IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.12681 of 2020
and W.M.P.Nos.15662 and 15663 of 2020

1.N.Dinesh Kumar
2.Swathi Priya … Petitioners

-Vs-

1.The State of Tamil Nadu
rep.by its Secretary, Revenue Department
Fort St.George, Chennai 600 001.

2.The District Registrar, Erode
Sub Registrar Office.

3.The Joint Sub Registrar No.II, Erode
Kasipalayam, Ward No.V, Erode. … Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in his letter pending Doct. No.61 of 2020 dated 26.08.2020 quash the same and consequently direct the 3rd respondent to register the Sale Certificate dated 04.05.2019 in Pending Doct. No.61 of 2020 after refunding the penalty of Rs.88 890/- collected in receipt No.7870 of 2020 to the petitioners within a time period to be fixed by this Honourable Court.

For Petitioner : Mr. C.Ramesh

For Respondent : Mr.Annai Ezhil, Government Advocate for R1
Mr.T.M.Pappiah, Special Government Pleader - for RR 2 and 3

O R D E R

On consent given on either side, the main writ petition itself has been taken up for final hearing.

2. This Writ Petition has been filed challenging the impugned letter issued by the third respondent dated 26.08.2020

and for a consequential direction to direct the third respondent to register the Sale Certificate dated 04.05.2019 and also for refund of the penalty collected from the petitioners.

3. The petitioners had earlier approached this Court and filed W.P.No.26568 of 2019 and this Court passed the following order on 20.09.2019 and the same is extracted hereunder.

> " Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.
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> 2. The petitioners are the successful bidders in the public auction held on 29.09.2018 conducted by 4 th respondent/Repco Home in respect of the property bearing Plot No.11, D.No.131, 131/1, Kasipalayam, Ward No.V, Karupusamy Street, Sastri Nagar, 2 nd 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 4 th 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 3 rd 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.
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> 3. Aggrieved by the refusal to register the sale certificate for the reasons stated, the present Writ Petition is filed on the ground that, the 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 3 rd 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.
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> 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 4 th 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 4 th 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:-
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> > "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 4 th 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."

4. Pursuant to the above order passed by this Court, the petitioners submitted the Sale Certificate before the third respondent and the third respondent, through the impugned letter dated 26.08.2020 has refused to register the Sale Certificate on the ground of delay. Aggrieved by the same, the present writ petition has been filed before this Court.

5. Mr.C.Ramesh, learned counsel for the petitioners submitted that the third respondent failed to take note of the fact that the earlier order passed by this Court will become final only on 28.12.2019 and therefore the document presented for registration before the third respondent was well within time. The learned counsel further submitted that the third respondent did not take note of the pandemic situation that was prevailing and the third respondent always had the power to condone the delay in presenting the document. In order to substantiate the said submission, the learned counsel relied on Section 25 of the Registration Act. The learned counsel further submitted that the third respondent had collected the penalty amount of Rs.88,890/- without any notice to the petitioners and the same shall be directed to be refunded to the petitioner.

6. Mr.Annai Ezhil, learned Government Advocate appeared on behalf of the first respondent and Mr.T.M.Pappiah, learned Special Government Pleader appeared on behalf of respondents 2 and 3. Learned counsel for the respondents submitted that the document was presented well beyond the period of four months that is stipulated under Section 23 of the Registration Act and that the petitioners are not entitled to directly come and claim for refund of the penalty. Learned counsel further submitted that the petitioners have to work out their remedy in the manner known to law.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. Insofar as the right of the petitioners to get the Sale Certificate registered, this Court has already recognized the right of the petitioners by virtue of the earlier order passed in W.P.No.26568 of 2019 dated 20.09.2019. The third respondent,

while receiving the document for registration has rejected to register the same on the ground that it was presented beyond the period of four months as stipulated under Section 23 of the Registration Act.

9. In the considered view of this Court, the third respondent had sufficient powers under Section 25 of the Registration Act to condone the delay upto a period of four months after the initial period of four months stipulated under Section 23 of the Act. The third respondent ought not to have again driven the petitioners back to this Court by refusing to register the Sale Certificate presented by the petitioners. To that extent, the refusal on the part of the third respondent to receive the Sale Certificate for registration is unsustainable.

10. In view of the above discussion, the impugned letter issued by the third respondent dated 26.08.2020 is hereby quashed. The third respondent is directed to register the Sale Certificate submitted by the petitioner and which is kept as a pending document in Document No.61 of 2020 forthwith, if it is otherwise in order and thereafter release the same to the petitioners. Insofar as the relief of refund of the penalty sought for by the petitioners, the petitioners are directed to make a fresh representation to the third respondent and the third respondent shall consider the same strictly in accordance with law and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order.

11. This Writ Petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

KST

To

1. The Secretary, Revenue Department
   The State of Tamil Nadu
   Fort St.George, Chennai 600 001.

2.The District Registrar, Erode
Sub Registrar Office.

3.The Joint Sub Registrar No.II, Erode
Kasipalayam, Ward No.V, Erode.

+1cc to Mr.C.Ramesh, Advocate SR.No.30192

+2cc to Government Pleader SR.No.30250 & 30075

LN(CO)
GMY(21/09/2020)