001.

Digitally signed
by SAROJA
HANGARAKI
Location: High
Court of
Karnataka,
Dharwad Bench,
Dharwad



4. SANJAY S. GOUR,
AGE: MAJOR, OCC. BUSINESS,
R/O. FLAT NO.502, 5TH FLOOR,
A WING SKY PARK, GODSEWADI, BELAGAVI-590001.
5. AMIT ASHOKE KUMAR PERIWA
H.NO. 301, 3RD FLOOR, SRI SAI APRTMENT,
2ND CROSS, SHASTRI NAGAR, BELAGAVI-590001.
6. THE ASST. DIRECTOR OF LAND RECORDS
AND CITY SURVEY OFFICE,
BELAGAVI-590001.

...RESPONDENTS

(BY SRI.SHARAD V. MAGADUM, AGA FOR R1 TO R3 AND R6;
NOTICE TO R4 AND R5 IS DEFERRED)

THIS WP IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO 1. ISSUE A WRIT THE NATURE OF MANDAMUS DIRECTING RESPONDENT NO. 1 TO 3 TO REMOVE THE ENCUMBRANCE/CHARGE CREATED OVER THE SUBJECT PROPERTY BEARING RESIDENTIAL FLAT BEARING NO. A 502 LOCATED ON THE 5TH FLOOR, A- WING SKY PARK COMPLEX SITUATED AT GODSEWADI BELAGAVI BY RESPONDENTS NO.1 TO 3 VIDE ANNEXURE A. 2. GRANT ANY OTHER RELIEF, WHICH THE HON BLE COURT MAY DEEM FIT IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED ON 15.09.2025, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CAV ORDER

(PER: THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. The petitioner is before this court seeking the following reliefs:

i. Issue a writ the nature of mandamus directing respondent no. 1 to 3 to remove the



encumbrance/charge created over the subject property bearing residential flat bearing no. A 502 located on the 5th floor, A- wing sky Park complex situated at Godsewadi Belagavi by respondents No.1 to 3 vide Annexure A.

ii. Grant any other relief, which the Hon'ble Court may deem fit in the interest of justice and equity.

2. Brief facts of the case are as under:

2.1. The petitioner contends that Respondents No. 4 and 5 had availed a mortgage loan from the petitioner bank for their partnership concern. As regards which the residential flat bearing No. A-502 located on the 5th floor, A Wing, Sky Park Complex situated at Godsewadi, Belagavi, it was provided as security for the loan. The loan became a non-performing asset on 1.12.2020.

2.2. Pursuant thereto, a notice under Subsection (2) of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') was issued on 16.11.2022, calling upon



Respondents No. 4 and 5 to clear the outstanding loan amount of Rs.42,09,855/- as of 31.10.2022.

2.3. Since Respondents No. 4 and 5 did not repay the loan, a notice under Subsection (4) of Section 13 of the SARFAESI Act was issued on 24.05.2024. A further notice was issued on 3.08.2024 to the guarantor. Possession of the property along with the keys was taken on 17.09.2024.

2.4. At this stage, it came to light that Respondents No. 4 and 5 also owed certain amounts to the Commercial Taxes Department as GST to the tune of Rs.1,38,25,684/-.

2.5. Respondent No.1 recovered Rs.80,54,200/- by sale of various assets but also created a charge/encumbrance on the aforesaid apartment, which was duly entered in the property card of apartment No. A-502.

2.6. The petitioner bank contends that it had a prior charge and issued a notice on 17.11.2024, to Respondents No. 2 and 3 stating that the said property is secured



and possession thereof had been taken in terms of the SARFAESI Act. The liability of Respondents No. 4 and 5 towards the Bank is to the extent of Rs. 1,07,80,517/-.

2.7. In terms of Section 26-E of the SARFAESI Act, the Bank has a first, prior, and exclusive charge on the property and asset, and requested Respondents No. 2 and 3 to remove the charge/encumbrance initiated by them, reflected in the property card, so as to enable the Bank to conduct and complete the auction.

2.8. The said letter was followed up by a further proposal dated 24.12.2024, giving a detailed overview and seeking permission from the respondents to remove the encumbrance. No action having been taken by the respondents, the petitioner is before this court seeking an official release.

