IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Judgment reserved on | **19.12.2025** |
| Judgment pronounced on | **23.01.2026** |

CORAM

**THE HONOURABLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P.No.16885 of 2022 & WMP Nos. 16184 & 16185 of 2022 & 1718 of 2024**

M/s Sree Gokulam Chit and Finance
Co. P. Ltd.
W 110, Gokulam Sabari Tower
4th Floor, 3rd Avenue,
Anna Nagar, Chennai 600 040
PAN: AAACS8778C ... Petitioner

Vs

1. The Tax Recovery Officer,
The PCIT-1, Chennai
Wanaparthy Block, IIIrd Floor,
Main Building, No.121, M.G.Road.
Nungambakkam, Chennai-600 034

2. The Principal Commissioner of
Income Tax-1 Chennai,
Main Building.
No.121, M.G.Road, Nungambakkam, Chennai 600 034.

3. Shri S. Elangovan
No.37, Lazarus Church Road,

2nd Lane, R.A.Puram,
Chennai 600 028,
PAN:AAAPE2824Q. ...Respondents

**RAYER**: This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records of the Writ Petitioner on the file of the First Respondent to quash the impugned order dated 21.04.2022 passed in terms of the second schedule of the Income Tax Act, 1961 in DIN & Order No.ITBA/COM/F/17/2022-23/1042805708(1).

For Petitioner(s): M/s A.S.Sriraman & S.Sridhar

For Respondent(s):Mr.B.Ramanakumar,
Senior Standing Counsel
Mr. Avinash Krishnan Ravi,
Junior Standing Counsel for R1 & R2
No appearance for R3

**ORDER**

**Factual Background**

An immovable property bearing Plot No.6A, Vanchi Nagar Extension, 7th Street, Korattur, Chennai-600 080 in S.No.1222, Korattur Village, Ambattur Taluk, Tiruvallur District, and admeasuring about 1288 sq.ft. was purchased by the third respondent herein under sale deed dated 26.02.2016 from Perfect Medical Enterprises (P) Limited. The third respondent had earlier filed the return of income for the Assessment Year (AY) 2011-12 electronically

on 08.02.2012 admitting a taxable income of Rs.8,55,710/-. After being selected for scrutiny, notice under Section 143(2) of the Income-tax Act, 1961 (the I-T Act) was issued on 31.07.2012. Pursuant thereto, an assessment order under Section 143(3) was issued on 31.03.2014 raising a demand of Rs.2,64,00,385/- along with penalty of Rs.10,000/- under Section 272A(1)(c) and interest of Rs.57,74,710/-. The total demand of Rs.3,21,87,295/- was certified by the Tax Recovery Officer (TRO) on 19.02.2016. Notice in ITCP-1 under Rule 2 of the Second Schedule to the I-T Act (Rule 2 notice) was issued by the TRO to the assessee in default/third respondent on 24.02.2016. Such notice was received by the third respondent on 26.02.2016.

2. As security in relation to amounts due in present or in future to the petitioner of the value of Rs.50,00,000/-, the third respondent created a mortgage by deposit of title deeds in favour of the petitioner. Such mortgage was evidenced by memorandum of deposit of title deeds dated 16.11.2016 (the MoDT). The property described in paragraph 1 above was the property mortgaged in favour of the

petitioner. Thereafter, in 2018, the third respondent and his wife stood as sureties in respect of a loan taken by a partnership firm, Vimal Enterprises, from the petitioner.

3. Meanwhile, a penalty order under Section 271(1)(c) of the I-T Act was issued on 21.03.2017 levying a penalty of Rs.1,83,23,700/- along with interest of Rs.31,15,029/- on the third respondent under Section 220(2) of the I-T Act. This was also certified by the TRO on 12.09.2018. In relation to all the dues, the property of the third respondent was attached by issuing notice dated 24.09.2019 along with a copy thereof to the Sub Registrar, Villivakkam, Chennai-40. In order to realize the tax dues, an auction sale of the attached property was scheduled on 07.03.2022. The petitioner objected to the conduct of such auction by relying on the mortgage created in its favour by the third respondent. After considering the objections of the petitioner, order dated 21.04.2022 was issued. The said order is impugned in this writ petition.

