HC-KAR

NC: 2026:KHC:46643
WP No. 24893 of 2015

CNR: KAHC010033662015

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 25TH DAY OF AUGUST, 2026**

**BEFORE**

**THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**WRIT PETITION NO. 24893 OF 2015 (GM-DRT)**

**BETWEEN:**

M/S. YASH REAL ESTATE PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES, ACT, 1956
HAVING ITS REGISTERED OFFICE AT
NO.12/A, 7TH CROSS ROAD,
R.D. LAYOUT,
BANNERGHATTA ROAD,
BANGALORE-560 030.
REPRESENTED BY ITS
MANAGING DIRECTOR
MR. RAJKUMAR LADHA

...PETITIONER

(BY SRI. RAVI RAGHAVAN, ADVOCATE)

**AND:**

1. RECOVERY OFFICER- II
DEBT RECOVERY TRIBUNAL
KARNATAKA KRISHI BHAVAN
HUDSON CIRCLE
BANGALORE.

2. THE JAMMU & KASHMIR BANK LIMITED
BANKING COMPANY ESTABLISHED
UNDER THE JAMMU & KASHMIR
COMPANIES ACT,
NO.XI OF 1977 (SAMVAT),
HAVING ITS CORPORATE OFFICE AT
M.A. ROAD, SRINAGAR, KASHMIR,
AND BRANCH OFFICE AT 1ST FLOOR,

S.P.A. PLAZA, O.T.C. ROAD,
BANGALORE-560 002
REPRESENTED BY ITS MANAGER,
MR. SALEEM AHMED
JAHANGIR KIRMANI

3. BPL ENGINEERING LIMITED
A COMPANY REGISTERED WITH
REGISTRAR OF COMPANIES,
HAVING ITS REGISTERED
OFFICE AT NO.13/5, HOSUR ROAD,
BOMMANAHALLI,
BANGALORE-560 068
BY IT SVICE CHAIRMAN
MR. AJIT G NAMBIAR

4. MR. V.S. RAMANAN
HEAD-FINANCE & ACCOUNTS,
BPL ENGINEERING LIMITED,
A COMPANY REGISTERED WITH
REGISTRAR OF COMPANIES,
HAVING ITS REGISTERED
OFFICE AT NO.13/5,
HOSUR ROAD,
BOMMANAHALLI,
BANGALORE-560 068

5. MAR. AJIT G NAMBIAR
VICE CHAIRMAN,
BPL ENGINEERING LIMITED,
A COMPANY REGISTERED WITH
REGISTRAR OF COMPANIES,
HAVING ITS REGISTERED,
OFFICE AT NO.13/5, HOSUR ROAD,
BOMMANAHALLI,
BANGALORE-560 068

6. STATE BANK OF MYSORE
CONSTITUTED UNDER
THE STATE BANK OF INDIA
(SUBSIDIARY BANKS)

ACT 1959, HAVING ITS HEAD OFFICE
AT K.G. ROAD,
BANGALORE-560 009

AND OF ITS SEVERAL BRANCHES
ONE CALLED THE
INDUSTRIAL FINANCIAL BRANCH,
NO.18, RAMANASHREE ARCADE,
MID-FORT, GARDENS ROAD,
BANGALORE-560 001.
REPRESENTED BY ITS
ASSISTANT GENERAL MANAGER

7. CANARA BANK
CONTONMENT BRANCH,
NO.88, M.G. ROAD,
BANGALORE-560 001.
REPRESENTED BY MANAGER

8. STATE BANK OF HYDERABAD
ICRIS AT BRANCH,
PATTANCHARU-502307,
MEDAK DISTRICT,
ANDHRA PRADESH
REPRESENTED BY MANAGER

9. CENTURION BANK OF PUNJAB LIMITED
NO.17, CUNNINGHAM ROAD,
BANGALORE-560 002.
REPRESENTED BY MANAGER

10. AMERICAN EXPRESS BANK LIMITED
NO.187, ANNASALAI,
CHENNAI-600 006.
REPRESENTED BY ITS MANAGER

11. HDFC BANK LIMITED
PROCESS HOUSE, 2ND FLOOR,
KAMALA MILLS COMPOUND,
SENAPATHIBAPAT MARG,
LOWER PAREL,

MUMBAI-400 013.
REPRESENTED BY ITS MANAGER

12. ICICI BANK LIMITED
ICICI TOWERS,
BANDRA, KURLA COMPLEX,
MUMBAI-500 051.
REPRESENTED BY ITS DEPUTY
GENERAL MANAGER

13. INDUSTRIAL DEVELOPMENT
BANK OF INDIA,
SASF, 10TH FLOOR,
IDBI TOWER, WTC COMPLEX,
CUFFEE PARADE,
MUMBAI-400 021.
REPRESENTED BY ITS DEPUTY
GENERAL MANAGER