3. Shri Santosh B Malligwad, learned counsel for the petitioner Bank, would submit that



- 3.1. Any encumbrance or charge under the SARFAESI Act has precedence and preference over the charge of any other authority, including taxing authorities and governmental authorities, until and unless a charge of the secured creditor is discharged, no other authority or entity, including taxing authorities, can claim any interest in a secured asset offered as security towards a loan disbursed by a bank.
- 3.2. The security in respect of the said apartment was created in favor of the Bank as on the date of the disbursement of the loan amount i.e. on 21.12.2017. The charge claimed by the GST authorities was created on 6.11.2019, which is subsequent to the security interest created in favor of the Bank.
- 3.3. Therefore, both on account of the priority of the Bank under the SARFAESI Act and on account of the priority in point of time of creation of charge, it is the Bank which gets precedence until the dues of the Bank are discharged, the question of the GST authorities



claiming any right, title, interest, or creating any charge or encumbrance on the said property would not arise.

3.4. He relies upon the decision of the Division Bench of this court in ***Sri Abdul Khader V/s Sadath Ali Siddiqui and ors.***¹ more particularly paragraph 18 thereof which is reproduced hereunder for easy reference:

"18. On plain reading of Section 26-E of the SARFAESI Act, we would find that the secured creditor has precedence over all other charges. By Amendment Act 44 of 2016 which came into effect from 01.09.2016, a new provision was incorporated into the SARFAESI Act and therefore, under Section 26-E of the SARFAESI Act, priority in payment has been statutorily created in favour of the secured creditor over all other debts including taxes payable to the Central Government or the State Government on registration of security interest. The non obstante clause under the provision makes the intention of the Parliament explicit that even against statutory charges created under the Central Act, secured creditor shall have the right for priority in payment and priority to release the debt for bringing the secured asset for sale. The non obstante clause used in Section 26-E is a tool by which legislature gives complete

¹ WA.No.1102 of 2021



predominance to that provision over all other provisions of law."

- 3.5. Relying on **Abdul Khader**'s case, he submits that priority in payment has been statutorily created under SARFAESI Act in favor of the secured creditor over all other debts, including taxes payable to the Centre or State Government on registration of a security interest. This non-obstante clause in Section 26-E of the SARFAESI Act gives complete predominance to the charge of the Bank over all other provisions or claims.
- 3.6. He relies upon the decision of the Hon'ble Telangana High Court in **State Bank of India V/s. Deputy Commercial Tax Officer, Jogipet Unit, Office of Medak Circle and Ors.**² more particularly paragraphs 12, 13, 38, and 41 thereof which are reproduced hereunder for easy reference:

"12. He would further submit that auction was conducted on 30.07.2018 and after 28 rounds of bidding M/s.Vishnu Chemicals Ltd., was declared as highest bidder for sale consideration of ₹ 1.90 crores and sale certificate was registered in their favour. Even though said information is available Bank has

² 2023(6)ALT353



not chosen to implead the auction purchaser and in the absence of auction purchaser, no relief can be granted.

13. The question for consideration is whether in terms of Section 31B of the Act, 1993 the Bank has priority over the claim of Commercial Tax Department of the State Government, in spite of employing non-abstante clause in Section 82 of Telangana State Goods and Services Act, 2017.

38. Thus, the secured creditor shall have precedence to recover its dues from the secured asset over claims of a State Government to recover taxes. It is therefore open to the petitioner-bank to take such measures as required to recover the amounts due from the secured asset."

41. It is made clear that if the secured assets are likely to yield more money than the actual money due to the Bank, after adjusting the amounts due to the Bank, the balance amount shall be credited to the account of the State and respondent Nos.1 and 2 shall be updated about the measures taken by the Bank and the amounts secured by them on the secured assets.

3.7. By relying on the **State Bank of India's** case, he submits that Hon'ble Telangana High Court had considered a similar issue regarding priority under Section 31B of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as 'the RDB Act'), and the claims of the Commercial Tax Department



under Section 82 of the Goods and Services Tax Act, 2017 (hereinafter referred to as 'the GST Act').

3.8. The Hon'ble Telangana High Court came to a categorical conclusion that though the GST Act is a later law, the SARFAESI Act will prevail. Section 31B of the SARFAESI Act is emphatic that the secured creditor shall have priority rights to realise secured debts over all other debts and government dues, including revenues, taxes, cess, and rates due to the Central Government, State Government, or local authority etc.,.