**Counsel and their contentions**

4. Mr.S.Sridhar, learned counsel, advanced oral arguments on behalf of the petitioner. Mr.Avinash Krishnan Ravi, junior standing counsel, advanced arguments on behalf of respondents 1 and 2. In spite of service of notice on 26.07.2022, the third respondent did not enter appearance and contest the matter.

5. The first contention of Mr.S.Sridhar, learned counsel for the petitioner, was that the TRO does not have the authority or jurisdiction to declare the mortgage in favour of the petitioner as *void ab initio*. By relying on the judgment of the Hon'ble Supreme Court in *Tax Recovery Officer v. Gangadhar Vishwanath Ranade [1998] 234 ITR 188 (SC) ['Gangadhar Ranade']*, he submitted that the Income-Tax Department is required to file a suit if it intends to seek a declaration that the transfer is void. He also relied upon the judgment of the Division Bench of this Court in *Agasthia Holdings (P) Ltd. v. Commissioner of Income-tax, Madurai, (2018) 403 ITR 288 (Mad),* for the same proposition. Because the TRO proceeded to declare the

mortgage as *void ab initio* in contravention of the settled legal position, learned counsel contended that the impugned order is unsustainable and is liable to be set aside.

6. Learned counsel contended further that the petitioner is required to approach the TRO only if he is desirous of raising the attachment. He pointed out that the mortgage was created in favour of the petitioner prior to the date of attachment of the property, and contended that, until the order of attachment was communicated to the jurisdictional Sub Registrar and such attachment was reflected in the encumbrance certificate, it was not possible for the petitioner, as a third party lender, to be aware of the attachment. Therefore, he contended that the petitioner qualifies as a *bona fide* mortgagee for adequate consideration, who is entitled to protection under the proviso to Section 281 (1) of the I-T Act. By virtue thereof, learned counsel contended that the mortgage is not void. In support of this contention, learned counsel relied on the judgment of the Division Bench of the High Court of Andhra Pradesh and Telengana in *ICICI Bank Limited v. Tax Recovery Officer (2019) 105 Taxmann.com*

*257)*. Learned Counsel also relied on *Tarapore & Co. v. Tax Recovery Officer [2008] 174 Taxman 461.*

7. In response to the contention of the revenue that the petitioner was aware of income tax proceedings on account of receiving notice under Section 133(6) of the I-T Act, learned counsel submitted that the said provision pertains to a request for information in relation to proceedings under the I-T Act, and the mere receipt of such notice does not lead to the conclusion that the person who is called upon to provide such information is aware that the assessee concerned is liable for the payment of income tax.

8. The last contention of learned counsel was that the third respondent was not the owner of the property when the Rule 2 notice was issued on 24.02.2016. Consequently, he contended that the attachment on 24.09.2019 would not be effective in respect of a property that was not owned by the third respondent on the date of issuance of Rule 2 notice.

9. Mr.Avinash Krishnan Ravi, learned standing counsel, responded on the behalf of the revenue. His first contention was that the mortgage was created after the issuance of Rule 2 notice. As a result, he submitted that Rule 16 of the Second Schedule is attracted. By virtue of Rule 16(1), he submitted that the defaulter or his representative in interest is not competent to mortgage, charge, lease or otherwise deal with the property unless he obtains the permission of the TRO. On account of not obtaining such permission, he contended that the mortgage is invalid. As regards the attachment being effected only on 24.09.2019, learned counsel contended that Rule 51 provides for the retrospective operation of the order of attachment from the date of service of the notice to pay the arrears. In effect, he submitted that the attachment took effect from 26.02.2016, which was the date of service of the Rule 2 notice.

10. Since the third respondent was not entitled to mortgage the property in favour of the petitioner after the receipt of the Rule 2 notice, learned standing counsel contended that it is not necessary for the revenue to file a civil suit. He contended further that the third

respondent should have approached the I-T Department for permission to mortgage; that the mortgage does not qualify as a valid defence to the claims of the I-T Department; and that, therefore, the I-T Department is entitled to recover its dues in priority to the claims of the petitioner.

11. As regards the contention that the petitioner is entitled to the benefit of being a *bona fide* purchaser for valuable consideration, learned standing counsel submitted that the petitioner is not entitled to such benefit on account of receiving a notice under Section 133(6) of the I-T Act in relation to the third respondent and, consequently, being aware about the assessment proceedings against the third respondent. He also contended, in this regard, that the benefit of the proviso to Section 281(1) of the I-T Act is not available after the Rule 2 notice is received. In support of this contention, he relied upon the language of Section 281(1) to contend that it only operates during the pendency of any proceedings under the I-T Act or after the completion thereof, but before the service of the Rule 2 notice.