14. CENTRAL BANK OF INDIA
DEBENTURE TRUSTEES SECTION,
MULLA HOUSE, 2ND FLOOR,
NO.51, M.G. ROAD,
MUMBAI-400 023.
REPRESENTED BY ITS MANAGER

15. SICOM LTD.,
NIRMAL NARIMAL POINT,
MUMBAI-400 021.
REPRESENTED BY ITS MANAGER

16. EXIM BANK LTD.,
RAMANASHREE ARCADE,
4TH FLOOR, NO.18,
M.G. ROAD,
BANGALORE-560 001.
REPRESENTED BY TIS MANAGER

17. BANK OF BAHREIN & KUWAIT BSC,
JOLLY MAKER CHAMBERS-II,
G-FLOOR, 225, NARIMAN POINT,

MUMBAI-400 021.
REPRESENTED BY ITS MANAGER

18. K.S.I.D.C
4TH FLLOR, KHANIJA BHAVAN,
EAST WING, NO.49,
RACE COURSE ROAD,
BANGALORE-560 052.
REPRESENTED BY ITS MANAGER

19. FEDERAL BANK LIMITED
NO.62, 1ST FLOOR,
ANNA SALAI,
CHENNAI-600 006.
REPRESENTED BY ITS MANAGER

...RESPONDENTS

(BY SRI. TIMMANNA BHAT, ADVOCATE FOR R1
SRI.SHAILESH KUMAR, ADVOCATE FOR R2
SMT.KRUTIKA RAGHAVAN, ADVOCATE FOR R3
SRI.FRANCIS XAVIER, ADVOCATE FOR R11
SRI.S.RAMAKRISHNA, ADVOCATE FOR R20 AND R16
SRI.T.P.VIVEKANANDA, ADVOCATE FOR R18
SRI.T.P.MUTHANNA, ADVOCATE FOR R6, R7, R8 AND R13
SRI.V.VIJAYKUMAR, ADVOCATE FOR R19
SRI.JAI M PATIL, ADVOCATE FOR R12
R9, R14 AND R17 ARE SERVED V/O/DATED:19/12/2024
R4, R5 AND R10- NOTICE HELD SUFFICIENT V/O/D:19/12/2024
R15 NOTICE TAKEN AS SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDERS PASSED BY THE DEBT RECOVER TRIBUNAL, KARNATAKA IN O.A. 2/2009 VIDE ANNEXURE-A DATED 18.11.2009 TO THE EXTENT OF DIRECTION GIVEN viz. 'FURTHER THE APPLICANT BANK IS AT LIBERTY TO RECOVER THE SAME FROM THE DEFENDANTS NO.1 TO 3 AS STATED ABOVE AND ALSO FROM THE PROPERTY SHOWN IN THE O.A. SCHEDULES' FOR A WRIT OF CERTIORARI QUASHING THE PROCLAMATION OF SALE [FORM-13] E-AUCTION SALE NOTICE

HC-KAR



CNR: KAHC010033662015

PUBLISHED IN THE HINDU DATED 17.5.2015 ISSUED BY THE R-1 DATED 7.5.2015 AND PRODUCED AS ANNEXURE-B.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 25.04.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

## CAV ORDER

The present writ petition is filed seeking the following prayer:

> ***"PRAYER***
>
> ***WHEREFORE, the Petitioner prays that this Hon'ble Court may be pleased to issue writ of certiorari quashing the Orders passed by the Debt Recovery Tribunal, Karnataka in O.A.2/2009 vide Annexure - A dated 18/11/2009 to the extent of direction_given_viz. "further the Applicant Bank is at liberty to recover the same from the Defendants No.1 to 3 as stated above and also from the property shown in the O.A Schedules", for a writ of certiorari quashing the proclamation of sale (Form-13) E-Auction sale notice published in The Hindu dated 17/05/2015 issued by the 1st Respondent dated 07/05/2015 and produced as Annexure-B and for such other writ directions, declarations and orders as this Hon'ble Court may deem fit to grant including the costs of this petition."***

