

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.24878 of 2016
and WMP.No.21222 of 2016

State Bank of India,
Stressed Assets Management Branch,
No.1112, 1st Floor, Raja Plaza,
Avinashi Road, Coimbatore-641 037.
Represented by its Assistant General Manager. .. Petitioner
vs.

- 1.The Inspector General of Registration,
Santhome High Road,
Chennai-28.
- 2.The Sub-Registrar,
Musiri, Tiruchi District.
- 3.The Deputy Registrar of Chit Funds,
Karur. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the impugned order dated 17.06.2016, vide Na.Ka.No.146/2016 issued by the 2nd respondent and consequently direct the petitioner to register the sale certificate dated 11.05.2016 issued by the petitioner bank.

For Petitioner : M/s.M.L.Ganesh
For Respondents : Mr.R.Govindasamy,
Special Government Pleader for R1 to R3

O R D E R

By consent this Writ Petition is taken up for final disposal.

2. The petitioner is the Assistant General Manager of the petitioner Bank and he would state that M/s.Sri Vasavi Spinning Mills had availed various credit facilities from the petitioner Bank and Mr.S.Purushothaman and his wife Mrs.Geethalakshmi stood as guarantors to secure the repayment of loan liability and a sum of Rs.12.39 crores was advanced by way of loan for which the above said two persons have created necessary security documents and the guarantors have also executed guarantee documents. The petitioner would further state that the loan amount of the petitioner has become Non-Performing Assets (NPA) on 26.09.2012 and therefore,

action was initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act] by issuing a demand notice on 01.11.2012 under Section 13(2) of the said Act and possession notice dated 20.04.2013 was also issued under Section 13(4) of the Act. The petitioner has also filed O.A.No.84 of 2014 before the Debts Recovery Tribunal, Madurai by invoking Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. According to the petitioner, as on date of issuing the possession notice dated 20.04.2013, the petitioner company is due and liable for a sum of Rs.12,08,90,845/- and it conducted an e-auction on 29.04.2016 and Mr.V.C.Govindaraj had become the successful bidder for a sum of Rs.54,00,000/- and on receipt of the sale consideration, the petitioner bank had issued a sale certificate dated 11.05.2016, which has to be registered within 120 days as per the provisions of the Registration Act and accordingly, the said certificate was presented for registration before the second respondent, but it was refused to be registered on the ground that the attachment order was issued on 06.05.2014 by the third respondent on behalf of unsecured creditors Mr.Srikanth, Mr.Ravi and Mr.Vijayan. It is the specific case of the petitioner that the said attachment is subsequent to the Memorandum executed on 26.05.2011, vide Doc.No.1855/20155, SRO, Musiri, in favour of the petitioner Bank.

3. The learned counsel appearing for the petitioner has drawn the attention of this Court to the impugned order passed by the second respondent and would submit that it is not as if once property is attached, there cannot any alienation and any alienation is subject to attachment and also invited the attention of this Court to the judgment in S.Praveen Bohra v. Joint-I, Sub-Registrar, Coimbatore [2016 (3) CTC 493] and also the order dated 02.06.2016 made in W.P.No.28971 of 2015 [Punjab National Bank v. The Sub-Registrar, Triplicane, Chennai] and prays for appropriate orders.

4. Per contra, Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents 1 to 3, on instructions, would submit that since the order of attachment has been passed by a competent legal forum and unless it is set aside, subsequent registration of the document in respect of the same property cannot be done and therefore it was refused to be registered and prays for dismissal of the writ petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. In S.Praveen Bohra v. Joint-1 Sub Registrar (In the cadre of District Registrar), Coimbatore [2016 (3) CTC 493], it has been held as follows:

"8. Thus, it is crystal clear that it is well settled principle of law that the Order of Attachment cannot be a bar to register the document. Therefore, I am of the view that there is no need for this Petitioner

to file an Appeal. I am of the opinion that the sale of the subject property, pending the Order of Attachment is void only as against the claims enforceable under the Order of Attachment and not in respect of other claims. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale.

9. In the light of the decisions cited supra, the Writ Petition is allowed and the respondent viz., Joint-I, Sub-Registrar, Coimbatore is directed to register the document and release the registered document in favour of the Petitioner, within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petition is closed. No costs."

Similar view was taken in the order dated 02.06.2016 made in W.P.No.28971 of 2015 wherein number of earlier decisions on that point have been considered and the said conclusion has been reached.

7. In the light of the ratio laid down in the above cited judgments, the impugned order/proceedings of the second respondent in Na.Ka.No.146/2016 dated 17.06.2016 is set aside and the matter is once again remanded to the second respondent and the petitioner is at liberty to resubmit the documents for registration within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the second respondent shall take into consideration the above cited judgments as well as the observations made in this writ petition and pass orders in accordance with law within a period of two weeks thereafter and communicate the decision taken to the petitioner.

8. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Inspector General of Registration,
Santhome High Road,
Chennai-28.

2.The Sub-Registrar,
Musiri, Tiruchi District.

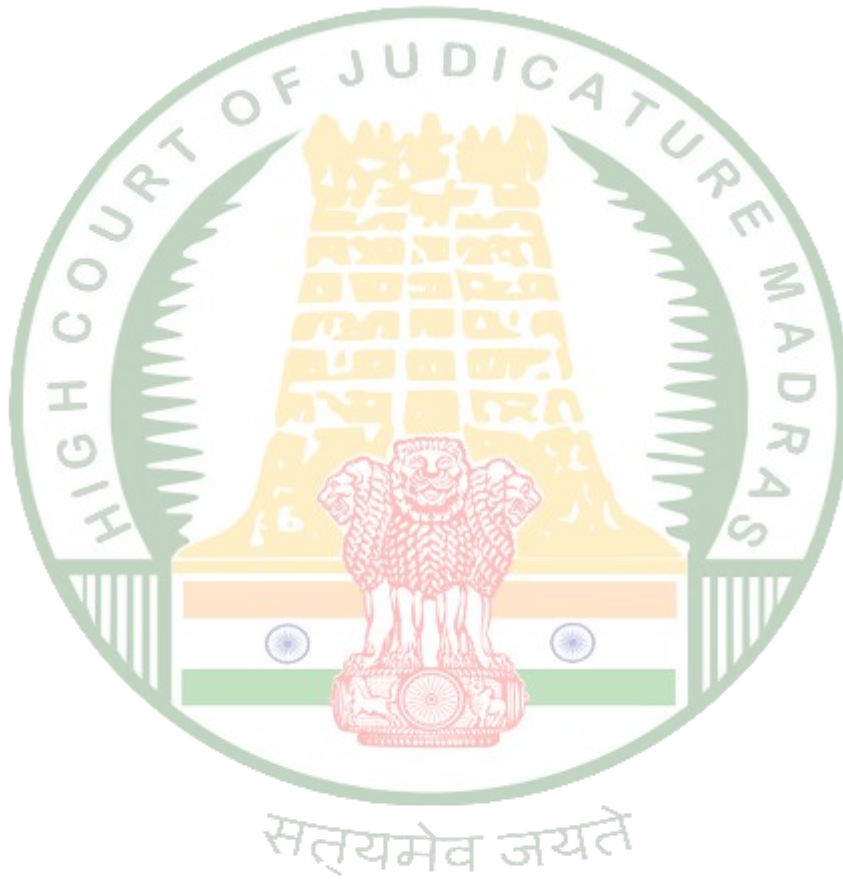
3.The Deputy Registrar of Chit Funds,
Karur.

+1 cc to Govt.Pleader,sr.42403

+1 cc to Mr.ML.Ganesh, advocate,sr.42817.

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