HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.23561 OF 2017

ORDER: *(per V. Ramasubramanian, J)*

The Bank of India has come up with the above writ petition challenging the refusal of the sub-Registrar to register a sale certificate issued in favour of the auction purchaser.

2. Heard Mrs.V.Dyumani, learned counsel for the petitioner, learned Government Pleader for respondents 1 to 4 and Mr.P.Durga Prasad, learned counsel for the 5th respondent.

3. The property in question was mortgaged in favour of the petitioner bank, on 14.02.2014. The mortgage was created by the 6th respondent borrower.

4. Since the account of the 6th respondent became a non-performing asset, the Bank initiated measures in terms of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Possession notice was issued on 27.10.2016 and thereafter, sale was conducted. One Mrs.Vijaya Kolhapuri became the highest bidder and the sale was confirmed in her favour.

5. But, the Sub-Registrar is refusing to register the sale certificate on the ground that an order of attachment was passed by the 4th respondent Deputy Registrar of Chits on an application filed by the 5th respondent company. But the order of attachment is obviously subsequent in point of time to the mortgage. Therefore, the claim of the 5th respondent cannot take precedence over the mortgage in favour of the Bank.

6. The only thing that the 5th respondent can seek is the payment of any surplus, after adjustment of all the dues by the Bank.

7. Therefore, the Writ Petition is disposed of directing the Sub-Registrar to register the sale certificate. However, if after adjustment of the entire loan amount, any surplus money remains out of the auction sale proceeds, the Bank shall not pay it to the 6th respondent borrower but shall pay it to the 5th respondent, after notice to the 6th respondent.

8. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

May 01, 2018
KTL