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WP No.30293 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2026

CORAM

THE HON'BLE MR.SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

WP No.30293 of 2023

Kotak Mahindra Bank Ltd.,
A Banking Company,
having ifs Regd. Office at
27, BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai 400 051,
Branch office at
No.219, 1st Floor, Arunachalam Road,
DB Road, Coimbatore 641 002,
Rep. By its Associate Vice President-Legal
Recovery, Mr.Srinivas Pondurai.

.. Petitioner

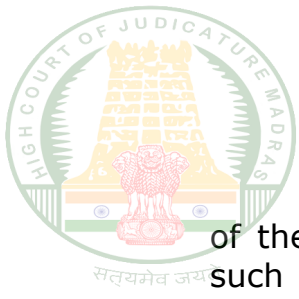
-VS-

1. The Sub-Registrar,
Office of the Sub-Registrar,
Mettupalayam.
2. M/s.Shriram Transport Finance Ltd.,
Mookambiga Complex, 3rd Floor,
No.4, Lady Desika Road, Mylapore,
Chennai 600 004.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 1st respondent to remove the entry of the order of attachment made in the land records maintained by 1st respondent with respect to the mortgaged properties

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of the petitioner, as the 2nd respondent has no legal right to sustain such attachment which attachment obstructs the legal process of selling of the mortgaged property.

For Petitioner : Mr.V.Jayachandran
For Respondents : Mr.R.Veeramani
Govt. Pleader, for R-1
: Ms.Lidiya Steffi
for Mrs.V.Pushpa, for R-2

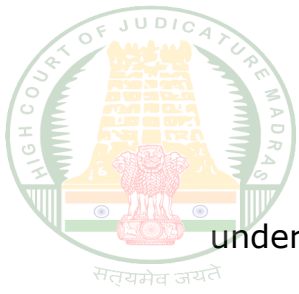
* * * * *

ORDER

(Order of the Court was made by G.ARUL MURUGAN, J.)

This writ petition has been filed seeking for a direction to the first respondent to remove the entry of attachment order by the first respondent with respect to the property mortgaged with the petitioner-bank.

2. It is the case of the petitioner-bank that they are the secured creditor having advanced financial assistance in favour of the borrower as early as on 27.06.2016. The borrower has executed a memorandum of deposit of title deeds dated 06.07.2016 by mortgaging the properties. In view of the default committed in repayment of dues, the petitioner-bank had initiated proceedings

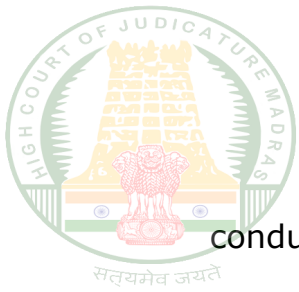


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under the SARFAESI Act, 2002 and a demand notice under Section 13(2) of the SARFAESI Act dated 21.05.2018 came to be issued, followed by a notice under Section 13(4) of the SARFAESI Act, dated 11.10.2019. It is the further case of the petitioner that consequent to the issuance of possession notice, they issued paper publication dated 12.12.2022 bringing the properties for auction. However, later, it came to their knowledge that there is an entry made in the Encumbrance Certificate to the effect that there is an interim order of attachment made in respect of the properties in favour of the second respondent in an arbitration proceedings. Hence, the petitioner-bank had come up with the present writ petition.

3. Learned counsel appearing for the petitioner-bank submitted that the bank is having priority over the secured asset and as per Section 26E of the SARFAESI Act, 2002, even if the second respondent had obtained an interim order of attachment in an arbitration proceedings, the SARFAESI Act, being a special enactment, will prevail over the Arbitration and Conciliation Act and therefore, the mortgage executed in favour of the petitioner-bank would prevail and the entry made in the encumbrance certificate affecting the rights of the petitioner-bank has to be deleted enabling the petitioner-bank to

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conduct the auction of the properties to realise the defaulted loan amount.

