

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.19753 of 2015
and
M.P.No.1 of 2015

Mrs.Savithri R.Naidu

... Petitioner

- Vs -

1. The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
Chennai 600 009.
2. The District Registrar,
Coimbatore District,
Coimbatore.
3. The Sub Registrar,
Annur Sub Registration District,
Avinashi Taluk,
Coimbatore.
4. M/s.Lakshmi Ganesh Textiles Pvt., Ltd.,
Rep. By its Managing Director,
Vikram R.Naidu,
No.442, Avinashi Road,
Peelamedu,
Coimbatore 641 004.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 05.06.2015 passed by the 3rd respondent refusing to register the sale deed dated 23.04.2015 presented by the petitioner and to quash the same and consequently direct him to register the sale deed dated 23.04.2015 executed by the 4th respondent company in favour of the petitioner in respect of LGT-1 & LT-2 properties covered in the sale deed dated 23.04.2015.

Petitioner : Mr.C.Ravichandran

For Respondents : Mr.RM.Muthukumar for RR1 to 3

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner would state that the 4th respondent company had availed the credit facility for its business from ICICI Bank, Coimbatore-18 and as a security for due repayment of loan, it had created an equitable mortgage by depositing the title deed relating to its moveable and immovable properties with the ICICI Bank, Coimbatore. The petitioner would further state that the 4th respondent company was closed on account of illegal strike which was followed by lock-out from 20.01.2012. On 01.07.2013, the ICICI bank, declared the 4th respondent company's assets as "Non Performing Assets" [NPA] and also initiated recovery proceedings before the Debts Recovery Tribunal at Chennai and obtained an order of attachment in respect of Item Nos.1 and 2 of the properties. The said Bank has also initiated proceedings under The Securitisation & Reconstruction of Assets & Enforcement of Security Interest Act [in short "the SARFAESI Act"] and in the mean time, one time settlement was arrived at with the ICICI Bank for Rs.13.75 Crores on 29.12.2014 but, still the 4th respondent could not able to settle the dues. While so, the petitioner agreed to settle the One Time Settlement amount of Rs.13.75 Crores by purchasing the Item Nos. 1 and 2 and accordingly, a Tripartite Agreement was entered into between the 4th respondent company, ICICI Bank and the petitioner on 29.12.2014. The ICICI Bank has also agreed to return the title deeds and other documents relating to the properties to the petitioner soon after the receipt of entire OTS amount of Rs.13.75 Crores. It is the specific claim of the petitioner that she has paid the entire OTS amount of Rs.13.75 Crores to the ICICI Bank and also took possession of the properties on 01.04.2015 and the title deeds relating to the properties were all returned to her on 08.04.2015. Thereafter, a joint memo of compromise was also entered into between the parties and it was also recorded on 23.04.2015 and orders were also passed by the Debts Recovery Tribunal on the same day.

3. The grievance of the petitioner is that when he presented the sale deed for registration, the 3rd respondent refused to register the same by way of impugned order dated 05.06.2015 stating that the orders of attachment passed by the Debts Recovery Tribunal-1, Chennai and IV District Civil Judge, Guntur, are in subsistence. Hence, she is now before this court seeking to quash the impugned order and for a consequential direction to the 3rd respondent to register the sale deed dated 23.04.2015 executed by the 4th respondent.

4. Dr.C.Ravichandran, the learned counsel appearing for the petitioner would submit that insofar as the Item No.1 of the properties is concerned , the matter has been amicably settled with ICICI Bank, Coimbatore-18 and as far as the orders of

attachment in respect of Item Nos.2 to 6 are concerned, those orders came into being only after the execution of the sale deed and would contend that in the light of the judgement in Hamda Ammal v. Avadiappa Pathar and others, (1991) 1 SCC 715, the sale deed which came to be executed prior to the attachment could be registered and hence, pray for setting aside the impugned order and for a consequential direction to register the sale deed.

5. This court heard Mr.RM.Muthukumar, the learned Government Advocate who takes notice for the respondents 1 to 3 as well.