3.9. He relies upon the decision of the Hon'ble Madras High Court in ***Indian Bank V/s. The Commercial Tax Officer, Ambattur Assessment Circle and Ors.***³ more particularly paragraph 41 thereof, which is reproduced hereunder for easy reference:

"41. In view of the detailed discussion above, it is very clear that it is the provisions of Section 26E of the SARFAESI Act and Section 34 of the RDB Act would prevail over

³ (2025)3MLJ784



the provisions of Section 24 of the TNGST Act. Additionally, this is a case where security interest has been created by the Bank as early as in 1991, prior to the charge imposed by the Sales tax Department. Section 24 does not provide for priority by creation of a first charge in respect of the demands raised under that Act. Hence, Section 26E of the SARFAESI Act and Section 34 of RDB Act would prevail, in public interest.”

3.10. By relying on **Indian Bank’s** case he submits that the Hon’ble Madras High Court categorically held that the provisions of Section 26E of the SARFAESI Act and Section 34 of the RDB Act would prevail over the provisions of Section 24 of the GST Act. Additionally, it was held that where a security interest has been created at the Bank prior to the charge imposed by the sales tax department, then the GST Act would not provide priority by creation of a first charge in respect of demands raised under that Act.

3.11. On the basis of the above judgments and submissions, he submits that the charge created in favour of the Bank would have precedence over the claim of the GST authorities. Further, the charge in favour of the Bank, created on 15.07.2017, is prior in point of time



compared to the charge created by the GST authority on 16.04.2019, for the period April 2018 to October 2018. As such, the GST authorities cannot claim any interest to the detriment of the Bank. On that ground, he submits that a direction is required to be issued to the GST authorities to remove the charge/encumbrance recorded in respect of the apartment bearing No. A-502 in the property card, by allowing the writ petition.

4. Shri Sharad Magdum, learned AGA appearing for the respondent Nos.1 to 3 and 6, would submit that

4.1. The GST Act is a subsequent Act and that Parliament, being aware of the existence of the SARFAESI Act, has categorically held that the GST Act will prevail over any other enactment, including the SARFAESI Act.

4.2. In this regard, he places reliance on Section 82 of the GST Act, which is reproduced hereunder for easy reference.



"82. Tax to be first charge on property - *Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person."*

- 4.3. He submits that the GST Act, being a central enactment applicable to both CGST and SGST, and the SARFAESI Act also being a central enactment, the GST Act, being the subsequent enactment, would prevail over the earlier SARFAESI Act.
- 4.4. The learned AGA's submission is that the only exception is as regards claims under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC Code'), which would have precedence over a claim for GST. Apart from claims under the IBC Code, no other entity, including a bank, can claim priority of charge over dues to GST.
- 4.5. In this regard, he reliance upon the decision of the Hon'ble Apex Court in **State Tax Officer V/s.**



HC-KAR

NC: 2025:KHC-D:12959
WP No. 103730 of 2025

Rainbow Papers Limited⁴, more particularly paragraph 54, which is reproduced for easy reference.

"54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues"

4.6. By relying on ***Rainbow Papers's*** case he submits that the Hon'ble Apex Court categorically held that the committee of creditors, which may include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any government or governmental authority or any other dues. In that regard, reference was made to Section 53 of the IBC code, which is reproduced for easy reference.

"53. Distribution of assets.—(1) *Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:—*

⁴ Civil Appeal No. 1661 of 2020



- (a) the insolvency resolution process costs and the liquidation costs paid in full;*
- (b) the following debts which shall rank equally between and among the following:—*
 - (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and*
 - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;*
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*
- (d) financial debts owed to unsecured creditors;*
- (e) the following dues shall rank equally between and among the following:—*
 - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*
 - (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*
- (f) any remaining debts and dues;*
- (g) preference shareholders, if any; and*



(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation.—For the purpose of this section—

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and*
- (ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013)."*

4.7. His submission is that even in respect of claims under IBC, the Apex Court held that a claim of a creditor, which may include a bank or financial institution, cannot have preference over amounts owed to the Government as taxes under the GST Act.

4.8. On this basis, he submits that the claim of the Bank, which claims to be a secured creditor, must yield to



the claim of the Government, the tax being public money and forming part of the public exchequer. Hence, the Bank cannot claim superintendence over the GST claim by the State.

5. Heard Shri Santosh B Malligwad, learned counsel for the petitioner and Shri Sharad Magdum, learned AGA for the respondent Nos.1 to 3 and 6, and perused the papers.