2. It is the case of the petitioner that the petitioner is the absolute owner of the property bearing CMC Khatha No.242 and 243 (Sy.No.13/5 renumbered as Sy.No.13/5B of Bommanahalli Village) situated in Bangalore Hosur Road,

National Highway No.7, Bommanahalli Village, Begur Hobli, Bangalore South Taluk, which is described in the schedule. The petitioner got title to the same under a registered Sale Deed dated 16.05.2005 executed by one Sri.M.N.Panchalingam, Sri.M.N.Prakash and Sri.M.N.Sukumar. Originally, the property belonged to Gullappa alias Dinnappa, who bequeathed the property to his wife Smt.Akkamma and daughter Rukminiyamma. The said persons sold the property to Sri.Shivappa and Sri.N.Gopala Reddy under a Sale Deed dated 31.01.1972. Sri.Shivappa and Sri.N.Gopala Reddy secured conversion and sold the same to the vendors of the petitioner. The petitioner being the owner has been in peaceful possession and enjoyment of the schedule property. The khata has been made over in favour of the petitioner and the khata certificate is produced before the Court. The tax demand register issued by the BBMP shows that the petitioner is the owner. While things stood thus, the petitioner saw a notification in The Hindu dated 17.05.2015 regarding proclamation of the sale/E-auction sale notice.

3. It is stated that although the property description in Annexure-B appears slightly different from the schedule written to this writ petition, which is nothing other than the schedule shown in the sale deed of the petitioner, when the boundaries make it clear that the property sought to be sold under Annexure-B is the very property of the petitioner. After reviewing Annexure-B, the petitioner approached respondent No. 2 and made enquiries. Respondent No. 2 informed that M/s. BPL Engineering Ltd., respondent No. 3, was a lessee of the schedule property, and the lease deed provided that the lessee shall be at liberty to mortgage the leasehold rights without the express consent or approval of the lessor, without exposing the lessor to any liability. Hence, the said company mortgaged the property to the consortium of banks. Hence, respondent No. 2 claims mortgaged rights regarding the property and filed an application under Section 19 of the DRT Act in O.A. No. 2/2009. It is stated that on the very same day the petitioner purchased the property, M/s. BPL Engineering Ltd. also surrendered its lease and executed a Deed of Surrender of Lease dated 16.05.2005, placing the petitioner in possession of the schedule property. After possession was

surrendered, the petitioner saw that there was a very old building in a dilapidated condition, of no use, and consequently the same was demolished, and as on today there is no building whatsoever in the said property.

4. It is stated that the petitioner obtained a copy of the application filed by respondent No. 2 under Section 19 of the DRT Act. The application shows that the mortgage to the consortium of banks was by M/s. BPL Engineering Ltd., which was not the owner, and, in fact, there was no mortgage at all in favor of respondent No. 2 bank, as there was only an assurance that it would be mortgaged, not that it was mortgaged. At any rate, even the consortium of banks pleaded a mortgage created by respondent No. 3, and there is no allegation that the owners have not created a mortgage in favor of anyone. There is no mention of leasehold property at all in Annexure-A. Notwithstanding that, Annexure-B states that leasehold property is being sold, which is totally contrary to the order that has been passed. As respondent No. 3 was a lessee, at most leasehold rights could be mortgaged by it. Assuming, for the purpose of argument, that leasehold rights had been

mortgaged by respondent No. 3 in favor of respondent No. 2 bank, in the absence of a prayer being made and an order being passed based on that, no decree could be passed and no recovery certificate can be issued. In fact, in reality also, no order has been passed based on a mortgage of leasehold rights. In the event of a mortgage of leasehold rights, what can be sold is the leasehold rights, not the rights in the property. In the event of any order having to be passed for the sale of property or in the event of any order having to be passed that a mortgage exists, the owner of the property must be made a party to the proceedings.

