



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2017

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

W.P. (MD) No.24538 of 2016 &
W.M.P. (MD) .No.971 of 2017

Tamilnad Mercantile Bank Ltd.,
Periyakulam Road, Theni,
Represented by Branch Manager.

... Petitioner

Vs.

1. The Sub Registrar,
Office of the Sub Registrar,
Theni.

2. J.Madhanagopal
3. Gayathri
4. N.Rajaram

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records relating to the impugned communication issued by the first respondent, dated 21.11.2016 in letter number 407/2016 and quash the same and issue a consequential direction to the first respondent to delete the entry of encumbrance registered on 30.09.2014 upon the schedule mentioned property in Doc.No.44 of 2014 and register the sale certificate, dated 16.11.2016 executed by the petitioner bank in favour of the auction purchaser Mr.N.Rajaram in respect of the schedule mentioned property.

For Petitioner : Mr.N.Dilipkumar

For Respondents : Mr.V.Muruganantham for R1
Additional Government Pleader
No appearance for R2 to R4

**O R D E R****[Order of the Court was made by T.S.SIVAGNANAM, J]**

Heard Mr.N.Dilipkumar, learned counsel appearing for the petitioner and Mr.V.Muruganantham, learned Additional Government Pleader appearing for the first respondent. Though respondents 2 to 4 have been served and their names have been printed in the cause list, none appeared for the respondents.

2. By consent of both sides, the writ petition itself is taken up for final disposal.

3. The petitioner is a bank which has filed this writ petition challenging the proceedings issued by the first respondent dated 21.11.2016 refusing to register a sale certificate issued by the petitioner bank in favour of the fourth respondent/auction purchaser.

4. The undisputed facts are that the second respondent was the borrower, who borrowed money from the petitioner bank and default in repayment, resulting the money was classified as Non Performing Asset. The petitioner bank initiated proceedings under SARFAESI Act and brought the property for sale. The fourth respondent is stated to be a successful bidder in the auction in whose favour the petitioner bank has issued the sale certificate. When the petitioner bank went to the first respondent office to register the sale certificate, the first respondent refused to entertain the same on the ground that the Judicial Magistrate Court, Valliyoor has granted an interim order of injunction in Cr.M.P.No.3850 of 2014 in DVOP No.23 of 2014, which was filed by the third respondent, who is the wife of the second respondent under the provisions of Protection of Women from Domestic Violence Act, 2005.

5. It is to be noted that the petitioner bank is a secured creditor and whatever right that may accrue in favour of the respondents 2 and 3 is subject to the result of the secured creditor. Even if there is an exparte order of injunction granted by the learned Judicial Magistrate, Valliyoor, at the instance of the third respondent, the same will not be an impediment for the first respondent, the Sub Registrar, Theni, to register the sale certificate.

6. Accordingly, the writ petition is allowed and the impugned proceedings issued by the first respondent is set aside. The first respondent is directed to register the sale certificate produced by the petitioner bank, within a period of three weeks from the date of receipt of a copy of this order. The petitioner is directed to file an application before the learned Judicial Magistrate, Valliyoor seeking for appropriate direction so that the encumbrance register on the property owing to the injunction granted by the Court can be vacated or modified. If such an application is filed by the



petitioner, the learned Judicial Magistrate, Valliyoor, is directed to consider the same and pass appropriate orders modifying the same with regard to the property in question, within a period of three weeks from the date on which the application is presented. No costs. Connected miscellaneous petition is also closed.

WEB COPY

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Vallioor.

2. The Sub Registrar,
Office of the Sub Registrar,
Theni.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 16188

+ 1 CC TO Mr.N.DILIPKUMAR, ADVOCATE IN SR No. 16450

JIKR

TE/SKN-RSK : 03/04/2017 : 3P/5C

ORDER MADE IN
W.P.(MD) No.24538 of 2016 &
W.M.P.(MD).No.971 of 2017
20.03.2017