

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

W.P.No.14095 of 2017

The Authorised Officer/Chief Manager
Bank of Baroda
Nambiyur Branch
Gobichettipalayam Taluk
Erode District 638 458

... Petitioner

v.

1 The District Registrar
Office of the District Registrar
Gobichettipalayam
Erode District

2 The Joint Sub Registrar-I
Office of the District Registrar
Gobichettipalayam
Erode District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of certiorarified mandamus, calling
for the records of the second respondent dated 24.05.2017 in Na Ka

No.1862/E/2017 and quash the same and consequently direct the second respondent to register the sale certificate dated 24.05.2017 issued by the petitioner.

For Petitioner : Mr.S.Mohan

For Respondents : Mr.R.Rajeswaran
Spl. Govt. Pleader

ORDER

The petitioner has filed the above writ petition to issue a Writ of certiorarified mandamus to call for the records of the 2nd respondent dated 24.05.2017, to quash the same and consequently direct the 2nd respondent to register the sale certificate dated 24.05.2017 issued by him.

2.1 According to the petitioner, their bank is providing cash, credit and letters of credit facilities for carrying on business and other purposes. The borrower, viz., M/s.Anbu Thangal Maligai, represented by its partners, obtained a sum of Rs.11,85,95,000/- as loan from the bank and in consideration thereof, the partner and the guarantor, viz.,

K.Udayakumar, deposited the title deeds and created equitable mortgage over the secured assets by registered memorandum of deposit of title deeds in favour of the Bank on 31.12.2009. Similarly, other guarantors have also executed mortgage deeds for the due repayment of the loan availed by the said M/s.Anbu Thangal Maligai in favour of the bank.

2.2 According to the petitioner, the repayment of loan amount by the borrower was not regular and hence, the account was declared as Non Performing Asset on 30.11.2010 under the provisions of the Securitisation and Reconstruction of financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act').

2.3 According to the petitioner, notice under section 13(2) of the SARFAESI Act was issued to the borrower and possession was taken under section 13(4) of the SARFAESI Act. In the SARFAESI proceedings, the property was brought to sale and was sold on 15.03.2017 to M/s.Chakravarthy Thuhil Maaligai and 3 others. The sale was also confirmed in favour of the auction purchaser. However, when the sale certificate was presented for registration, the 2nd respondent

refused to register the same on the ground that there was prior attachment by the Assistant Registrar of Chits, Erode. in proceedings Nos.13/2011, 14/2011 and 15/2011.

3. The learned counsel appearing for the petitioner submitted that it is settled position that the secured creditor shall have the priority over the other creditors. Therefore, the order of attachment passed by the Assistant Registrar of Chits, Erode, shall not stand in the way of the 2nd respondent registering the sale certificate in favour of the auction purchaser.

4. Supporting the contention of the learned counsel for the petitioner, .Mr.R.Rajeswaran, learned Special Government Pleader, appearing for the respondents also submitted that in view of the settled position that the secured credit shall have the priority over the other creditor, the 2nd respondent should have registered the sale certificate presented for registration.

5. In view of the submissions made by the learned counsel on either side, I direct the 2nd respondent to register the sale certificate

dated 24.05.2017 within three days from the date of presentation of the document. It is also made clear that the petitioner shall pay the necessary stamp duty and the registration charges for registering the sale certificate before the 2nd respondent.

With these observations, the writ petition is disposed of. No costs.

01.08.2017

Index: Yes/No

Note : Issue copy of the order by 04.08.2017

Rj

To

- 1 The District Registrar
Office of the District Registrar
Gobichettipalayam
Erode District

- 2 The Joint Sub Registrar-I
Office of the District Registrar
Gobichettipalayam
Erode District

M.DURAI SWAMY,J.

Rj



W.P.No.14095 of 2017

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