12. With regard to the applicability of a defence in common law that the petitioner is a *bona fide* mortgagee / transferee for valuable consideration, learned standing counsel contended that Parliament consciously provided for such a defence at the pre-Rule 2 notice stage, but omitted such defence at subsequent stages. In view thereof, he contended that such defence is not available to the petitioner.

## Discussion, analysis and conclusions

### Scope and applicability of Section 281 of the I-T Act

13. At the outset, it is pertinent to discuss the scope and applicability of Section 281 of the I-T Act. Section 281(1) of the I-T Act reads as under:

> "***Certain transfers to be void***.
>
> *281. (1) Where,* ***during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule,*** *any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his*

*assets in favour of any other person,* ***such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee*** *as a result of the completion of the said proceeding or otherwise:*

***Provided*** *that such charge or transfer shall not be void if it is made—*

*(i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee; or*

*(ii) with the previous permission of the Assessing Officer."*

[emphasis added]

14. Prior to its amendment in 1975, the provision read as below:

*"281.* ***Transfers to defraud revenue void****.- Where, during the pendency of any proceeding under this Act, any assessee creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person* ***with the intention to***

***defraud the revenue,*** *such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding:*

*Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceeding under this Act"*

[emphasis supplied]

15. As is noticeable from the text of the amended Section 281(1) in comparison to the pre-amended version, the qualification or condition that the transfer should be "with the intention to defraud the revenue" has been deleted by the amendment. Consequently, it is no longer necessary for revenue to establish that the transfer was made with the intention to defraud the revenue. The text of Section 281(1) discloses that the provision is applicable during the following two stages:

(i) during the pendency of any proceeding under the I-T Act; or

(ii) after the completion thereof, but before the service of the Rule 2 notice.

16. In the case at hand, the third respondent filed the return of income for AY 2011-12 on 08.02.2012. The case was selected for scrutiny and a notice under Section 143(2) of the I-T Act was issued to the third respondent on 31.07.2012. Since the self-assessment of the assessee was not accepted, a proceeding under the I-T Act had commenced. Pursuant thereto, the assessment order under Section 143(3) was issued on 31.03.2014 and the Rule 2 notice was issued on 24.02.2016 and served on the third respondent on 26.02.2016. Thus, Section 281(1) operated only up to 26.02.2016.

**Creation of mortgage in favour of the petitioner**

17. Whether a mortgage was created in favour of the petitioner and, if so, the nature and date of creation thereof fall for consideration next. As mentioned earlier, the MoDT is dated 16.11.2016. The operative paragraph thereof is as under:

*"I hereby confirm the title deeds mentioned in the first schedule relating to the property as more fully described in the Second Schedule hereto, have been delivered and deposited by with full and complete knowledge and at my own will to and with the Company by way of deposit of title deeds with an intent to create an Equitable Mortgage for securing the repayment of Rs. 50,00,000/- (Rupees Fifty Lakhs only) availed to Mr. S. Elangovan, Son of Mr. V. Subramania Chettiar, aged about 53 years, residing at No.37/18, Lazarus Church II Lane, R.A. Puram, Chennai - 600 028, by the said company. The said sums advanced/to be availed from time to time and all such sums by way of principal and charges as are now due or which shall from time to time become due to company on any or all accounts or for money availed or lawful charges with all cost and expenses which may be incurred by the company. I hereby confirm that the company had authority to hold the title deeds by way of equitable mortgage over the title deeds for all present and future debts are fully paid or satisfied further. I declare that the property is not encumbered in any way whatsoever."*

18. As is evident from the above extract, in line with trade practice, it appears that the MoDT is in respect of an equitable mortgage. An equitable mortgage is created by handing over the title deeds of the property concerned as security for an obligation with intention to create a mortgage. Because this form of mortgage, which is recognised in Section 58(f) of the Transfer of Property Act, 1882, is not created under a document or instrument, registration of the mortgage is not possible or required.

19. As appears to have been done in this case, in order to establish that the deposit of title deeds was made with the intention to create a mortgage, a lender typically calls upon the borrower/mortgagor to execute a memorandum of deposit of title deeds. Although a memorandum of deposit of title deeds is not a document under which a mortgage is created and, consequently, does not fall within the scope of Section 17(1)(b) of the Registration Act, 1908 (the Registration Act), compulsory registration is necessary under Section 17(1)(i) thereof, as applicable in Tamil Nadu.

