



KER HC: Vacates Attachment On Properties Citing Statutory Period Of 7 Years For Sale Having Elapsed Under Rule 68B(4)

Facts of the Case

M/s. Atlas Jewellery Pvt. Ltd. was granted credit facilities of Rs. 237 crores in 2013 by the petitioner bank, secured through equitable mortgages on properties belonging to Atlas Jewellery and Atlas Gold Land and Developers, registered with the Central Registry under the SARFAESI Act. Upon default, the loan was declared an NPA on 22.12.2015, followed by a demand notice u/s 13(2) of the SARFAESI Act in January 2016. The bank filed a recovery application before the DRT, Ernakulam u/s 19 of the Recovery of Debts & Bankruptcy Act, which remains pending. Recovery efforts were further hindered when two mortgaged properties faced government attachments — one from December 2016 and another from August 2017 — causing a scheduled auction to fail due to the absence of bidders, effectively obstructing the bank's recovery proceedings under SARFAESI.

Observations and Ruling of the High Court

Under Rule 68B of the Second Schedule to the Income-tax Act, 1961, no immovable property attached for tax recovery can be sold after seven years from the end of the relevant financial year. If no sale occurs within this period, the attachment is deemed automatically vacated under sub-rule (4). In this case, properties admeasuring 63.62 cents and 35 cents were attached by the Income Tax Authority in December 2016 and June/August 2017 respectively. Since no sale was conducted and the seven-year statutory period has lapsed, the attachments stand deemed vacated. Despite this, the Registering Authority refused to register a SARFAESI auction sale citing the encumbrance. The High Court, noting that even one of the respondents' counsels conceded the lapse of the limitation period, held that the petitioners were entitled to relief.

In the result, the High Court allowed the petitioner bank's writ.

Citation:

The South Indian Bank Ltd [TS-392-HC-2026(KER)]

Our Comments

The High Court has re-emphasized that the attachment on properties by the Income Tax Department automatically vacates, if the attached properties are not sold within 7 years from the end of the relevant financial year.