6. The points that would arise for consideration are:

- i. Who would have preference or priority of charge/encumbrance by reading the SARFAESI Act and GST Act in conjunction?*
- ii. In the facts of the present matter, whether this court is required to intercede?*
- iii. What order?*

7. I answer the above points as under:

8. **Answer to Point No.(i): Who would have preference or priority of charge/encumbrance by reading the SARFAESI Act and GST Act in conjunction?**



- 8.1. The relevant provisions for consideration are:
Section 26-E of the SARFAESI Act, which is
reproduced hereunder for easy reference.

"26E. Priority to secured creditors.—
Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be 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.

Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.]

- 8.2. Section 34 of the RDB Act, which is reproduced for
easy reference.

Section 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.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), 1[,the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)].

8.3. Section 53 of the IBC which is reproduced hereunder for easy reference.

53. Distribution of assets.—*(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:—*

- (a) the insolvency resolution process costs and the liquidation costs paid in full;*
- (b) the following debts which shall rank equally between and among the following:—*
 - (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and*
 - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;*



- (c) *wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*
 - (d) *financial debts owed to unsecured creditors;*
 - (e) *the following dues shall rank equally between and among the following:—*
 - (i) *any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*
 - (ii) *debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*
 - (f) *any remaining debts and dues;*
 - (g) *preference shareholders, if any; and*
 - (h) *equity shareholders or partners, as the case may be.*
- (2) *Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.*
- (3) *The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.*

Explanation.—For the purpose of this section—



- (i) *it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and*
- (ii) *the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013)."*

8.4. Section 82 of the GST Act, which is reproduced hereunder for easy reference.

82. Tax to be first charge on property

- Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person."

8.5. Reading Section 26-E of the SARFAESI Act indicates priority of a secured creditor for recovery of amounts due to the secured creditor over any other claim by any other person or entity, including that of taxes due



to the Government, however makes it subject of the IBC.

8.6. Reading Section 34 of the RDB Act indicates that a bank, as a secured creditor, has priority of right of recovery over any other claimant.

8.7. Reading Section 53 of the IBC indicates that proceeds from sale or liquidation of assets would be distributed as per priority indicated therein and in terms thereof the dues to the Government on account of taxes and the dues to the secured creditor have equal status.

8.8. Reading Section 82 of the GST Act indicates that GST authorities have precedence over the claim of anyone else except claims under the IBC.

8.9. All these sections contain non-obstante clauses indicating that the provisions shall be effective irrespective of any other law in force.

8.10. As long as these provisions are applied independently, there is no conflict. Specifically, if a claim is made by



the Bank under either the SARFAESI Act or the RDB Act, and there is no claim under the IBC or GST Act, it is clear that the claim under the SARFAESI Act or the RDB Act may be enforced. If a claim is made under the IBC Act and there is no claim under the SARFAESI Act, RDB Act, or GST Act, the claim under the IBC Act can be implemented without issue. Similarly, if a claim is made under the GST Act and there are no claims under the SARFAESI Act, RDB Act, or IBC Act, the claim under the GST Act can be executed without difficulty.

8.11. The issue arises when two or more of these enactments are invoked concerning the same property or security. In such cases, it becomes necessary to determine the priority of charges and the order of recovery under the conflicting enactments.

8.12. The Hon'ble Apex Court in ***Rainbow Papers's*** case has categorically held that, in the event of a conflict between the IBC and statutory dues, the statutory dues will take precedence over the claim under the



IBC. Similarly, the Hon'ble Madras High Court in ***Indian Bank's*** case has held that, in the case of a conflict between the TNGST Act and the SARFAESI Act or RDB Act, it is the SARFAESI Act or RDB Act that would prevail. However, in that case, Section 24 of the TNGST Act was considered, not section 82 of the GST Act currently under discussion. The Telangana High Court in ***State Bank of India's*** case has specifically held that a secured creditor has precedence in recovering dues from secured assets over claims by the state government to recover taxes.

8.13. Additionally, the Division Bench of this Court in ***Abdul Khader's*** case held that, due to the non-obstante clause in Section 26-E of the SARFAESI Act, the charge created under SARFAESI would have priority, even over statutory charges created under other laws.

