



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.09.2019	Pronounced on: 20.09.2019
-------------------------	---------------------------

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.26568 of 2019
& W.M.P.Nos.25940 & 25942 of 2019

1. M.Dinesh Kumar,
2. Mrs.Swathi Priya,

Both at No.103, Samy Apartments,
Ponnu Garden Farms,
Old Mahabalipuram Road, Padur,
Kancheepuram District - 603 103.

... Petitioners

/versus/

1. The State of Tamil Nadu,
Represented by its Secretary,
Revenue Department,
Fort St.George, Chennai - 600 001.
2. The Inspector General of Registration,
Santhome, Mylapore, Chennai - 600 004.
3. The Joint Sub-Registrar No.1,
Erode, Kasipalayam, Ward No.V,
Erode.
4. Repco Home Finance Ltd.,
Alexander Square,
III Floor, No.2, Old No.34 & 35,
Sardar Patel Road,
Guindy, Chennai - 600 032.
5. R.N.Subramani,
No.1132/1, Karuppanna Samy Koil Thottam,
Saseri Nagar, II Street, Erode - 638 002.
6. N.Mohan Kumar,
No.205/2, Kummalan Kuttai,
Erode - 638 011.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records of the third respondent in his refusal cheque slip made in Refusla Number RFL/No.1, Joint Sub-Registrar, Erode/36/2019, dated 10.06.2019 quash the same and consequently directing the 3rd respondent to register the sale certificate dated 04.05.2019 executed by the 4th respondent in favour of the petitioners within a time period fixed by this Court.

For Petitioner : Mr.C.Ramesh,

For R1 to R3 : Mr.M.Thamizharasan,
Government Advocate

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioners are the successful bidders in the public auction held on 29.09.2018 conducted by 4th respondent/Repco Home Finance Ltd., in respect of the property bearing Plot No.11, D.No.131, 131/1, Kasipalayam, Ward No.V, Karupusamy Street, Sastri Nagar, 2nd Street Erode "C" Village comprised in R.S.No.789/1 measuring 1200 Sq.ft mortgaged by the defaulted borrowers Mr.A.Viswanathan and Mrs.V.Kalaivani. On payment of the bid amount, the 4th respondent/Repo Home Finance Ltd., has issued Sale Certificate dated 04.05.2019 in favour of the petitioners. When the petitioners presented the Sale Certificate before the 3rd respondent/Joint Sub-Registrar, Erode, for registration, same was returned on the ground that there are two Encumbrances found in the list of encumbrances in the form of Attachment Before Judgment (ABJ) passed by Sub-Court, Erode in O.S.No.446 of 2013 and O.S.No.209 of 2016 obtained by respondents 5 & 6 respectively.

3. Aggrieved by the refusal to register the sale certificate for the reasons stated, the present Writ Petition is filed on the ground that, there is no impediment in registering the sale certificate which is pursuant to the auction sale of the property by the 4th respondent/Repo Home Finance Ltd., which has priority over all other debts by virtue of section 31 (B) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Further, the mortgage by deposit of title deed was registered on 29.11.2012 which is prior in point of time. Whereas the Attachment Before Judgment (ABJ) are of the year 2013 and 2016. So, the 3rd respondent/Joint Sub-Registrar, Erode, ought not to have registered the subsequent order of Attachment Before Judgment

(ABJ) encumbrance register, when already the property mortgaged and encumbered.

4. In support of the submission, the learned counsel rely upon the judgment of this Court reported in 2018 SCC Online Mad 5016, (Indian Overseas Bank, Rep by its Chief Manager/Authorized Officer Vs. Sub-Registrar, Tuticorin District).

5. The 2nd respondent/Inspector General of Registration, Chennai, on receipt of the notice, has filed counter affidavit stating the reasons for refusing registration of the sale certificate presented by the petitioners. According to the 2nd respondent/Inspector General of Registration, this Court earlier in K.Kumaresan Vs. Suryalakshmi Finance Ltd reported in 2018 (1) MWN (Civil) 15 (Mad) had directed the Registration Department not to register any documents, if any competent Civil court ordered attachment in respect of the particular properties in their respective Registration Office. In any violation of the order of attachment by the Registrars/Sub-Registrars concern, the Inspector General of Registration, Chennai, is directed to take appropriate action against the erring Registrars/Sub-Registrars. Therefore, in reverence to the High Court direction, the sale certificate presented by the petitioners were returned with the check slip.

