IN THE HIGH COURT OF JUDICATURE AT MADRAS

12.04.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.6685 of 2016
and
W.M.P.No.5921 of 2016

State Bank of India,
Stressed Assets Management Branch,
No.32, Montieth Road,
Red Cross Building,
Egmore, Chennai-600 008. ... Petitioner

Vs.

1.The Tax Recovery Officer,
Income Tax Department, Govt. of India,
D.P.Thottam, Muthialpet,
Pondicherry-605 003.

2.The Sub-Registrar of Puducherry,
Govt. of Puducherry,
Puducherry.

3.Smt.Devaki Thirunavakkarasu,
Proprietrix of M/s.Devaki Agencies,
Nos.23 & 24, Jawahar Nagar Main Raod,
Boomiyanpet, Puducherry-605 005.

Also at : No.54, 3rd Cross, Jawahar Nagar Main Road,
Boomiyanpet, Puducherry-605 005.
... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 2nd respondent to receive, register and return the Sale Certificate dated 12.01.2016 executed by the petitioner in favour of Mr.Abdul Kader in respect of the property at Plot No.39 "FLOS CARMELI", Layout, Carmel Convent, Muthyalpet, Village No.40, Pondicherry Revenue Village, comprised in R.S.No.4/1, measuring an extent of 6055 sq.ft., covered by Doc.No.7359/2011, sold in the Auction held on 18.12.2015 under the provisions of SARFAESI Act, within a time frame.

For Petitioner : Mr.E.Om Prakash
for M/s.Ramalingam Associates

For respondents : Mr.J.Narayanaswamy (For R1)
Mr.M.Govindaraj GP (P) (For R2)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Mandamus, to direct the 2nd respondent to receive, register and return the Sale Certificate dated 12.01.2016 executed by the petitioner in favour of Mr.Abdul Kader in respect of the property at Plot No.39 "FLOS CARMELI", Layout, Carmel Convent, Muthyalpet, Village No.40, Pondicherry Revenue Village, comprised in R.S.No.4/1, measuring an extent of 6055 sq.ft., covered by Doc.No.7359/2011, sold in the Auction held on 18.12.2015 under the provisions of SARFAESI Act, within a time frame.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows:-

2-1.The property being vacant plot bearing Plot No.39 "FLOS CARMELI", Layout, Carmel Convent, Muthyalpet, Village No.40, Pondicherry Revenue Village, comprised in R.S.No.4/1, measuring an extent of 6055 sq.ft., covered by Doc.No.7359/2011, among other properties, was attached by the 1st respondent for the alleged tax dues of the 3rd respondent and the said attachment was recorded in the books of the 2nd respondent.

2-2.Originally, the said property was owned by the 3rd respondent. The 3rd respondent mortgaged the said property by deposit the original title deeds with the petitioner-Bank on 29.03.2012 with an intention to create mortgage to secure the facilities availed by (1)Devaki Traders, (2)Devaki Steels, (3)Devaki Steels & Cements, (4) Devaki Agencies and (5)Devaki Cement Agencies, for the total existing limit of Rs.37.50 crores. The 3rd respondent having deposited the original title deeds and created equitable mortgage, confirmed the same by a letter of confirmation dated 30.03.2012. The credit facilities availed by the 3rd respondent and her family concerns were enhanced to a total limit of Rs.54 crores and the mortgage of the said property stood extended for the enhanced limits by a constructive deposit made on 14.03.2013. The 3rd respondent confirmed the extension by a Letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limits dated 15.03.2013. The 3rd respondent had also executed a Memorandum relating to deposit of title deeds dated 04.04.2013 and the same was also registered as Doc.No.1953 of 2013 on the file of the 2nd respondent confirming the equitable mortgage for the total limit of Rs.54 crores. The 3rd respondent had also extended the equitable mortgage for the further enhanced limit of Rs.64 cores on 23.101.2013 and confirmed the same by letter dated 24.10.2013.