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4. The learned Government Pleader appearing for the first respondent submitted that since an interim order in the arbitration proceedings was passed and communicated to the first respondent, the first respondent is duty bound to enter the same in the encumbrance certificate, which has been rightly done. The learned Government Pleader, however, fairly brought to the notice of this Court the decisions of Co-ordinate Benches of this Court wherein the Division Bench of this Court directed removal of the entries made pursuant to the award or interim attachment passed in arbitration proceedings and directed the registering authorities to register the sale certificate in favour of the bank, as they have priority under the SARFAESI Act.

5. Learned counsel appearing for the second respondent submitted that they have granted financial facility in respect of vehicles and due to default of the borrowers, they have re-possessed the vehicles and sold them. However, still there are certain amounts due and payable to them, they initiated arbitration proceedings and pursuant to the order of attachment, the same was communicated to

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the first respondent, which is rightly reflected in the register. The learned counsel, in respect of the query posed with regard to the decisions of the Co-ordinate Benches of this Court, submitted that the second respondent, being the second-charge holder, may be allowed to submit an application before the petitioner-bank to receive any proceeds that are available, after adjusting with the dues of the petitioner-bank.

6. We have heard the rival submissions and perused the material available on record.

7. It is not in dispute that the borrowers, namely, A.Kavinraj and R.Dhandapani, had secured financial assistance from the petitioner-bank by availing working capital/overdraft facility for a sum of Rs.60 lakhs on 27.06.2016. In respect of the loan availed, they have executed mortgage of deposit of title deeds dated 06.07.2016 in favour of the petitioner-bank and the same has been registered in the office of the first respondent on 06.07.2016.

7.1. The borrower failed to repay the dues and due to the default committed, the accounts were classified as Non-performing



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asset and the bank took proceedings under the SARFAESI Act, whereby demand notice under Section 13(2) and possession notice under Section 13(4) came to be issued. It is the case of the petitioner-bank that they are not able to proceed with the sale in view of the entry made in the encumbrance certificate, which culminated at the instance of the second respondent by obtaining an interim order of attachment in an arbitration proceedings.

8. The issue in respect of the priority of the bank over the loan extended by them came up for consideration before the Co-ordinate Benches of this Court and it is useful to refer some of the decisions.

(i) In ***State Bank of India, rep. By Assistant General Manager vs Assistant Commissioner (ST), 2021 SCC OnLine Mad 17594***, the Division Bench, after considering the entire issue in respect of the priority of the bank over any other dues, particularly even as against the Commercial Tax Department in that case, held that the Sub Registrar has to necessarily delete the schedule mentioned property attachment reflected in the encumbrance certificate at the instance of the Commercial Tax Department. The writ petition was allowed on the ground that the bank is having priority

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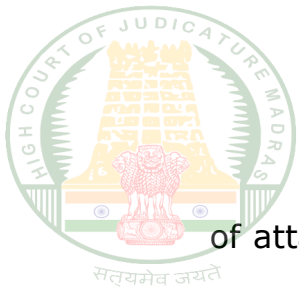


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as per the provisions of the SARFAESI Act. Paragraph 5 of the said judgment reads as under:

"5. In the light of the above, the Sub Registrar has to necessarily delete the schedule mentioned property attachment reflected in the encumbrance certificate at the instance of the commercial tax department. In the result, the writ petition is allowed. It is made clear that though the attachment at the instance of the first respondent Commercial Tax Department has been directed to be deleted, it will not in any manner affect the department's right to collect the dues from the default assessee by proceeding in accordance with law."