5. It is stated that the petitioner has purchased the property from third parties who were not parties to the application under Section 19 of the DRT Act. Hence, the property purchased is not hit by Section 52 of the Transfer of Property Act. The case proceeds on the basis that the property had been mortgaged by respondent No.3. Respondent No.3 was never the owner of the property and consequently could never have mortgaged it. The first respondent herein has not applied its mind to whether the third respondent is the owner

or whether the mortgage could have been created. By virtue of Annexures A and B, the petitioner would lose its right to the immovable property. This would cause great prejudice to the petitioner. The petitioner will be deprived of possession of the schedule property. All this would cause extraordinary hardship to the petitioner. It is stated that an alternative remedy is provided under Section 20 of the DRT Act. The alternative remedy is not an efficacious remedy for the reason that the Appellate Tribunal is not situated in Bangalore, and the petitioner would find it difficult to search for an advocate in Chennai. The petitioner has no activities in Chennai. Further, to file an appeal, 75% of the decretal amount has to be deposited, which would cause untold hardship and is impossible. Further, the petitioner is not asking for assessment of the evidence, appreciation of the evidence, or complicated questions of fact and law to be gone into. The petitioner is approaching the Court on the ground that the principles of natural justice are violated inasmuch as the owner of the schedule property was not heard, and on the ground that the mandatory requirements of law, that if a decree is to be passed based on mortgage, the

owner of the property should be made a party, are not followed.

6. Learned counsel appearing for the petitioner submits that respondent No. 2 has not registered any charge in respect of the schedule property. Even at the time the loan was sanctioned to respondent No. 2, no such charge was created or registered. Likewise, at the time the petitioner purchased the schedule property, no registered charge subsisted, nor has any such charge been created by respondent No.2. The petitioner is a bona fide purchaser, and in the absence of any registered charge over the schedule property, the impugned portion of the order and the proclamation of sale are unsustainable in law and require to be quashed. Hence, learned counsel submits that the proclamation of sale dated 17.05.2015 and the impugned portion of the order dated 18.11.2009, whereby liberty was granted to respondent No. 2 to recover the dues by selling the schedule property, may be set aside. The petitioner had relied on the judgments of the Apex Court in ***Whirlpool Corporation***

***Vs. Registrar of Trade Marks, Mumbai and Others***[1]***,*** at paragraph No.15 which reads thus:

> ***"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."***

7. Learned counsel has also relied on the judgment of the Gujarat High Court in case of ***IFCI Ltd. Vs. O.L. of Gujarat Inject Ltd. and others*** arising out of ***Company Application No.301/2012*** in ***Company Petition No.18/1999 dated 04.03.2015***, he relied on para No.19 which reads as follows:

> ***19. The charge created by mortgage transaction was not got registered under Section 125 as on the date of winding up. Therefore such unregistered charge so created was void against the Official Liquidator as per the said provision. The charge then created was one created in the realm of***

[1] (1998) 8 SCC 1

***contract. The decree passed by the Debt Recovery Tribunal did not 'create' charge as such. True, it is that it traveled into the four corners of the decree. The decree as passed only recognized the debt in respect of the charge not registered under the Section. However the debt becoming so payable would not rank in priority for its payment under the Companies Act, and would not be capable of being enforced as a secured debt of a secured creditor against the Official Liquidator. The applicant has to be taken as unsecured creditor.***

8. Learned counsel relied on the judgment in the case of ***Rajasthan Financial Corporation Vs. Jaipur Spinning and Weaving Mills Ltd. and another***[2], paragraph Nos.3 and 6 which reads as follows:

***"3. The Official Liquidator thereafter considered the claim and admitted the appellants as ordinary creditors. The appellants, therefore, filed an appeal against the order of the Official Liquidator. In that appeal some reliefs were given. However, it was dismissed by the order dated 25-8-1994 qua the claim of the appellants that they were secured creditors. The dismissal was based on Section 125 of the Companies Act which provides that if a charge is not registered then the charge would become void as against the Official Liquidator.***

***6. We, therefore, see no infirmity in the impugned order. We see no reason to interfere. The civil appeal is dismissed."***

[2] 2005 13 SCC 765

9. He relied on ***Durga Enterprises Pvt. Ltd. and Another Vs. Principal Secretary, Govt. of UP and others***, in para No. 3 which reads as follows:

> ***"3. The High Court, having entertained the writ petition, in which pleadings were also complete, ought to have decided the case on merits instead of relegating the parties to a civil suit."***

10. Relying on these judgments, it is submitted that the property purchased by the petitioner cannot be put up for auction or sale, and the order of the Tribunal needs to be set aside.

