

W.P.No.6379 of 2021

N.SESHASAYEE, J.

The matter is listed today under the caption “for being mentioned”.

2.Learned counsel for the petitioner brought to the notice of this Court that certain inadvertent error crept in the order in narrating the facts. The 1st error pointed out is in paragraph 4, 2nd sentence. The learned counsel submitted that the petitioner is the secured creditor whereas in the order it is stated to be the successful bidder in the auction. The bidder in the auction is not before the Court in this case. Therefore, this Court directs that the 4th paragraph to be recast as follows:

“4.Heard, Mr.T.M.Pappiah, the learned Special Government Pleader for the respondents 1 and 2. He concurred with the legal position as presented. The learned counsel added that the petitioner is the secured creditor and the property in question was brought to sale by it under the SARFAESI Act. He further added that this issue is covered by the above cited Judgment in J.Jayaniithaa Vs. Inspector General of Registration and others”.

3.The next point is that there was reference to two Civil Court Attachment orders, that was not referred in the order. The learned counsel for the petitioner submitted that one of the reasons why the Registrar refused Registration is that the Encumbrance Certificate showed two MoU pertaining to the same. He added that there are no MoU but only two Civil Court Attachments in O.S.No.5161 of 2017 and 5162 of 2017 vide order dated 13.10.2017, added this attachment is subsequent to the mortgage created by the debtor in favour of the petitioner. He requested that this aspect of the matter may be clarified in the very same order.

4.This Court, therefore drops paragraph No.5 as it is now available in the order dated 12.03.2021 and the same is now replaced with the following;

“5.Pertaining to the objections of Registering Authority, this Court on a perusal of the Encumbrance Certificate made available in the typed set of papers finds that on 05.08.2016 the property involved was given as a security to the petitioner vide a registered document, whereas the Civil Court Attachment comes thereafter on 13.10.2017 only. This would imply that the petitioner is a secured creditor and has priority over the security. This Court has already held in W.P.No.9037 of 2020, that subsequent attachment would not be a bar for the Registering

Authority to register the sale certificate.

6.In view of the above, there shall be a direction to the respondent to register the Sale Certificate forthwith, if all the other requirements are satisfied”.

5.Registry is required to replace paragraphs 4, 5 and 6 as stated above.

23.07.2021

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Note: Issue order copy on 28.07.2021

Index : yes / no

Internet : yes / no



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