2-3.The business concerns of the 3rd respondent had committed default in repayment of the dues after having availing huge credit limits in the name of (1)Devaki Traders, (2)Devaki Steels, (3)Devaki Steels & Cements, (4)Devaki Agencies and (5)Devaki Cement Agencies. On account of default in payment of the dues, the petitioner being the mortgagee initiated proceedings against the various mortgaged properties, including the subject property. The petitioner-Bank initiated the measures under SARFAESI Act. The subject property was brought for sale by the petitioner-Bank by publishing E-Auction Sale Notice dated 07.11.2015 under the provisions of the SARFAESI Act, scheduling the Auction Sale on 18.12.2015 and the reserve price for the said property was fixed as Rs.1,36,00,000/-. Pursuant to the said E-Auction Sale Notice published by the petitioner-Bank in the newspapers, bids were submitted by prospective purchasers evincing interest in purchasing the said property. The Auction was accordingly conducted on 18.12.2015 and one Mr.Abdul Kader was the highest bidder for the said property at Rs.1,38,00,000/- and the auction was confirmed in his favour. The said highest bidder being the successful auction purchaser had paid the entire bid amount by complying with the terms and conditions. Accordingly, the petitioner-Bank has issued a Sale Certificate dated 12.01.2016 confirming the auction sale in his favour. Thus, the sale has become concluded at the instance of the secured creditor under the statutory provisions.

2-4.The said Sale Certificate was presented on 12.01.2016 for registration with the 2nd respondent. But, the 2nd respondent refused to entertain the Sale Certificate for registration stating that the 1st respondent has passed an order of attachment against the said property. The 1st respondent has further informed the petitioner that unless a No-Objection Certificate (NOC) is obtained from the 1st respondent, the document cannot be received for registration.

2-5.It is further stated by the petitioner that even prior to the conclusion of the auction sale under SARFAESI Act, the petitioner was informed about the income tax dues of the 3rd respondent and the petitioner had accordingly taken up the issue with the 1st respondent making it clear to them that State Bank of India as the secured creditor has a priority of charge on the property based on the mortgage created to secure the outstanding dues in the credit facilities availed. Even then, the 2nd respondent is insisting the petitioner to obtain No Objection Certificate from the 1st respondent for registering the Sale Certificate. Hence, the petitioner has come forward with the present writ petition seeking for the relief as stated supra.

3.When the matter is taken up for consideration, the learned counsel for the petitioner, by relying upon the judgment passed by this Court in W.P.No.36076 of 2015, dated 04.03.2016 (S.Praveen Bohra Vs. Joint-I Sub-Registrar (In the cadre of District Registrar), submitted that in the said case, this Court by relying on the judgment of the Hon'ble Supreme Court in reported in (1985) 2 SCC 167, Balkrishan Gupta and others vs. Swadeshi Polytex Limited and another, held that the sale of the subject property pending the order of attachment is void only as against the claims enforceable under the order of the said attachment and not in respect of other claims; thus, the order of attachment cannot be a bar to register the document.

4.By relying upon the above said decision, the learned counsel for the petitioner submitted that following the said decision, the present writ petition could be allowed.

5.The learned counsel appearing for the 1st respondent, by filing a counter, contended that since the effective date of attachment by the Income Tax Department precedes the date on which the property was mortgaged with the petitioner-Bank, the mortgage is void and the Income Tax Department has priority over the Bank. Thus, the learned counsel for the 1st respondent sought for dismissal of the writ petition.

6. I have also heard the learned Government Pleader appearing for the 2nd respondent also and perused the materials available on record.

7.It is relevant to make a reference in the unreported judgment of the Madurai Bench of Madras High Court in W.P.(MD) No.2635 of 2012, dated 13.03.2013, in the case of M/s.K.D.P.Properties Private Limited vs. The Sub-Registrar and other, relied on by the learned counsel for the petitioner, wherein, in paragraph No.18, a reference was made to the decision of the Hon'ble Apex Court reported in (1985) 2 SCC 167, Balkrishan Gupta and others vs. Swadeshi Polytex Limited and another, and it was held as follows:-

> "18.In (1985) 2 SCC 167 (supra), the Hon'ble Supreme Court has held as under:
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> > "30.The consequence of attachment of certain shares of a company held by a shareholder for purposes of sale in a proceeding under section 149 of the Land Revenue Act is more or less the same. The effect of an order of

attachment is what Section 149 of the Land Revenue Act itself says. Such attachment is made according to the law in force for the time being for the attachment and sale of movable property under the decree of a civil court. Section 60 of the Code of Civil Procedure, 1908 says that except those items of property mentioned in its proviso, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities of money, debts, shares in a corporation and all other saleable property, moveable or immovable, belonging to a judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor, or by another person in trust for him or on his behalf, is liable for attachment and sale in execution of a decree against him. Section 64 of the Code of Civil Procedure, 1908, states that where an attachment of a property is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims endorceable under the attachment. What is forbidden under Section 64 of the Code of Civil Procedure is a private transfer by the judgment-debtor of the property attached contrary to the attachment, that is, contrary to the claims of the decree holder under the decree for realisation for which the attachment is effected. A private transfer under Section 64 of the Code of Civil Procedure is not absolutely void, that is, not void