(ii) In the case of ***Cholamandalam Investment and Finance Company Limited, rep. By its Authorised Officer vs. District Registrar, Registration Department and others, 2023 SCC OnLine Mad 8940***, the same issue was considered wherein the Court held that the sale of the property has to be conducted under the SARFAESI Act and Section 26E clearly grants priority to the secured creditor over the other debtors as it contains a non-obstante clause. Therefore, the sale conducted under the SARFAESI Act, by virtue of Section 26E, will have priority and notwithstanding the attachment made before judgment, the sale is valid. Holding so, this Court directed the authorities to register the sale certificate by deleting the entry made in the encumbrance certificate relating to the interim order



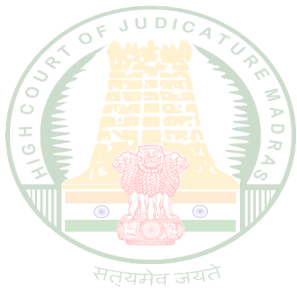
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of attachment made in the arbitration proceedings. Paragraphs 4 to 7 of the said judgment are as under:

4. *It can be seen that the sale certificate was refused to be registered only on the ground that there is an entry in the form of an order of attachment pending arbitration proceedings.*

5. *The learned counsel appearing on behalf of the fourth respondent would submit that even though there is priority as per Section 26E of the SARFAESI Act, 2002, the Arbitration and Conciliation Act, 1996 is equally a special legislation and when Section 17 of the said Act permits the arbitrator to grant such orders by way of interim measure, it cannot be said that Section 26E would override the attachment made by the arbitrator and therefore, he would submit that even though he does not have any objection for registering the sale certificate, the attachment shall be subsisting and the fourth respondent will be entitled for such relief as may be further decided in the arbitration.*

6. *We are not in agreement with the said submission of the learned counsel appearing for the fourth respondent. Firstly, the fourth respondent is not a secured creditor. The property is mortgaged in favour of the petitioner and as such the petitioner as a secured creditor is in a higher pedestal. The sale of the property has been conducted under the SARFAESI Act and Section 26E clearly grants priority to the secured creditor over the other debtors. It contains a non-obstante clause. Therefore, the sale conducted under the SARFAESI Act, by virtue of Section 26E will have priority and notwithstanding the attachment made before judgment, the sale is valid. As far as the entry is concerned, once property has been sold in favour of the fifth respondent and the title has been conveyed,*



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the attachment order will not serve any purpose for the fourth respondent concerned as there is no money left after satisfying the debt of the secured creditor. On the other hand it would remain as a confusing cloud on the title of the auction purchaser. This question is no longer res integra as this Court had recently considered the very same issue in detail in Siva Automative Trading Private Limited Vs. The Sub Registrar, Othakadai and held that the sale certificate is entitled to be registered and also the entries of attachment will have to be deleted.

7. In that view of the matter, this Writ Petition is allowed on the following terms:

(i) The petitioner/fifth respondent shall represent the sale certificate for registration within a period of two weeks from the date of receipt of a copy of this order. Upon which, the second respondent shall duly register the same in accordance with law;

(ii) The first and second respondents shall also show the entry of encumbrance relating to the order in I.A.No.1 of 2020 in Arbitration Case No.KP16 of 2020 as deleted in respect of the subject matter property;

(iii) No costs.

(iv) Consequently, connected miscellaneous petition is closed.

(iii) In the case of *M/s.City Union Bank Limited, rep. By its Chief*

Manager vs. District Registrar, 2025 SCC OnLine Mad 14624, yet

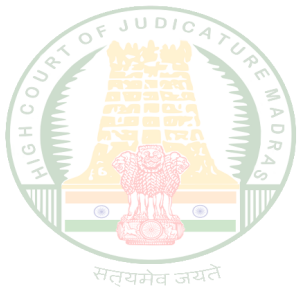
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another co-ordinate bench of this Court went into a similar issue and by following the earlier decisions, held that in view of Section 26E of the SARFAESI Act, the financial institution is having priority charge over other creditors and thereby held that attachment by way of interim order in the arbitration proceedings has necessarily to be deleted and the sale certificate executed by the bank has to be registered. The Division Bench, however, gave liberty to the financial institution, who obtained the interim order in the arbitration proceedings, to make necessary application to the bank to pay the balance amount available after adjusting their debt. Paragraphs 5 to 7 of the said judgment read as under:

