

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI
W.A.No.1391 of 2021

The Authorised Officer,
Tamilnadu Mercantile Bank Ltd,
Mayiladuthurai Branch,
Mayiladuthurai.Appellant

Vs

The Sub-Registrar-Joint No.1
Office of the Sub Registrar,
Mayiladuthurai. ... Respondent

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 03.03.2021 passed in
W.P.No.4872 of 2021 and allow the Writ Petition.

PRAYER in W.P.No.4872 of 2021 : Writ Petition is filed under
Article 226 of the constitution of India, to issue a writ of
certiorarified Mandamns, calling for the records pertaining to
communication in Na.Ka.No.432/2021/pa dated 09.02.2021 issued by
the Sub Registrar, Joint No.I, Mayiladuthurai, and quash the
same as illegal and arbitrary and consequently direct the Sub
Registrar, Joint No.1, Mayiladuthurai to Register the sale
certificate dated 30.11.2020 issued by the Bank in favour of the
Auction purchaser Mr.Neelakandan.

For Appellant : Mr.S.Sethuraman

For Respondent : Mr.Richardson Wilson
State Government counsel

W E B J U D G M E N T
(Judgment of the court was made by N.KIRUBAKARAN.J.,)
The matter was heard through "Video Conference".

2.This Appeal has been preferred against the order passed by
the Learned Single Judge refusing to quash the order passed by
the registering authorities by which the registration of sale
certificate of the Appellant / Auction purchaser has been
declined.

3.It is seen from the records that the Appellant lent loan to M/s.Sri Srinivash Timber Traders on getting a security of Flat No.S3, 2nd Floor, Balaji Nestele, Ward No.11, Mayuranathar South Car Street, Mayiladuthurai Taluk, Nagapattinam District by way of a mortgage dated 22.11.2018. However, the said borrower failed to repay the amount. Therefore, the Appellant brought the property for auction under the provisions of Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. One Mr.R.Neelakandan was the successful bidder for a sum of Rs.33,51,000/-. The said amount was paid by the auction purchaser and the sale certificate was issued on 30.11.2020.

4.When the sale certificate was produced before Sub-Registrar, Joint No.1, Mayiladuthurai, he refused to register the said document stating that there is already an attachment order dated 25.04.2019 passed by the I Additional District Judge, Thoothukudi. The said order was challenged before the Learned Single Judge. However, the Learned Single Judge refused to quash the same and had directed the authorities to go through the order of this Court in W.P.No.9802 of 2020 dated 29.07.2020 passed in the case of "Tamil Nadu Mercantile Bank Limited, rep. by its Authorised Officer Vs. The Sub Registrar, Kancheepuram", ignoring the Judgment of the Division Bench of this Court passed in W.P.(MD) Nos.6976 and 1101 of 2021 dated 29.01.2021. The said order of the Learned Single Judge is challenged by way of this Appeal.

5.Heard Mr.S.Sethuraman, Learned Counsel for the Appellant and Mr.Richardson Wilson, Learned State Government Counsel appearing for the Respondent.

6.A perusal of the records would show that the Appellant has lent loan to the borrower viz., M/s.Sri Srinivash Timber Traders on getting a security of Flat No.S3, 2nd Floor, Balaji Nestele, Ward No.11, Mayuranathar South Car Street, Mayiladuthurai Taluk, Nagapattinam District by way of a mortgage dated 22.11.2018. Since there was a failure on the part of the borrower to repay the amount regarding supply of goods from third party, an attachment order has been passed in an Application in I.A.No.98 of 2018 in O.S.No.91 of 2018 on the file of the I Additional District Judge, Thoothukudi. Subsequently, based on the attachment order, the registering authority refused to register the sale certificate of the Auction purchaser.

7.It is a well settled law that bank is a secured creditor and right of the bank will prevail over other transactions. Moreover, the borrower mortgaged the property in favour of the Appellant as early as on 22.11.2018 and by following the Securitisation And Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002, the property was auctioned.

8. When that is the position, the registering authority has got no right to decline registering the document. In a similar circumstances, in the Judgment of the Division Bench of this Court passed in W.P.(MD) Nos.6976 and 1101 of 2021 dated 29.01.2021, it has been held as follows:

"13. Therefore, looking from any perspective, we are of the view that the petitioner Bank cannot be denied the relief as sought for. In such view of the matter, both the writ petitions stand allowed. The first respondent in both the writ petitions are directed to register the sale certificates issued by the petitioner Bank in favour of the respondents 7 & 8 in W.P.(MD)No.6976 of 2020 and the 7th respondent in W.P.No.(M.D)No.1101 of 2021. Consequently, the encumbrance / attachment entry made on the file of the first respondent with respect to the properties, which are subject matter of the two mortgage deeds and the subject matter of these writ petitions, are directed to be deleted by the first respondent. The aforesaid exercise shall be carried out within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed."

9. Further, a similar Judgment has been passed by the Division Bench of this Court in W.P.No.11965 of 2021 dated 19.05.2021, quashing the order of the Registering authority at the instance of the Petitioner. It is not known as to why, in spite of the settled position of law and various Judgments obtained by the Appellant, the Registering authorities for the reasons best known to them, driving the Appellant to get this Order from this Court. Therefore, order passed by the Learned Single Judge is set aside and the order passed by the Respondent in Na.Ka.No.432/2021/pa dated 09.02.2021 is quashed and a direction is given to the Respondent to register the sale certificate and release the document within a period of two weeks from the date of receipt of a copy of this order.

10. With the above directions, this Writ Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ay/rri

To
The Sub-Registrar-Joint No.1
Office of the Sub Registrar,
Mayiladuthurai.

+1CC to Government Pleader Sr.No.27610

W.A.No.1391 of 2021

LN(CO)
A.SK 12.07.2021



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