

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.06.2017

Coram:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.6124 of 2017

The Authorised Officer,
Indian Overseas Bank,
Surampatti Branch,
No.72, Perundurai Road,
Surampatti, Post Box No.902
Erode - 638 011.

.... Petitioner

Versus

1.The Joint I Sub-Registrar,
Combined District Registrar Office,
Rangampalayam,
Erode District.

2.Mr.M.Ahamed Khan

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records of the letter issued by the 1st respondent in Na.Ka.No.698/Vu/2017 dated 24.02.2017 and quash the same.

For Petitioner ... Ms.Ananda Gomathy

For Respondents .. Mr.P.S.Shivashanmugasundaram,
Spl.GP.

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O R D E R

(Order of the Court was made by HULUVADI G.RAMESH, J)

Heard Ms.Ananda Gomathy, learned counsel appearing for the petitioner and Mr.P.S.Shivashanmugasundaram, learned Special Government Pleader, appearing for the Respondents.

2.It appears that one T.Duraisamy, S/o of Late.Thambannan @ Thambusamy had borrowed Cash Credit Loan to a sum of Rs.50.00 lakhs from the Petitioner Bank on 14.06.2011 for his Jewellery Business and mortgaged his property as security for the said loan and created equitable mortgage by deposit of his original title deeds with the Petitioner Bank. Since the said Duraisamy died intestate leaving behind his wife Mrs.D.Shanthi, as his legal heir and since the loan amount was not repaid, the loan account has been declared as Non Performing Asset. Thereafter, the Petitioner Bank has initiated proceedings under the SARFAESI Act, 2002 and issued Demand Notice to Mrs.D.Shanthi, W/o T.Duraisamy on 16.04.2015 under Section 13(2) of the SARFAESI Act, 2002, for recovery of loan amount of a sum of Rs.49,92,473.00 with subsequent interest. Subsequently, the Bank has taken symbolical possession of the mortgaged property under Section 13(4) of the SARFAESI Act, 2002, on 15.10.2015. The District Collector, Erode, in his proceedings dated 08.09.2016 issued an order for delivery of possession and the Petitioner Bank has taken actual possession of the property. Thereafter, the Petitioner Bank has issued a Sale Auction Notice for sale of the mortgaged property under the provisions of SARFAESI Act, 2002 on 11.03.2016.

3.It appears that pursuant to the Sale Certificate dated 20.02.2017 issued by the Authorised Officer of the petitioner Bank, under the provisions of the SARFAESI Act in favour of the second respondent, the Sale Certificate was presented before the first respondent for registration. The first respondent has refused to register the Sale Certificate on the ground that an order of Attachment has been passed by the Ist Additional Sub-Court, Erode in I.A.No.321 of 2015 in O.S.No.326 of 2015 in respect of the property in question. Aggrieved by the impugned letter dated 24.02.2017, issued by the first respondent, the Authorized Officer has come up with the present writ petition.

4.Learned counsel appearing for the petitioner would submit that since the petitioner is a secured creditor, having lent money by securing mortgage of the property in question and having taken possession of the same under the provisions of SARFAESI Act and sold the same to the second respondent by way of Auction Sale, the petitioner may be given priority to realize the amount lent by them. However, in view of the order of Attachment passed by the Ist Additional Sub-Court, Erode, there is an impediment for the second respondent to register the Sale Certificate in his favour. Hence, he prayed for quashing the impugned letter issued by the first respondent.

5.On the other hand, learned Special Government Pleader appearing for the respondents submitted that the property in

question is the subject matter of O.S.No.326 of 2015 on the file of the Ist Additional Sub-Court, Erode, in which an order of Attachment in respect of the property in question has been passed on 25.07.2016. Whereas the Sale Certificate was issued by the Petitioner in favour of the first respondent only on 20.02.2017 and hence, it is for the petitioner to approach the Ist Additional Sub-Court, Erode to set aside the order of Attachment.