> as against all the world but void only as against the claims enforceable under the attachment. Until the property is actually sold the judgment debtor retains title in the property attached. Under Rule 76 of Order 21 of the Code of Civil Procedure, 1908, the shares in a corporation which are attached may be sold through a broker. In the alternative such shares may be sold in public auction under Rule 77 thereof. On such sale either under Rule 76 or under Rule 77, the purchaser acquires title. Until such sale is effected, all other rights of the judgment debtor remain unaffected even if the shares may have been seized by the officer of the court under Rule 43 of Order 21 of the Code of Civil Procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or though an order in terms of Rule 46 of Order 21 of the Code of Civil Procedure may have been served on the judgment debtor or on the company concerned."

19.The dictum laid down in the above judgment (1985) 2 SCC 167 (supra), gives a fitting answer to the issue raised in this writ petition. So far as the order of attachment passed by the DRT is concerned, the transfer is not void generally but it is void only as against the claims enforceable under the said attachment. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale. However, if the 2nd respondent bank exercises its right as against the property, the petitioner cannot raise any objection because the sale of the vendor in favour of the petitioner is void in respect of the order of attachment obtained by the 2nd respondent bank. So, even if the property is sold in favour of the petitioner, the 2nd respondent bank can always exercise its right as against the said property.

20. In view of the above finding, 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 said attachment and not in respect of other claims. Therefore, the sale of the property, which is under attachment, cannot be said as illegal.

In the light of what is stated above, the writ petition is allowed and the 1st respondent, Sub- Registrar, Kochiadai, Madurai, is directed to release the registered document in favour of the petitioner within a period of one week from the date of receipt of a copy of this order. No costs."

8. It is also worthwhile to refer to the unreported judgment of Madurai Bench of Madras High Court in W.P.(MD) No.14388 of 2014, dated 01.09.2014, in the case of M.Chitra vs. The Sub-Registrar, relied on by the learned counsel for the petitioner, wherein, in paragraph No.5, it was held as follows:-

"5. In such circumstances, merely because there is an order of attachment passed by a Civil Court, the same cannot be a ground to refuse to register the Memorandum of Deposit of Title Deeds. If any deposit of title deeds is created in respect of the said property pursuant to the right acquired by the petitioner, vide settlement deed, dated 04.07.2011, it is always subject to further orders to be passed by the Civil Court. The petitioner's case is that she acquired title by way of settlement deed dated 04.07.2011, much prior to the order of attachment. Further, the learned counsel appearing for the petitioner placed reliance on Order 38, Rule 10 C.P.C. stating that attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree. The lending bank namely, Canara Bank, Vadamadurai if satisfies with the title of the petitioner over the property, can request the Registrar to register the document. In such circumstances, merely because an order has been passed by the Civil Court effecting attachment, cannot be a bar for entertaining a document for registration. Hence, the reasons assigned by the respondent refusing to register, vide his memo, dated 25.07.2014, is not in accordance with law beyond the scope of Section 71 of the Act."

9. 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. It is clear that the sale of any property, pending the order of attachment, is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Hence, if a document is presented for registration in compliance with the provisions under the Registration Act, the Sub Registrar cannot deny the registration of the same unless there is interim order from the competent Court restraining him from registering the document and he is empowered to deny the registration of the document within the frame of provisions of the Registration Act and Rules framed thereunder, particularly, on the grounds enunciated under Rule 55, viz., if the document is forged, impersonation by the parties, if the executing party is a minor or a lunatice, etc. Therefore, in the absence of any interim order from the competent Court nor any of the grounds available under Rule 55, the Sub Registrar cannot deny the registration.

10. In the light of the decisions cited supra, the Writ Petition is allowed and the 2nd respondent viz., Sub-Registrar, Puducherry, is directed to register the Sale Certificate dated 12.01.2016 issued by the petitioner and to release the registered document, 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.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

ssv

To

1.The Tax Recovery Officer,
Income Tax Department, Govt. of India,
D.P.Thottam, Muthialpet,
Pondicherry-605 003.

2.The Sub-Registrar of Puducherry,
Govt. of Puducherry,
Puducherry.

+2 ccs to M/s.Ramalingam & Associates, Advocate, sr.22981
+1 cc to Mr.J.Narayanaswamy, Advocate, sr.22961

W.P.No.6685 of 2016
and W.M.P.No.5921 of 2016

pa co kra 03.05.2016