20. Given that the mortgage is not created under the document, it becomes necessary to look for evidence of the date of creation. The MoDT does not mention the date of deposit of title deeds. Taking into account the date of execution thereof, the date of deposit could have been on 16.11.2016 or earlier, but not later. The petitioner, who is the alleged lender and mortgagee, does not assert that the mortgage was created prior to the date of service of the Rule 2 notice. Thus, there is sufficient justification to proceed on the basis that the date of creation of mortgage was subsequent to 26.02.2016, i.e. the date of receipt of the Rule 2 notice. Hence, Section 281(1) is not applicable for purposes of testing the validity of the mortgage. As a corollary, the proviso thereto, including the exemption for *bona fide* transfers for adequate consideration, cannot be relied on by the petitioner. In view thereof, the Second Schedule warrants close consideration. Before doing so, I intend to briefly examine whether the debt currently sought to be enforced by the petitioner is secured by the mortgage.

21. The extract from the MoDT reveals that the deposit of title deeds is intended as security for the repayment of a sum of Rs.50

lakhs borrowed by the petitioner. It, however, cannot be discerned therefrom as to when this amount was borrowed by the third respondent. Logically, it should have been borrowed not later than 16.11.2016, i.e. the date of execution of the MoDT. The security provided under the MoDT, however, appears to cover both present and future debts.

22. In order to correlate the mortgage with the alleged unpaid debt of the petitioner, it is necessary to examine the application dated 21.09.2021 of the petitioner for reference of its dispute with *inter alia* the third respondent for arbitration. The said application reveals that one Vimal Enterprises, a partnership firm, had participated in Chit series G2M 390, Ticket No.19, for the value of Rs.50 lakhs. The amount payable per month was Rs.2,50,000/- and the term of the chit series was 20 months. Vimal Enterprises participated in the fifth auction on 27.01.2018 and became the successful bidder. As a result, a sum of Rs.37,50,000/- appears to have been paid on the said date by the petitioner to Vimal Enterprises. One of the partners of Vimal Enterprises, E. Vimala Devi, and the third respondent herein, who is

the husband of E. Vimala Devi, stood as sureties. After giving credit to a sum of Rs.22,47,400/- paid by way of subscription and dividend, a net principal claim of Rs.27,52,600/- and an aggregate claim of Rs.42,94,056/- (including interest at 24% per annum from May 2019 to August 2021) was made by the petitioner. The inference that follows from the above discussion is that the debt in respect of which the arbitral proceedings were initiated by the petitioner appears to be a debt incurred on 27.01.2018 and not prior thereto.

23. The petitioner has also filed a copy of the award dated 24.05.2022 issued by the Arbitrator, Chit Fund Cases Court in Case No. 377 of 2021. The award records that all the respondents were set *ex parte* and that the entire claim of Rs. 42,94,056/- was allowed along with interest on the principal sum at 24% per annum from the date of claim until the date of realisation with costs of Rs. 2,19,480/-. The award also records that the immovable assets of the third respondent and second respondent therein, respectively, which are described in schedules, were attached by orders dated 05.05.2022 and 24.05.2022, respectively. The schedule of the property of the

third respondent, as described therein, tallies with the schedule of the MoDT and with the property attached under order dated 21.04.2022 of the TRO.

24. In order to enforce the award, it appears from documents filed by the petitioner that E.P. No.812 of 2023 was filed against the three judgment debtors. This execution petition is directed only against the property of E. Vimala Devi and has no bearing on these proceedings. Whether any separate execution petition was filed against the asset of the third respondent cannot be gleaned from the documents on record. Against this factual matrix, I turn to the Second Schedule to the I-T Act and consider the implications of actions taken thereunder.