6. The 4th respondent is only a formal party, who executed the sale deed in question in respect of the property covered under the proceedings mentioned at serial No.1 of the impugned order. Insofar as the Item No.1 of the property is concerned, it is the categorical stand of the petitioner that the entire amounts due to ICICI Bank has been settled pursuant to the Tripartite Agreement and as far as the other items of properties are concerned, the orders of attachment came to be passed only after the execution of the sale deed and therefore, it would not at all bind them. The Hon'ble Supreme Court in Hamda Ammal's case cited supra has held the sale deed executed prior to the attachment before judgement can be registered and it will prevail over the attachment. A perusal of the impugned order would disclose that the petitioner has not been afforded with any opportunity to put forth his stand as to the subsistence of the orders of attachment and hence this court is of the view that on this sole ground the impugned order warrants interference at the hands of this court.

7. In the result, this writ petition is partly allowed and the impugned order is set aside and the matter is remitted to the 3rd respondent and the petitioner is at liberty to submit a detailed representation as to the stand taken by him in respect of the registration of sale along with the sale deed which is sought to be registered within a period of two weeks from the date of receipt of a copy of this order and on such representation, the 3rd respondent shall afford an opportunity of personal hearing to the petitioner as well as to the persons concerned and consider the claim of the petitioner on merits and in accordance with law and pass appropriate orders thereon within a period of twelve weeks thereafter and communicate the decision taken, to the petitioner as well as the person concerned. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai 600 009.

2.The District Registrar,
Coimbatore District,
Coimbatore.

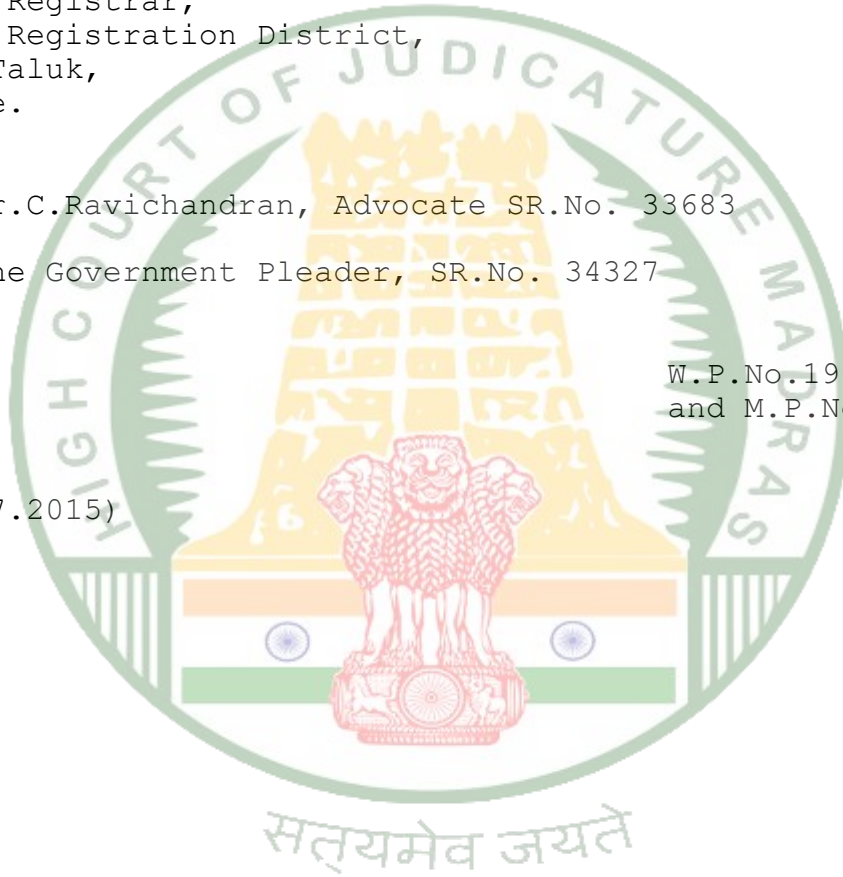
3.The Sub Registrar,
Annur Sub Registration District,
Avinashi Taluk,
Coimbatore.

1 CC to Mr.C.Ravichandran, Advocate SR.No. 33683

1 CC to the Government Pleader, SR.No. 34327

W.P.No.19753 of 2015
and M.P.No.1 of 2015

SR (CO)
PSI (15.07.2015)



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