8.14. The only case that directly addresses a similar conflict is ***Rainbow Papers's*** case, which dealt with a conflict between the IBC and tax claims. ***State Bank of India's*** case concerned a conflict between the RDB



Act and the TNGST Act, while ***Indian Bank's*** case dealt with Section 26-E of the SARFAESI Act, Section 34 of the RDB Act, and Section 24 of the TNGST Act. While all of these cases address interse conflicts, the present case specifically concerns the conflict between Section 26-E of the SARFAESI Act and Section 82 of the KGST Act. Section 26-E of the SARFAESI Act indicates that a secured creditor has priority over any other claim. Section 82 of the KGST Act indicates that tax recovery under the GST Act takes precedence over all other claims except those under the IBC.

8.15. In the present case, Shri Sharad Magdum, learned AGA, contends that only claims under the IBC can override those under the GST Act, and that, since the GST Act is subsequent to the SARFAESI Act, the GST Act should prevail.

8.16. I am unable to accept this argument for the simple reason that the claim under the GST Act is not directly enforceable until the tax authorities have made an assessment and an entry is made on public records,



like the encumbrance certificate or property card. In contrast, a secured creditor's claim under the SARFAESI Act is based on a charge on the property, which is usually available in the public domain and can be acted upon by third parties.

8.17. Furthermore, the Hon'ble Apex Court in the ***Rainbow Papers's*** case held that the claim of the taxing authorities will prevail over the claims of secured creditors, including financial institutions, under the IBC. What needs to be considered is the date of creation of the charge.

8.18. The transaction under the GST Act is not reflected in public records until an assessment order is passed and an entry is made. In this case, the GST order was passed on 16-04-2019, and the entry was made on 06-11-2019, while the charge in favour of the petitioner bank under the SARFAESI Act was created on 15-07-2017 and was already entered into the property card. Thus, although the ***Rainbow Papers's*** case suggests that the claim of the GST authorities



prevails over that under the IBC, in the present case, the charge created under the SARFAESI Act prevails. The principle to be applied is that if the charge under the SARFAESI Act was created prior in time to the charge under the GST Act, the charge under SARFAESI Act would prevail, and vice versa.

8.19. In conclusion, I am in agreement with the judgment of the Hon'ble Madras High Court in ***Indian Bank's*** case, which held that the charge created earlier in time would have precedence. Therefore, if the charge under the SARFAESI Act was created before the charge under the GST Act, as in the present case, the SARFAESI Act charge would take precedence.

8.20. If there is a conflict between the GST Act and the SARFAESI Act (or the RDB Act), the priority of the charge must be determined based on the order in which the charges were created. If the charge under the GST Act was created prior to that under the SARFAESI Act, the GST Act will prevail, and vice versa.



9. **Answer to Point No.(ii):In the facts of the present matter, whether this court is required to intercede?**

9.1. In the present case, as noted earlier, the charge in favor of the Bank was created on 15-07-2017, while the charge in favor of the GST authorities was created pursuant to an order dated 16-04-2019. However, this charge was only recorded in the property card on 06-11-2019, which could be said to have come to the notice of the general public, or to be considered a constructive notice to the public.

9.2. Regardless of the date of the order or the date of recordal, the fact remains that the charge in favor of the Bank was recorded on 15-07-2017, which is more than two years prior to the charge created by the GST authorities. In light of the above, and based on the timeline of events as outlined, I answer point No.ii by holding that in the present case, the Bank's charge takes precedence over that of the GST authorities.

10. **Answer to Point No. (iii): What order?**



10.1. In view of my findings in respect of all the above points, I pass the following:

ORDER

- i) Writ petition is **allowed**.
- ii) A writ of mandamus is issued directing Respondent Nos. 1 to 3 to remove the encumbrance or charge created over Apartment No. A-502, situated on the 5th Floor, A-Wing, Sky Park Complex, Godsewadi, Belagavi, within a period of 15 days from the date of receipt of a certified copy of this order.
- iii) Upon removal of the said charge, the petitioner-Bank shall be entitled to proceed with bringing the said property to auction in accordance with law. During the auction process, the GST authorities shall be at liberty to inform any prospective purchaser or interested party to participate in the auction.
- iv) Upon completion of the auction, if any surplus amount remains after full adjustment of the dues



recoverable by the petitioner-Bank, such surplus shall be deposited with Respondent No. 2, to be appropriated towards the dues payable to the GST authorities in accordance with law.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

VB/CT:PA
List No.: 1 Sl No.: 221