**Scope and applicability of the Second Schedule to the I-T Act**

25. The Second Schedule to the I-T Act deals with the procedure for recovery of tax. Significantly, the substantive provisions referred to therein are Sections 222 and 276 of the I-T Act and not Section 281

thereof. Section 222 deals with the issuance of a statement by the TRO specifying the amount of arrears due from the assessee. This statement is referred to as certificate. Section 222(1), in relevant part, reads as under:

> *"**222.**(1) When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee (such statement being hereafter in this Chapter and in the Second Schedule referred to as "certificate") and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule—*
>
> *(a) attachment and sale of the assessee's movable property;*
>
> *(b) attachment and sale of the assessee's immovable property;*
>
> *(c) arrest of the assessee and his detention in prison;*
>
> *(d) appointing a receiver for the*

*management of the assessee's movable and immovable properties."*

26. The Second Schedule consists of Parts I to VI. Out of these, Parts I and III pertain to the attachment and sale of immovable property. Rule 2 deals with the issuance of a notice calling upon the defaulter to pay the amount specified in the certificate. The said rule is as under:

> *"**Issue of notice:***
>
> *2. [When a certificate has been drawn up by the Tax Recovery Officer] for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule."*

27. Under Rule 3, the TRO is entitled to take steps for execution of the certificate if the arrears mentioned in the certificate remain unpaid for not less than 15 days after the service of the Rule 2 notice.

Rule 4 provides for recovery of the amount mentioned in the notice by any of the four modes mentioned therein. One of the modes is by attachment and sale of the defaulter's immovable property. Under Rule 9, every question relating to the execution, discharge or satisfaction of a certificate, which arises between the TRO and the defaulter or their representatives, is required to be determined by an order of the TRO and not by a suit. The only exception provided therein is if fraud were to be alleged.

28. Rule 11 provides for investigation by the TRO, including in respect of claims or objections in relation to the attachment or sale. Rule 11 is set out below:

> *"11.(1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:*
> *Provided that no such investigation shall be made where the Tax Recovery Officer*

*considers that the claim or objection was designedly or unnecessarily delayed.*

*(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.*

***(3) The claimant or objector must adduce evidence to show that—***

***(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears****, or*

*(b) (in the case of movable property) at the date of the attachment,* ***he had some interest in, or was possessed of, the property in question.***

*(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a*

*tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.*

*(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.*

***(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute;***

***but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."***

[emphasis added]

29. Rules 16, 48 and 51 are also of particular relevance.

"*16.(1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer,* ***nor shall any civil court issue any process against such property in execution of a decree for the payment of money.***

*(2) Where an attachment has been made under this Schedule,* ***any private transfer or delivery of the property attached or of any interest therein*** *and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment,* ***shall be void as against all claims enforceable under the attachment."***

*[emphasis added]*

> *"48.Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge."*

> *"51.Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter."*

30. On closely examining the above rules, the following conclusions emerge:

(i) The Second Schedule prescribes the procedure for recovery of tax. The provisions set out therein become applicable only after a certificate has been drawn up by the TRO under Section 222 of the I-T Act.

(ii) The TRO is entitled to resort to any one of the modes of recovery specified in Rule 4 after the lapse of the 15-day notice period for payment of arrears under Rule 2.

(iii) All questions relating to the execution, discharge or satisfaction of the certificate, as between the TRO and the defaulter or representatives of such defaulter, are required to be determined by the TRO in terms of Rule 9 unless a suit is brought on the ground of fraud. Any person aggrieved against an order of the TRO may institute a civil suit to establish his right. Unless held otherwise by a civil court, the determination by the TRO is conclusive.

(iv) In order to release a property from attachment or sale, the claimant or objector should adduce evidence that he had some interest in or was in possession of the property on the date of service of the Rule 2 notice in the case of immovable property and on the date of attachment in the case of movable property.

(v) Once Rule 2 notice has been served on the defaulter, as per Rule 16(1), the defaulter or his representative in interest is not competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the TRO. Upon service of the Rule 2 notice, Rule 16(1) also precludes the issuance of process against the property of the assessee in default for execution of a decree for the payment of money.

(vi) As per Rule 16(2), if an attachment has been made under the Second Schedule, any private transfer or delivery of the property attached shall be void as against all claims enforceable under the attachment, but not void or *void ab initio*.

(vii) Under Rule 51, the attachment relates back to and takes effect from the date on which the notice to pay the arrears is served on the defaulter.