11. On behalf of respondent No. 13, the written submissions are placed before the Court. It is stated that M/s. BPL Engineering Ltd., a limited company engaged in manufacturing washing machines, compressors, motors, etc., had availed credit facilities from banks and financial institutions by mortgaging immovable properties, including the schedule property, and by hypothecation of buildings, plant, and machinery, etc. The Jammu and Kashmir Bank had granted credit facilities to the company to the extent of Rs.10 Crores for the purpose of financial restructure on an agreement that the

schedule properties mortgaged and hypothecated to the consortium banks would be mortgaged to the Jammu and Kashmir Bank. The loan was sanctioned on 06.12.2000 on the terms and conditions mentioned therein and under a multiple banking system. In consideration of sanctioning the loan, the company executed various loan documents. One of the conditions of sanction was that the company had to create and get registered the bank's charge with the ROC. As the company defaulted in making payments, the account was classified as NPA, and the Jammu and Kashmir Bank filed OA No. 2/2009 before the DRT, Bangalore, against the company to recover the amount due to the bank. The other financial institutions/members of the consortium banks are arrayed as defendant Nos.4 to 17 in the OA.No.2/2009. The DRT allowed the OA.No.2/2009 and directed defendant Nos. 1 to 3, i.e., the company and its officers, to pay the Jammu and Kashmir Bank a sum of Rs.19,47,50,564/- with interest, jointly and severally. The DRT has also given liberty to recover the amount from the OA.No.2/2009 schedule properties, subject to the rights of defendants Nos. 4 to 17.

12. It is stated that the DRT has issued a recovery certificate dated 13.03.2012. The company had offered two properties, one in Andhra Pradesh and the other in Bommanahalli Village, Begur Hobli. The Recovery Officer-II, DRT, Bangalore, issued a Proclamation of Sale/e-auction Sale Notice dated 07.05.2015 with respect to the property at Bommanahalli, and on 19.06.2015, the property was sold for recovery of the sum of Rs.22,53,53,501/- from the Company. Thereafter, the petitioner filed the present writ petition to quash the orders passed by the DRT. It is stated that an agreement of lease was made on 23.07.1992 between Sri.M.N.Panchalingam, Sri.M.N.Prakash, and Sri.M.N.Sukumar, owners of the property at Bommanahalli, and BPL Engineering Ltd., to lease the said property along with buildings, structures, and other constructions on terms and conditions, including payment of rent, etc. The lease is for a period of 38 years, i.e., up to 31.12.2029. One of the terms and conditions of the agreement is that the lessee shall be at liberty to mortgage the leasehold rights in respect of the property to any bank or financial institution without any express consent or approval of the lessors and without exposing the lessors to any liability

whatsoever. BPL Engineering Ltd. has executed a Memorandum of Entry in respect of this property at Bommanahalli, stating therein that the documents relating to the said property were deposited on 15.03.2002 and further deposited by way of constructive delivery on 15.03.2002.

13. It is stated that the company executed a deed of surrender of lease on 16.05.2005, surrendering the leasehold rights before the expiry of the lease period. On the same day, the Sale Deed has been executed by the lessors in favour of the petitioner. The company availed the loan by mortgaging the schedule properties as stated. Without informing or obtaining permission from the bank, and without closing the liabilities with the Jammu and Kashmir Bank and other consortium members, the company surrendered the leasehold rights, which is contrary to the terms and conditions of the sanction of the loan and also illegal. During the pendency of the liabilities, the company, the lessors, and the petitioner colluded to deprive the bank and consortium members of the right to recover the amount due to them. The Jammu and Kashmir Bank filed OA.No.2/2009. It is submitted that the security interest in

respect to the schedule property was created on 15.03.2002. The alleged Sale Deed and the deed of surrender of lease were executed on 16.05.2005. The bank, being the secured creditor, has priority over other dues. It is submitted that, considering all these aspects, the Tribunal rightly passed an order, and there is no reason to interfere with the well-considered order passed by the Tribunal. The petitioner has the benefit of an effective alternative remedy, and the writ petition has to be dismissed.

