

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

W.P.No.16847 of 2015

Punjab National Bank
rep. By its Chief Manager,
Asset Recovery Management Branch,
No.448-A, Dr. Nanjappa Road,
Coimbatore 641 018.

... Petitioner

vs.

1. The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Fort St. George,
Chennai 600 008.
2. The Assistant Registrar (Chits Arbitrator),
in the cadre of District Registrar,
Coimbatore - 18.
3. The Sub-Registrar,
Avinashi, Coimbatore District.
4. M/s.Margadarsi Chits Private Limited,
represented by its Foreman,
Mr.M.Saravanaselvam,
No.36/17, 3rd Floor,
Ashirvad Building, D.B.Road,
R.S.Puram,
Coimbatore - 641 002.

5. S.Suseela ... Respondents

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Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records and quash the impugned order dated 10.04.2015 passed by the 3rd respondent and consequently direct the 3rd respondent to register the Sale Certificate dated 06.02.2015 based on merits.

For Petitioner : Mr.M.L.Ganesh

For R1 & R3 : Mr.Dig Vijay Pandian,
Addl. Government Pleader

For R4 : Mr.D.Shivakumaran

For R5 : No appearance

O R D E R

The petitioner is a nationalised Bank. A sum of Rs.1807.29 lakhs was obtained by M/s.Sowcar Textiles from the petitioner. The 5th respondent stood as a Guarantor by depositing original title deeds on 28.01.2010.

2. As the borrower had defaulted in repaying the outstanding loan which now appears to be more than Rs.24 crores, proceedings under SARFAESI Act was initiated. It was duly concluded and Sale Certificate was issued in favour of the successful bidder. However, by the order impugned, it was not registered, since the 4th respondent had obtained an order of attachment in I.A.No.3 of 2011 in A.R.C.No.319 of 2010 on 25.01.2011. Challenging the said order, the present Writ Petition has been filed.

3. Learned counsel for the petitioner submitted that the 3rd respondent is bound to register the Sale Certificate produced. He cannot go into inter se dispute. The Memorandum of Deposit of Title Deeds was signed by the 5th respondent on 19.02.2010 and it was presented for registration on the very same day. Merely because registration was completed with the signature of the Registering Officer on 27.01.2011, it cannot be said that the Memorandum of Deposit of Title Deeds signed on 19.02.2010 does not have any legal effect on the order passed on 25.01.2011 in I.A.No.3 of 2011 in A.R.C.No.319 of 2010.

4. It is the further submission of the learned counsel for the petitioner that as against the secured creditors, an unsecured creditor has a lesser right. The 4th respondent cannot be allowed to take a different stand between the one who has taken by way of a reply to the legal notice and in paragraph 4 of the counter affidavit filed.

5. Reliance has been made by the learned counsel on the decision rendered by this Court in W.P.(MD) No.2635 of 2012, dated 13.03.2013 regarding the role of the Sub-Registrar in registering the Sale Certificate.

6. Learned Additional Government Pleader appearing for respondents 1 to 3 submitted that admittedly, the order passed in I.A.No.3 of 2011 is earlier to the registration done. The Sale Certificate has been issued by the petitioner Bank on 06.02.2015, which is also subsequent. Therefore, no interference is required.

7. A perusal of the records would show that the Memorandum of Deposit of Title Deeds was executed on 19.02.2010 by the 5th

respondent. This Court is not inclined to hear the 5th respondent, though not served, since both the proceedings have been concluded against her. Merely because registration was completed on 27.01.2011, though presented for registration on 19.02.2010, the same would not nullify the execution of the said document. When there is no dispute on the execution, the subsequent registration would relate back to the earlier action done. In other words, registration is a confirmation of the action of the parties. Perhaps, this position is well understood by the 4th respondent as seen from the legal notice issued on 29.12.2011 on his behalf, relevant portion of which is extracted hereunder:

"6. My client knows that they being third party creditor can make their claim only after the discharge of Government dues and the Bank dues of the concerned party/debtor.

7. Hence, it necessitates my client to send this Legal notice to you to record their claim against the sale of notice mentioned property to restrain the 6th opponent namely Mrs.S.Susila from getting surplus amount if any available in the sale proceeds of the notice mentioned property. If you have allowed the 6th opponent namely Mrs.S.Susila to withdraw the surplus amount in the sale proceeds of the notice mentioned property if sold, my client would suffer a lot, despite obtained an order of Attachment before Judgment pertaining to notice mentioned property.

8. Hence, please take notice of the same and record my client's claim as they are entitled to make a claim in the surplus funds of the sale price after discharging your debt if sale is effected pertaining to notice mentioned property.''

8. The abovesaid stand having been taken, the 4th respondent cannot be allowed to resile from it and then take a different stand. Thus, the stand taken in the counter affidavit filed cannot be accepted. Admittedly, the petitioner is a secured creditor. The subsequent Sale Certificate issued by the petitioner on 06.02.2015 is irrelevant, as what is important is the execution of the Memorandum of Deposit of Title Deeds, dated 19.02.2010. The further important factor to be considered is the presentation of the document on the very same day for registration.

9. Therefore, in the light of the abovesaid discussion, this Court is of the considered view that the order impugned cannot be sustained in the eye of law. After all, the role of the 3rd respondent is to register the document, if it is otherwise in order. In other words, it is not required to go into the issue either on fact or on law between the petitioner on the one hand and

the 4th respondent on the other hand.

10. Thus, the order impugned dated 10.04.2015 passed by the 3rd respondent is hereby set aside and consequently, further direction is issued to the said authority to register the Sale Certificate produced by the petitioner, if it is otherwise in order.

This Writ Petition is allowed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Fort St. George,
Chennai 600 008.
2. The Assistant Registrar (Chits Arbitrator),
in the cadre of District Registrar,
Coimbatore - 18.
3. The Sub-Registrar,
Avinashi, Coimbatore District.

+1 cc to Mr.M.L.Ganesh, Advocate (sr.53466)
+1 cc to Mr.D.Shivakumar, Advocate (sr.53555)
+1 cc to Government Pleader (sr.53712)

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SR(co)
cp 12/10/2015