**Implications of the Second Schedule**:

31. In this case, the record shows that the Rule 2 notice was served on the third respondent/defaulting assessee on 26.02.2016. The third respondent was called upon to pay the arrears mentioned therein within 15 days from the date of receipt of such notice. The said 15 day period would have expired on or about 13.03.2016. As narrated earlier, while it is unclear as to when the mortgage by deposit of title deeds was created, it appears from the MoDT that such mortgage was created on or before 16.11.2016. The petitioner has not stated, on affidavit or otherwise, that the mortgage was created before the Rule 2 notice was received. In the face of such evidence, it is safe to proceed on the basis that the mortgage was subsequent to the Rule 2 notice. As a consequence of the mortgage

being created by the third respondent after the receipt of the Rule 2 notice, Rule 16(1) was set in motion and operated with effect from 26.02.2016. Consequently, on or after the said date, no process against the property of the third respondent for enforcement of a money decree may be issued by a civil court. As a corollary, proceedings cannot be initiated by the petitioner for enforcement of the award in ARC No.377 of 2021 against the assets of the third respondent. As noticed earlier, E.P. No. 812 of 2023 is against the asset of E. Vimala Devi and has no bearing on this matter.

32. Learned counsel for the petitioner contended that the attachment would not operate against this property because the third respondent had not purchased the same on the date of issuance of the Rule 2 notice (i.e. 24.02.2016). Curiously, as was recorded earlier, the relevant immovable property was purchased by the third respondent on 26.02.2016. The sale deed reveals that the registration was concluded at about 5.00 p.m. on the said date. Given that the property was purchased on the date of receipt of the Rule 2 notice, there is no reason to conclude that the third respondent was not the

owner of the relevant immovable property on the date of service of the Rule 2 notice. For reasons indicated above and as a combined reading of Rules 2 and 4 of the Second Schedule shows, the relevant date is the date of service of such notice and not the date of issuance thereof. Therefore, the contention of learned counsel for the petitioner cannot be countenanced.

33. Because the mortgage was created after service of the Rule 2 notice, the mortgagor/third respondent was required to obtain the permission of the TRO before doing so as per Rule 16(1). In the absence of such permission, he was not competent to mortgage the property. The implications of such mortgage call for consideration next.

34. Rule 16(2) provides that any private transfer or delivery of the property attached shall be void as against all claims enforceable under the attachment. Significantly, Rule 16(2) does not declare that any transfer of attached property is *void ab initio* or even void. Instead, the declaration is limited to being void as against claims

enforceable under the attachment. The consequences would be clear from the following illustration. Assuming an assessee in default owes the Income Tax Department a sum of Rs.6 crore, whereas the relevant property has a market value of Rs.10 crore. If the transfer by way of mortgage is construed as being *void ab initio*, no interest in the property would pass to the mortgagee. Therefore, if the property were to be sold, the mortgagee would not be entitled to even the surplus over and above the Income Tax Department's dues of Rs.6 crore. On the other hand, if the transfer were to be construed as void only against the claims enforceable under the attachment, the mortgagee would still be entitled to enforce the mortgage in respect of the available surplus of Rs.4 crore. In my view, the text of Rule 16(2) leads to the conclusion that any transfer, including by way of mortgage, would be void only against claims enforceable under the attachment, but not otherwise.

**Adjudication of the validity of the mortgage**

35. The next question that falls for consideration is whether the TRO was entitled to adjudicate on the validity of the mortgage. As

noticed earlier, the TRO concluded that the mortgage is *void ab initio*. In *Gangadhar Ranade*, the Supreme Court examined the scope of Section 281 of the I-T Act as it stood prior to 01.10.1975. At that juncture, Section 281(1) could be pressed into service only if it was proved that the transfer was with the intent to defraud the revenue. In that statutory context, the Hon'ble Supreme Court recorded the following conclusion:

> *"The Tax Recovery Officer, therefore, has to examine who is in possession of the property and in what capacity. He can only attach property in possession of the assessee in his own right, or in possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the assessee in favour of a third party as void. If the Department finds that a property of the assessee is transferred by him to a third party with the intention to defraud the Revenue, it will have to file a suit under Rule 11(6) to have the transfer declared void under Section 281."*

While concluding as above, the Hon'ble Supreme Court also took note of Rules 11(4), (5) and (6) of the Second Schedule.

36. The follow-on question is whether the amendment to Section 281 has altered the position by rendering it unnecessary for the TRO to approach a civil court. The text of both Section 281 - which, as noticed earlier, operates during the pendency of proceedings under the I-T Act and after the conclusion thereof, but until service of notice under Rule 2 of the Second Schedule - and Rule 16(2) of the Second Schedule indicate clearly that transfers are not either *void ab initio* or even liable to be declared void. Instead, under Section 281(1), such transfer is void as against any claim in respect of any tax or any other sum payable by the assessee; and under Rule 16(2), it is void against claims enforceable under the attachment. In neither case, the statute provides that such transfer would be completely unenforceable.

