

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29..04..2021

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.9607 of 2021
and
W.M.Nos.10186 and 10187 of 2021

1.Mr.V.Hariharan

2.M.Paulpandian

... Petitioners

-Versus-

1.The District Registrar,
Registration Department,
Chennai-South Registration Department,
Having Office at AC1 to 48, Tod Hunter Nagar,
Chennai,
Tamil Nadu 600 015.

2.The Sub-Registrar,
Virugambakkam Sub Registrar Office,
Registration Department,
No.45-A, Arcot Road,
Virugambakkam, Chennai 600 092.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Notice dated 24.03.2021 and to quash the same and for a consequential direction to the 2nd respondent to register the pending Doc.No.63 of 2020 by assigning a Regular Document Number and to release the same to the petitioners within the time period fixed by this court.

For Petitioner(s) : Mr.M.V.Seshachari

For Respondent(s) : Mr.T.M.Pappiah,
Spl. Government Pleader for
RR1 and 2

ORDER

[This matter has been heard through video conference]

Challenging the notice issued by the 2nd respondent refusing to register the sale certificate dated 19.02.2020 issued by

M/s.Sundaram Home Finance Limited in favour of the petitioners and for a consequential direction for the registration of the sale certificate vide pending Doc.No.63 of 2020.

2. The petitioners are the absolute owners of the property situated at Plot No.34 and 35 in Varadharajaswamy Nagar, Maduravoyal, Chennai having purchased the same through auction sale conducted under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the SARFAESI Act"). The above said property was originally owned by one Jayaraj and his wife. They availed loan of Rs.2.5 crores from M/s.Sundaram BNP Paribas Home Finance Limited and created an equitable mortgage by depositing the title deeds relating to their property in question. Thereafter, as the borrower did not repay the loan amount, the secured creditor initiated a proceedings under the SARFAESI Act and the property was brought for auction sale. The petitioners who participated in the auction were declared as successful bidders for Rs.2,75,10,000/- and a sale certificate was also issued in favour of the petitioners on 19.12.2020. Thereafter, the petitioners availed loan from Tamil Nadu Mercantile Bank Limited and created an equitable mortgage by depositing the title deeds relating to the property in question and produce the same before the Sub Registrar on the very same day for registration after paying necessary stamp duties and registration charges. The grievance of the petitioners is that 2nd respondent keeping the registration of the sale certificate pending has issued a notice dated 24.03.2021 stating that the property has been subjected to various orders of attachment before judgment by a civil court from 31.07.2020 and until and otherwise the petitioners get those orders of attachment before judgment are raised, the document cannot be registered and this is challenged in the writ petition.

3. The 2nd respondent filed counter affidavit inter alia contending that since the property in question was subjected to various orders of attachment before judgment and encumbrances were also made in the relevant registers, unless and until the attachments of the property before judgement are raised, the sale certificate presented by the petitioners cannot be registered.

4. Heard the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents 1 and 2.

5. The learned counsel for the petitioners would submit that the equitable mortgage was created on 27.02.2014 by Jayaraj and his wife by depositing the title deeds relating to the property in question and whereas the orders of attachment before the

judgement were made subsequently in the year 2015 and therefore, the same cannot have over riding effect and on that ground the 2nd respondent ought not to have refused to register the document.

6. The learned counsel for the petitioners relying upon Section 26-E of The SARFAESI Act and Section 31-B of The Recovery of Debts and Bankruptcy Act, 1993 would further contend that the right of a secured creditor to realize the debts will prevail over the debts due to an unsecured creditor. Therefore, the existence of any order of attachment prior to or subsequent to the mortgage cannot be a bar for registration of a sale certificate issued by the secured creditor.

7. Per contra, the learned Special Government Pleader appearing for the respondents would contend that the property for which sale certificate has been issued is subjected to orders of attachment (eleven different orders) by civil court and encumbrances have also been made in the relevant register. In those circumstances, the 2nd respondent was absolutely right in issuing the notice to the petitioners expressing his view that in view of orders of attachment before judgement, sale certificate cannot be registered and advising the petitioners to get raised those orders of attachment before judgment to register the sale certificate and such order cannot be termed as illegally.

8. The issue involved in this writ petition as to whether a Sub Registrar can refuse to register a sale certificate issued by a secured creditor on the ground that there was an order of attachment in force against the secured assets is no more res integra.

9. A Division Bench of this Court in its judgement in Central Bank of India, Rep. by its Authorized Officer and Chief Manager, Regional Office, Madurai in W.P.No.10724 of 2018 dated 06.12.2018 following a judgement of the Full Bench of this Court in Assistant Commercial Tax Officer (CT) v. Indian Overseas Bank reported in 2016 (6) CTC 769 has held that the right of a secured creditor to realize the debts due and payable by the 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. In such circumstances, the order attaching the property before judgement would not be a bar for a Registrar to register the sale certificate. The relevant portion of the judgment reads as under:-

"9. 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."

10. 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 19.02.2020 issued in favour of the petitioners.

11. Another Division Bench of this Court in Indian Overseas Bank v. Sub Registrar, Tuticorin Keelur and others (2018 SC OnLine Mad 5016) has also taken the similar view. The judgements of the Division Benches of this court cited above have been followed by the learned single Judges of this Court in M.Dinesh Kumar and another v. The State of Tamil Nadu and others in W.P.No.26568 of 2019 dated 20.09.2019 and in C.Govindasamy and another v. The Joint Sub Registrar-II, Gobichettipalayam and others in W.P.No.18710 of 2020 dated 15.12.2020 wherein it has been held that the Sub Registrar cannot refuse to register a document on the ground that the property was subjected to an order of attachment and the holder of the sale certificate, who has purchased the property pendente lite shall take the risk of encumbrances created over the property prior to his purchase.

12. In the light of the above settled legal position, this court is of the consider view that notice impugned in this writ petition refusing to register the sale certificate by the 2nd respondent on the ground that there has been an order attaching the property before judgement is not sustainable in the eye of law and therefore, it is liable to be quashed.

13. In the result, the writ petition is allowed and the notice impugned in this writ petition is quashed and the 2nd respondent is directed to register the sale certificate in question, if it is otherwise in order, within a period of two

weeks from the date of receipt of a copy of this order. This writ petition is allowed accordingly with the above directions. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The District Registrar,
Registration Department,
Chennai-South Registration Department,
Having Office at AC1 to 48, Tod Hunter Nagar,
Chennai,
Tamil Nadu 600 015.

2.The Sub-Registrar,
Virugambakkam Sub Registrar Office,
Registration Department,
No.45-A, Arcot Road,
Virugambakkam, Chennai 600 092.

+1cc to the Government Pleader, S.R.No. 26749

Writ Petition No.9607 of 2021

AJS (CO)
GN(05/07/2021)

सत्यमेव जयते

WEB COPY