



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD)No.22639 of 2018
and
W.M.P. (MD)No.20521 of 2018

The Assistant General Manager/
Authorized Officer,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja Plaza,
Avinashi Road,
Coimbatore - 641 037.

... Petitioner

Vs

1. The District Registrar,
District Registrar Office,
Theni, Theni District.
2. The Sub Registrar,
Sub Registrar Office,
Theni.
3. The Assistant Commissioner,
Commercial Taxes Department,
Theni - 1.
4. M/s.Boss Enterprises,
Represented through its Managing Partner,
Mr.K.Raja.
- 5.M/s.Shri Renuga Textiles Ltd.,
Represented by its Managing Director,
Mr.R.N.Jagadeesan.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 & 2 herein to receive and register the deed dated 10.10.2018 (Confirming the sale certificate dated 11.04.2018) executed by the authorized officer of the writ petitioner bank in favour of the 4th respondent herein without reference to the objections/attachment projected by the 3rd respondent herein.



WEB COPY

For Petitioner : Mr.V.Meenakshisundaram
For Respondents : Mr.M.Murugan
Government Advocate for R1 to R3
: Mr.P.Jeyaraman for R4
: Mr.A.Arun Murugan for R5

ORDER

Heard the learned counsel on either side.

2.Shri.Renuga Textiles Limited, Theni, had borrowed a huge sum from State Bank of India. Since the loan account turned into a non performing asset, proceedings were initiated under SARFAESI Act. The security offered by the borrower was brought to sale and ultimately sold at auction in favour of the fourth respondent. The Bank issued a sale certificate. When it was presented for registration before the second respondent, the second respondent cited certain proceedings issued by the third respondent and declined to register the same. Therefore, this writ petition came to be filed.

3.When the matter was taken up for hearing, the learned counsel appearing for the borrower who has been shown as fifth respondent pointed out that the fifth respondent is presently under liquidation and that the official liquidator has taken charge. He pointed out that this writ petition is not maintainable because the Bank is seeking to enforce its claim without impleading the official liquidator.

4.I am of the view that the only issue that is projected for my consideration is whether the second respondent is justified in declining to register the sale certificate. This issue is no longer *res integra*. It has been answered in favour of the Bank in the decision reported in **2016 (6) SCC 769 (Assistant Commercial Tax Officer (CT) Vs. Indian Overseas Bank)**. The same was followed by the Honourable Division Bench this Court in W.P.(MD)No.14168 of 2018, dated 18.12.2018. The Honourable Division Bench held as follows:-

"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.

WEB COPY

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.

7. Accordingly, this writ petition is allowed and the impugned order passed by the first respondent is quashed and consequently, the first respondent is directed to register the sale certificate dated 20.03.2018 issued by the petitioner bank in favour of the fifth respondent, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed."

5. Respectfully following the aforesaid decision, this Court directs the second respondent to receive and register the petition mentioned documents, executed by the writ petitioner in favour of the fourth respondent. The writ petition stands allowed. It is needless to mention that whatever the rights which the official liquidator may have, have not been adjudicated in this writ petition. They are left open. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To:

1. The District Registrar,
District Registrar Office,
Tirunelveli District.



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

3. The Assistant Commissioner,
Commercial Taxes Department,
Theni - 1.

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-59814[F] dated 09/04/2019)

+1 CC to SPECIAL GOVERNMENT PLEADER (SR-59882[F] dated 09/04/2019)

+1 CC to M/s.P.JEYARAMAN, Advocate (SR-60199[F] dated 10/04/2019)

W.P. (MD) No.22639 of 2018
08.04.2019

ias

AE (26.04.2019) 4P 7C