14. Having heard the learned counsel on either side, perused the entire material on record. According to the petitioner, the petitioner is the absolute owner of the property having purchased it in the year 2005. On the same day, the company also surrendered its leasehold rights. Hence, the company has nothing to do, and the respondents cannot initiate the proceedings. It is the case of the respondent/bank that, without its notice, the leasehold rights cannot be surrendered, and the bank, being a secured creditor, has a right. The distinction between these two rights is important. The lessor continued to hold title to the property. What the company

acquired was a right created in its favor under the lease. The clause relied upon by the respondents permitted the company to mortgage its leasehold rights. Such a clause undoubtedly enabled the company to create a security over the interest it had acquired under the lease. But permission to mortgage a leasehold right cannot, without anything further, be understood as permission to mortgage the ownership of the lessor. A person can ordinarily transfer or create a security right only to the extent of the interest he possesses. Therefore, if the company had only leasehold rights when the mortgage was created, what could be mortgaged by it was ordinarily the leasehold interest. The creditor would acquire security over the interests of the lessee. It would not become a mortgage of the lessor's ownership. The distinction assumes considerable importance because the sale proclamation appears to proceed against the property itself.

15. The next question concerns is effect of the company's surrender of the lease. The petitioner contends that after the lease was created, the company surrendered its rights to the lessor and that the surrender was accepted. Thereafter, the

owner sold the property to the petitioner in 2005. Ordinarily, a lease can end by surrender, but the matter does not end there in the present case. If, before surrendering the lease, the company had already created a valid mortgage over its leasehold interest, the effect of the subsequent surrender on the mortgagee's rights must be considered separately. A lessee who has already created a valid interest in favor of a third party cannot necessarily destroy that interest by surrendering its lease to the lessor. Otherwise, every lessee who mortgages its leasehold interest could defeat the security the very next day by surrendering the lease to the owner. The law cannot permit the parties to a subsequent transaction to simply wipe out a right that had already been validly created in favor of a third person. Therefore, the petitioner's contention that surrender of the lease automatically extinguished the earlier mortgage cannot be accepted merely on the basis of the surrender. At the same time, the converse contention of the respondents also cannot be accepted in its entirety. Merely because the mortgage or the leasehold rights may survive for the purpose of protecting the mortgage, it does not follow that the

mortgagee acquires ownership rights that the company itself never possessed.

16. If the company had mortgaged the property as its own and was legally competent to do so, the position would be different. But if the company had mortgaged only its leasehold rights, the Tribunal could not, without examining the nature and extent of the security, proceed on the footing that the company's creditor had mortgaged the absolute ownership of the property. The Tribunal was therefore required to identify what had actually been mortgaged. The lease deed, the clause permitting mortgage, the mortgage document itself, the duration and terms of the lease, the surrendered deed, and the petitioner's subsequent sale deed all assume importance for this purpose. The petitioner states that it came to know of the recovery proceeding only when it noticed the sale proclamation in 2015. The petitioner was neither a party to the loan transaction nor to the proceedings in which the order for sale was passed, an order passed there cannot automatically conclude its independent claim of title without an opportunity to establish the same. The petitioner's claim is based upon a

registered sale deed of 2005. Therefore, the objection cannot be rejected merely because the recovery proceedings against the company had commenced earlier.

17. In the present case, the order permitting sale and the consequential sale proclamation cannot be sustained. They proceed on the assumption that the entire ownership of the property stood mortgaged, mainly because the company was authorized to mortgage the leasehold rights. Hence, the order impugned, as far as the direction given to the applicant bank to recover the same from the defendant No.1 to 3 from the property shown in the OA.No.2/2009 schedule needs to be set aside, and the matter has to be remanded to the Tribunal for consideration. Hence, this Court is passing the following order:

**ORDER**

i. The order dated 18.11.2009 passed in O.A.No.2/2009 by the Debts Recovery Tribunal, Karnataka, is ***set aside***.

ii. Insofar as liberty is given to the Bank to recover the amount from defendants Nos. 1 to 3 and from the property shown in the O.A. schedules, subject to the rights of defendants Nos. 4 to 17 over the

schedule properties, the matter is ***remanded back*** to the Tribunal for fresh consideration.

iii. Proclamation of Sale notice published in the Hindu dated 17.05.2015 issued by 1st respondent dated 07.05.2015 is ***set aside.***

iv. The Debts Recovery Tribunal shall examine all the relevant aspects and shall pass appropriate orders as expeditiously as possible.

v. Accordingly, the writ petition is ***allowed.***

vi. All I.As. in this petition shall stand closed.

**SD/-**
**(LALITHA KANNEGANTI)**
**JUDGE**

MEG
List No.: 1 Sl No.: 1
*MR