37. In my view, the Second Schedule is intended to enable the TRO to recover arrears from a defaulting assessee or his representatives in interest, but not to enable the adjudication of the validity of a transfer in favour of a third party. Without adjudicating

on the validity of such transfer, however, it enables the TRO to attach and sell the property of the defaulting assessee unless the claimant or objector is able to satisfy the TRO that the property is liable to be released from attachment under Rule 11. For this purpose, in my view, after the amendment, it is not necessary for the Income Tax Department to approach a civil court. Upon completion of such sale, it also enables the Income Tax Department to appropriate the arrears from and out of the sale proceeds. As regards the surplus, ordinarily, as per Rule 8(1)(c), the balance would be liable to be paid to the defaulter. Where the TRO is informed of a claim by a transferee to such amount, as in this case, the surplus amount, if any, shall be retained by the TRO and paid to the transferee or the defaulting assessee, as the case may be, based on the orders of a competent civil court or an arbitrator depending on the dispute resolution mechanism agreed to by the parties concerned.

38. In the impugned order, the TRO has drawn reference to Rule 51 of the Second Schedule and concluded that the mortgage is *void ab initio*. Even after the amendment to Section 281(1), the TRO

does not have the power to adjudicate on the validity of the instrument of transfer in favour of a third party. To that extent, the order impugned herein calls for interference. Consequently, the declaration that the mortgage in favour of the petitioner is *void ab initio* is set aside.

39. The sequitur to the above conclusion is, however, not that the attachment by the revenue is invalid or that the proceedings by the TRO to recover arrears is invalid. As discussed earlier, the mortgage in favour of the petitioner will not operate against the claims enforceable under the order of attachment. The TRO is entitled, therefore, to proceed to take measures for the recovery of arrears by the sale of the immovable property of the defaulting assessee. If such sale were to be successful, the TRO would also be entitled to adjust the tax dues from and out of the sale proceeds. Surplus, if any, shall be retained by the TRO and paid to the petitioner after confirming that proceedings under the Chit Funds Act, 1982 have attained finality. It should be borne in mind, in this regard, that the award was issued *ex parte* and that the statute

provides for an appeal. The execution proceedings initiated by the petitioner before the civil court may be proceeded with because it pertains to the asset of E. Vimala Devi, but no civil court shall issue any process against the attached property. Any such process for the execution of a decree would contravene Rule 16(1) of the Second Schedule of the I-T Act.

40. In the result, this writ petition is disposed of on the following terms:

(i) The order dated 21.04.2022 is set aside partly to the extent that it declares that the mortgage in favour of the petitioner is *void ab initio*.

(ii) The TRO is entitled to bring the attached immovable property for sale in accordance with the Second Schedule of the I-T Act.

(iii) The TRO is entitled to appropriate the sale proceeds towards the amount mentioned in the certificate issued under Section 222 of the I-T Act.

(iv) If a surplus were to be available after the above mentioned

appropriation, the TRO shall pay such surplus to the petitioner or the third respondent, as the case may be, on the basis of the final, conclusive and binding verdict in proceedings initiated by the petitioner against *inter alia* the third respondent under the Chit Funds Act, 1982.

(v) It is open to the petitioner to take steps to enforce the award in ARC No.377 of 2021 against the assets of Vimal Enterprises or E. Vimala Devi, but not against the assets of the third respondent, including the attached asset.

(vi) No costs. Consequently, connected miscellaneous petitions are closed.

**23.01.2026**

Neutral Citation : Yes/No
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To

1. The Tax Recovery Officer,
The PCIT-1, Chennai,Wanaparthy Block, IIIrd Floor,
Main Building, No.121, M.G.Road.
Nungambakkam, Chennai-600 034

2. The Principal Commissioner of
Income Tax-1 Chennai,
Main Building.
No.121, M.G.Road, Nungambakkam, Chennai 600 034.

**SENTHILKUMAR RAMAMOORTHY J.**

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**W.P.No.16885 of 2022 &**
**WMP Nos. 16184 & 16185 of 2022 & 1718 of 2024**

23.01.2026