6.We are of the considered view that since the order of Attachment passed by the Ist Additional Sub-Court, Erode, come into way in registering the property in favour of the second respondent, as rightly raised by the first respondent herein. The fact remains that the petitioner has to approach the Ist Additional Sub-Court, Erode, seeking to pass necessary orders in this regard.

7.The learned counsel for the petitioner submitted that the petitioner has already filed an Interlocutory Application in I.A.SR.No.16308 of 2016 in I.A.No.321 of 2015 in O.S.No.325 of 2015 on the file of the Ist Additional Sub-Court, Erode, to raise the order of Attachment dated 25.07.2016 passed in I.A.No.321 of 2015.

8.Considering the above submissions, we are of the view that it is for the Ist Additional Sub-Court, Erode, to give opportunity for the petitioner herein if the Interlocutory Application is pending consideration and also look into the priority rights and also as a matter of lien over the property or any other interest thereon, take into consideration and pass necessary orders within a period of two months from the date of receipt of copy of this order, so as to enable the petitioner to exercise the rights well within the time.

9.Accordingly, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gr.

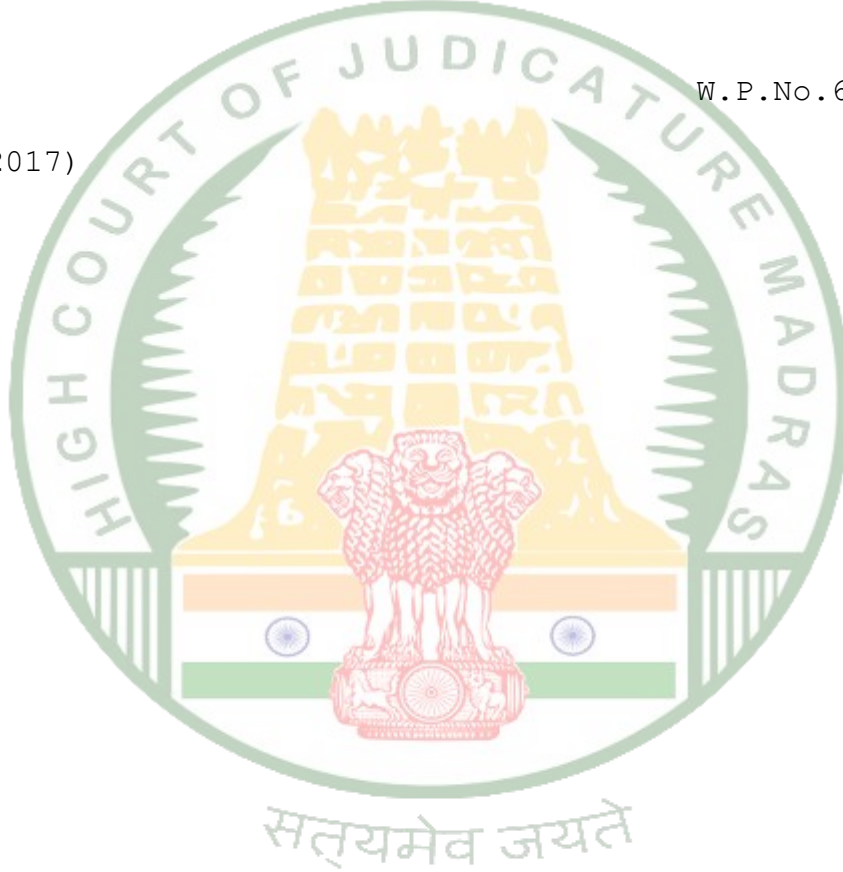
To

The Joint I Sub Registrar,
Coimbatore District Registrar Office,
Rangampalayam,
Erode District.

+1cc to M/s. Ananda Gomathy, Advocate, S.R.No.42173
+1cc to the Government Pleader, S.R.No.42192

NR(CO)
RS(27/06/2017)

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