"5. Further under Section 26E of Sarfaesi Act, the financial institution is having priority charge over other creditors, including decree of the Court/Tribunal. The issue was considered in [Assistant Commissioner \(CT\) Anna Salai-III Assessment Circle Vs. Indian Overseas Bank and another](#) (AIR 2017 Mad 67 FB) and was held that the financial institutions are having priority over other charges. The Full Bench of Bombay High Court has held in [Jalgaon Janta Sahakari Bank Ltd and another Vs. Joint Commissioner of Sales Tax and another](#) (2022 Online SCC Bom 1767), wherein it is held that the secured creditor would have the priority charges as contemplated under [section 26E](#) of Sarfaesi Act, 2002. As rightly pointed out by the Learned Counsel appearing for the petitioner the First Bench of this Court vide order dated 18.04.2024 passed in W.P.No.1434 of 2024 filed by M/s.City [Union Bank Vs. Sub Registrar, Vazhapady](#) and 2 others



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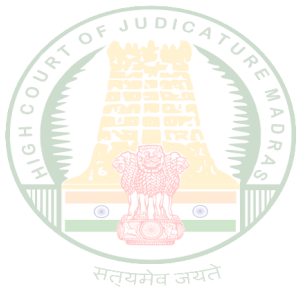
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has held that "the issue is no longer res integra and has been settled by a catena of judgments, wherein it has been held that in view of [Section 26E](#) of the Act of 2002, the secured creditor has a priority charge over all other creditors, including decree of the Court".

6. Therefore, following the aforesaid cases, this Court is of the considered opinion that the petitioner institution is having priority charge over the charge of the 6th respondent. Hence, the respondents 1 and 2 are directed to delete the impugned attachment entry within a period of four weeks from the date of receipt of the copy of this order.

7. The 6th respondent is at liberty to submit an application to the petitioner bank to pay the balance amount available after adjusting their debt. On receipt of such application, the petitioner institution is directed to consider the same after issuing notice and after obtaining reply from the respondents 3 to 5."

9. In view of the aforesaid decisions and considering the provisions of Section 26E of the SARFAESI Act, which contains a non-obstante clause, the petitioner-bank/secured creditor will have priority over any other dues and in such circumstances, the entry made in the encumbrance certificate pursuant to the interim order passed in the arbitration proceedings has to be necessarily deleted and any sale conducted by the petitioner-bank has to be registered in the office of the first respondent.



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10. Accordingly, the writ petition stands allowed with the following directions:

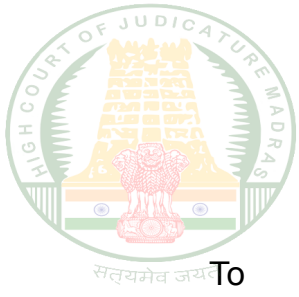
- (a) The first respondent is directed to delete the attachment entry made in the encumbrance certificate within a period of four weeks from the date of receipt of a copy of this order.
- (b) However, the second respondent is given liberty to submit an application to the petitioner-bank to pay the balance amount available, if any, after adjusting their debt.
- (c) If any such application is made by the second respondent, it is for the petitioner-bank to consider the same in accordance with law and after adjusting their dues, if any money is left available, it is for them to proceed to hand it over to the second respondent.

There shall be no order as to costs.

(SUSHRUT ARVIND DHARMADHIKARI, C.J.) (G.ARUL MURUGAN, J.)
29.07.2026

Index : Yes/No
Neutral Citation : Yes/No
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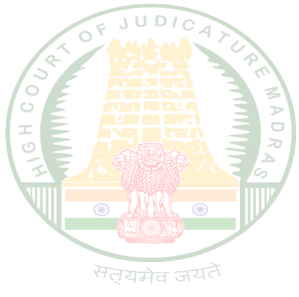
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- To
1. The Sub-Registrar,
Office of the Sub-Registrar,
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 2. M/s.Shriram Transport Finance Ltd.,
Mookambiga Complex, 3rd Floor,
No.4, Lady Desika Road, Mylapore,
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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN, J.

(sra)

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