6. The petitioners are the third party purchasers of the property mortgaged by the default borrowers of the 4th respondent/Repco Home Finance Ltd. The mortgage of title deed is first in the line of encumbrance of the property followed by the Attachment Before Judgment (ABJ) obtained by the 4th and 5th respondents. The debt to the 4th respondent/Repco Home Finance Ltd, gets priority over all other debts in view of Section 31(B) of the Recovery of Debts due to Banks and Financial Institutions Act as amended. This legal position is clarified by the Full Bench of this Court in Assistant Commercial Tax Officer (CT) Vs. Indian Overseas Bank reported in 2016 (6) CTC 769 as below:-

2. We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principal Act, which reads as under:-

"31B. Notwithstanding anything

contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation. - For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

3. There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with 'notwithstanding' clause and has come into force from 01.09.2016.

4. The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.

5. The aforesaid would, thus, answer question (a) in favour of the financial institution, which is a secured creditor having the benefit of the mortgaged property.

6. In so far as question (b) is concerned, the same is stated to relate only to auction sales, which may be carried out in pursuance to the rights exercised by the secured

creditor having a mortgage of the property. This aspect is also covered by the introduction of Section 31B, as it includes 'secured debts due and payable to them by sale of assets over which security interest is created'.

7. We, thus, answer the aforesaid reference accordingly.

8. The matters be placed before the roster Division Bench for dealing with the individual cases.

7. Following this judgment, the Division Bench of this Court in the Indian Overseas Bank, Chief Manager/Authorised Officer Case (cited supra) has held that :-

"5. In the light of the judgment of the Full Bench of this Court reported in 2016 (6) CTC 769 (cited supra) and on a conjoint reading of Section 26-E of the SARFAESI Act and Section 31-B of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, there cannot be any doubt that the rights of a secured creditor to realise the debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority, inasmuch as Section 31-B of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was introduced with a "notwithstanding" clause and it has also come into force from 01.09.2016.

6. In such view of the matter, we are of the opinion that the order of attachment before judgment cannot be a bar for the first respondent to register the sale certificate in respect of the property in question and hence, there cannot be any impediment for the first respondent to register the sale certificate dated 20.03.2018 issued in favour of the fifth respondent."

8. Therefore, this Court is of the opinion that the Registrars/Sub-Registrars of the Registration department while enforcing the direction of this Court issued in K.Kumersan Vs. Suryalakshmi Finance Ltd., (cited supra) shall also take into consideration the Full Bench Judgment of this Court cited above. Instead of refusing registration and returning the Sale Certificate with check slip, the Registrars/Sub-Registrars shall accept it and register it, with other encumbrances already created. The Sale Certificates issued by any Court or Tribunal or any other statutory Authority shall be accepted for registration, subject to the encumbrance recorded regarding the Civil Court order of Attachment Before Judgment. The holder of the sale certificate who is the purchaser pendente-lite shall take the risk of the encumbrance created to the property prior to his purchase.

9. Accordingly, the Writ petition is Allowed. The impugned order of the 3rd respondent/Joint Sub-Registrar, dated 10.06.2019 is quashed. The 3rd respondent/Joint Sub-Registrar, Erode, is directed to receive the sale certificate dated 04.05.2019 executed in favour of the petitioners by the 4th respondent/Repo Home Finance Ltd and register the same on payment of necessary fees and stamp duty. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Secretary,
The State of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai - 600 001.
2. The Inspector General of Registration,
Santhome, Mylapore, Chennai - 600 004.
3. The Joint Sub-Registrar No.1,
Erode, Kasipalayam, Ward No.V,
Erode.

+1cc to Mr.C.Ramesh, Advocate SR.81066

delivery order in
Writ Petition No.26568 of 2019

MP (CO)
CB (30/10/2019)



WEB COPY