

HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.4949 of 2019

ORDER:

The grievance of the petitioner is that the Sub-Registrar, Registration and Stamps, Golconda, is not registering the sale certificate issued in her favour by the Canara Bank, Basheerbagh, Hyderabad, pursuant to the sale held by it under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. This refusal stems from the order of attachment passed by the Registrar of Chits/Arbitrator, Prashanth Nagar, Kukatpally, Ranga Reddy District (WEST), in I.A.No.30 of 2013 in Dispute No.118 of 2013 in relation to the property which is the subject matter of the sale certificate. A consequential direction is sought to the Registrar to register the sale certificate dated 08.11.2018 issued by the Canara Bank.

Perusal of the record reflects that the Canara Bank sanctioned a house loan on 09.3.2007 and obtained a mortgage over the subject property which was sold to the petitioner. It is therefore clear that the mortgage was created long before the attachment order came to be passed on 16.4.2013.

The question that falls for consideration is whether the Sub-Registrar is entitled to deny registration of the sale certificate on the basis of the said attachment order.

The issue is no longer *res integra*. This very question fell for consideration before a Division Bench of the erstwhile Common High

Court for the States of Telangana and Andhra Pradesh in City Union Bank Limited, Karimnagar Branch Vs. The Sub-Registrar, Peddpalli, Karimnagar District and Others¹. The Division Bench, having considered the issue at length, observed as under in para-14 of the order:-

“The preponderance of judicial opinion leads to the irresistible conclusion that the sale of the mortgaged property in favour of the auction purchaser and the sale certificate under the SARFAESI Act in such circumstances is free of all encumbrances. The attachments effected subsequent to the mortgage created in favour of the bank do not affect the rights of the secured creditor over the subject property. Such attachments have no impact on the sale conducted under the Act and the same ceases to have any effect or fall to the ground the moment the same is confirmed in favour of the secured creditor Bank and auction purchaser. Otherwise, those attachments would remain as a permanent taboo prejudicially affecting the marketability and title to the property even though they ceased to have any legal efficacy and thereby it becomes necessary to register the sale certificate.”

In the light of the aforestated observations made by the Division Bench, it is clear that the Sub-Registrar, Golconda, is not entitled to cite the attachment order as a ground for refusing registration of the sale certificate issued in favour of the petitioner by the Canara Bank.

The Writ Petition is accordingly allowed directing the Sub-Registrar, Golconda, to forthwith register the said sale certificate in accordance with the due procedure and release the same. This exercise shall be completed expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order, be it from whatever source.

¹ W.P.No.1084 of 2017 dated 06.8.2018

Pending Miscellaneous Petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

11th March, 2019
dr

