IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.08.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.No.17620/2019 & WMP.Nos.5488 & 5485/2020

Tamil Nadu Mercantile Bank Ltd
rep.by its Branch Manager,
Panruti Branch, No.71, Chennai Salai
Panruti 620 018, Cuddalore District. ...Petitioner

Versus

1.The Sub Registrar
Office of the Sub Registrar,
Panruti.

2.The Sale Tax Officer
Sale Tax Office, Panruti.

3.M/s.Yogi Enterprises
rep.by its Proprietor Mr.V.R.Inbakumar
1314 & 1316, Chennai Salai
L.N.Puram, Panruti 607 106. ...Respondents

Prayer:-Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned order/letter dated 11.04.2019 RFL/PANRUTI/12/2019 issued by the 1st respondent and quash the same as illegal, arbitrary and unlawful and consequently direct 1st respondent to register the sale certificate dated 10.04.2019 issued by the petitioner Bank in favour of auction purchaser.

For Petitioner : Mr.G.Senthil Kumar
For R1 : Mr.T.M.Pappiah, Spl.GP
For R2 : Mr.M.Hariharan, AGP[Taxes]

ORDER

(1) This writ petition has been filed challenging the refusal letter issued by the 1st respondent and thereby, rejecting the Sale Certificate submitted by the Bank for registration.

(2) The 3rd respondent had availed a Term Loan from the petitioner Bank and mortgaged this property in favour of the petitioner

Bank by a registered Mortgage Deed dated 07.01.2015. The Loan Account of the 3rd respondent was classified as a Non Performing Asset on 31.05.2017. Thereafter, proceedings were initiated under the SARFAESI Act and ultimately, the property was brought for auction sale on 31.10.2018. One Suresh Kumar was declared as the successful bidder and the sale was confirmed in his favour and a Sale Certificate was also issued on 10.04.2019. This Sale Certificate was submitted before the 1st respondent for registration and it was rejected on the ground that there is an order of attachment passed by the 2nd respondent since there was a sales tax arrears from the 3rd respondent. Therefore, till the attachment is lifted, the document cannot be received by the 1st respondent and the Sale Certificate cannot be registered.

(3) Heard Mr.G.Senthil Kumar, learned counsel for the petitioner ; Mr.T.M.Pappiah, learned Special Government Pleader appearing for the 1st respondent and Mr.M.Hariharan, learned Additional Government Pleader [Taxes] appearing on behalf of the 2nd respondent.

(4) The issue involved in the present writ petition, is directly covered by the earlier order passed by this Court dated 03.08.2020 in WP.No.1680 of 2020. The relevant portion of the order is extracted hereunder:-

> ''12 It is now a well settled principle of law that the Bank has a priority over all the debts and the Government dues. The Hon'ble Full Bench of this Court in the case of The Assistant Commissioner [CT] Vs. Indian Overseas Bank reported in 2016 [6] CTC 769 has held that on a conjoint reading of Section 26[E] of the SARFAESI Act and Section 31[b] of the Recovery of Debt Due to Bank and Financial Institutions Act, 1993, it is the secured creditor who has a priority to realise the debt over all the other Government dues and unsecured creditors. Thus, the first respondent Bank will have a priority when it comes to realising the debt of a secured creditor.''

(5) It is clear from the above order that a secured creditor like the petitioner Bank will have the priority over the assets. This issue has also been settled by a Full Bench judgment of this Court in B.Suresh Chand V. State of Tamil Nadu and Others reported in 2006 [4] CTC 805.

(6) In view of the above settled position of law, the reason for refusing to register the document by the 1st respondent is not sustainable and the same requires interference of this Court.

(7) Accordingly, the impugned Rejection Letter of the 1st respondent dated 11.04.2019 is quashed.

(8) The learned Special Government Pleader appearing for the 1st respondent submitted that an appeal has been filed before the Hon'ble Apex Court against the judgment of the Full Bench and the same is pending. He further submitted that there is an order of status quo passed by the Hon'ble Supreme Court of India.

(9) This was also considered in an earlier order passed by this Court in WP.No.26749 of 2018 dated 22.01.2019 and paragraph No.6 of the said order is extracted hereunder:-

> ''6. The said Full Bench Court decision was taken up on Special Leave Petition, wherein it was ordered that status quo to be maintained by the parties. In the absence of any order of stay, the registration of the Sales Certificate cannot be refused. It is also stated that WP Nos.9750, 11199, 17829 of 2011 and 5382 of 2015 are pending, which are filed by the Government, where the question of the priority over the property was to be decided and the same is pending. As on date, the decision of the Full Bench is very clear that the priority right over the secured debt finds favour only with the Bank having the benefit of the mortgage properties. Therefore, the Registering Authority cannot refuse to register the sale certificate, if it is presented in the manner known to law and the same is otherwise in order. It is also stated that the sale proceeds is not appropriated and the same is with the Bank. ''

(10) It is, therefore clear that even on an earlier occasion, the filing of the appeal before the Hon'ble Supreme Court of India was brought to the notice of the learned Single Judge and since there was no order of stay, this Court has consistently passed orders to the effect that there is no bar for the concerned Sub Registrar to receive the document and register the same. This Court, therefore, does not want to take a different view in this writ petition.

(11) The petitioner is directed to represent the Sale Certificate dated 10.04.2019 before the 1st respondent along with necessary stamp duty and registration charges and the 1st respondent, on receipt of the same, shall register the document, if it is

otherwise in order and release the document ot the petitioner Bank.

(12) This writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sub Registrar
Office of the Sub Registrar,
Panruti.

2. The Sale Tax Officer
Sale Tax Office, Panruti.

+1cc to Govt.Pleader in Sr no.27086

WP.No.17620/2019

SKS(SO)
RV(01.09.2020)