

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.02.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24063 of 2017
and WMP.No. 25386 of 2017

Central Bank of India,
Asset Recovery Branch,
Represented by its Chief Manager,
No.48/49, Montieth Road, Egmore,
Chennai - 600 008.Petitioner

-vs-

1. The Arbitrator,
Central Chennai Chit Fund Cases Court,
Chennai - 1.
2. The Sub-Registrar,
Neelangarai,
Kancheepuram District.
3. The Sub Registrar,
Peelamedu, Coimbatore District.
4. M/s. Margadarsi Chits Private Limited,
Anna Salai Branch, Chennai - 6.
Represented by its foreman.
5. M/s. Viman Travels India Pvt Ltd.,
Represented by its Managing Director,
D. Thanikachalam, Flat No.H14, Madura Garden,
1st Floor, No.491/15, P.H.Road, Maduravoyal,
Chennai - 40.
6. M/s. Beyond Boundaries Entertainment Pvt Ltd.,
Represented by its Directors at
Plot No.3018, 2nd Floor, 12th Main Road,
Old 'Y' Block, 3rd Street,
Anna Nagar, Chennai - 600 040.

7. Mr.S. Rajmohan,
S/o. Raju Naidu Swaminathan,
Flat No.A21, 36 carat,
Old No.950, New No.136,
Poonamallee High Road, Chennai - 84.

...Respondents

PRAYER :

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the second respondent to register the sale certificate executed by the petitioner bank in favour of the auction purchaser by invoking SARFAESI proceedings pertaining to the property situate at Plot No.54A, Mangalapuri Layout, Okkiyam Thuraipakkam Village, Sholinganallur Taluk, Kancheepuram District, comprised in Old Survey No.406/3B, Patta No.4962 and 6634, New survey No.406/258 measuring an extent of 2888 sq.ft lying within the Sub-Registration District of the 2nd respondent and undivided share of land measuring an extent of 353 sq.ft. Out of 43408 sq.ft together with Residential unit No.FO No.302, 'C' Block having a plinth area of 760 sq.ft, 3rd floor along with reserved Car parking space No.PO 044 in basement/Ground Floor of the building bearing Door Nos. 1073 and 1074, "Raheja Centre", Avinashi Road, Coimbatore - 18 forming part of Krishnarayanpuram Village, Pappanaickenpalayam, Coimbatore town, comprised in T.S.No.10/1056 lying within the Sub-Registration District of the 3rd respondent owned by the 7th respondent notwithstanding the attachment order dated 28.10.2016 passed in A.R.C.Nos. 193 and 289/2016 by the 1st respondent.

For Petitioner : Mr.M.L. Ganesh
For Respondents : Mr.P.P.Purushothaman
Government Advocate [R2 & R3]
Mr.D.Shivakumar [R4]

सत्यमेव जयते
O R D E R

Heard Mr.M.L.Ganesh, learned counsel for the petitioner, Mr.P.P.Purushothaman, learned Government Advocate for the respondents 2 and 3 and Mr.D.Shivakumar, learned counsel for the 4th respondent.

2. With the consent of learned counsel on either side, this writ petition itself is taken up for final disposal.

3. This writ petition has been filed by the Central Bank of India, a nationalised bank, praying for a direction to the 2nd respondent, Sub-Registrar, Neelangarai, Kancheepuram, to

register the sale certificate executed by the petitioner bank in favour of the auction purchasers by invoking SARFAESI proceedings pertaining to the property situated at Plot No.54A, Mangalapuri Layout, Okkiyam Thuraipakkam Village, Sholinganallur Taluk, Kancheepuram District, comprised in Old Survey No.406/3B, Patta No.4962 and 6634, New survey No.406/258 measuring an extent of 2888 sq.ft lying within the Sub-Registration District of the 2nd respondent and undivided share of land measuring an extent of 353 sq.ft. Out of 43408 sq.ft together with Residential unit No.FO No.302, 'C' Block having a plinth area of 760 sq.ft, 3rd floor along with reserved Car parking space No.PO 044 in basement/Ground Floor of the building bearing Door Nos. 1073 and 1074, "Raheja Centre", Avinashi Road, Coimbatore - 18 forming part of Krishnarayanpuram Village, Pappanaickenpalayam, Coimbatore town, comprised in T.S.No.10/1056 lying within the Sub-Registration District of the 3rd respondent owned by the 7th respondent notwithstanding the attachment order dated 28.10.2016 passed in A.R.C.Nos. 193 and 289/2016 by the 1st respondent.

4. The reason for refusing to register the sale certificate is on the ground that the 4th respondent, a chit company, had filed an arbitration claim before the 1st respondent for recovering the amounts payable by 7th respondent and obtained an ex-parte award and also attachment of the property, which has already been mortgaged with the petitioner bank. The question is whether the order of attachment can be enforced and binds the petitioner Bank a secured creditor.

5. In the light of the amended provisions of the SARFESI Act especially after introduction of the 26 E of the SARFESI Act, the petitioner bank has priority over all other debts. This issue was considered by the Full Bench of this Court in the case of Assistant Commissioner (CT) Vs. The Indian Overseas Bank and Ors. [in W.P.Nos.2675, etc batch], wherein the Court considered the Section 26 E of the SARFESI amended Act, 2016 and over riding effect of the same over the recover of all other debts and Government dues. Very recently, the Union Government had issued notification dated 26.12.2019, by which, from 24.01.2020, the claim of the secured creditors has absolutely priority over all other dues.

6. In the light of the above settled legal position, the respondents 2 and 3 could not have refused to register the sale certificate merely on the ground that the 1st respondent has passed an order of attachment at the behest of the 4th respondent, Chit Company.

7. It is well open to the 4th respondent, chit company to take steps for recover of their claim against the 7th respondent by initiating separate proceedings. It is submitted by the

learned counsel for the petitioner that as on 22.02.2016, the total dues payable by the respondents 6 and 7 is Rs.2,36,34,591.78/-.

8. In the light of the above, the writ petition is allowed with a direction to the respondents 2 and 3 to register the sale certificate presented by the petitioner company within a period of two(2) weeks from the date of receipt of a copy of this order, notwithstanding the order of attachment obtained by the 1st respondent, the legal position clearly shows that such order of attachment does not bind the petitioner Bank a secured creditor. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Arbitrator,
Central Chennai Chit Fund Cases Court,
Chennai - 1.
2. The Sub-Registrar,
Neelangarai,
Kancheepuram District.
3. The Sub Registrar,
Peelamedu, Coimbatore District.

+lcc to Mr.M.L.Ganesh, Advocate, S.R.No.16360
+lcc to Mr.D.Sivakumaran, Advocate, S.R.No.15771
+lcc to the Government Pleader, S.R.No.16222

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NMI (CO)
KKV/11/06/2020