

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29..04..2021

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.10811 of 2021

M/s. Housing Development Finance Corporation Ltd.,
Rep. by its Authorized Officer,
HDFC House -29, Kamaraj Road,
Near Circuit House,
Coimbatore 641 018. Petitioner

-Versus-

1.The Sub Registrar,
Office of the Sub Registrar Sulur,
Old No.113, 114, New No.423,
Tiruchy Road, Sulur 641402.

2.Mrs.Sasi.N.
(No.15A, Valluvar Street,
Palladam,
Ichipatti P.O., Tiruppur 641 668.)

3.M.Dharmaraj

4.D.Saranraj

5.D.Selvi

... 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 1st respondent relating to Refusal Check Slip with Refusal No. RFL/Sulur/10/2021 dated 16.04.2021 and to quash the same and consequently direct the 1st respondent to register the sale certificate dated 26.03.2021 issued by the petitioner in favour of the 2nd respondent Mrs.Sasi.N.

For Petitioner : Mr.K.J.Parthasarathy

For Respondent(s) : Mr.T.M.Pappiah, Spl.G.P. for
R1

Notice as against RR2 to 5
dispensed with

ORDER

[This matter has been heard through video conference]

This writ petition has been filed challenging the check slip issued by the 1st respondent - Sub Registrar, Sulur, refusing to register the sale certificate dated 26.03.2021 presented by the petitioner for registration on the ground that there is an order of attachment of the property before judgement being in force.

2. The petitioner is a non banking financial company. The case of the petitioner is that respondents 2 to 5 herein had obtained housing loan on 28.07.2017 to the tune of Rs.99,02.305/- from the petitioner financial institution. The respondents 2 to 5 had also created equitable mortgage (security interest) over the properties in favour of the petitioner by depositing the title deeds on 28.07.2017 which was duly registered on the same date before the Office of the Sub Registrar, Sulur. Thereafter, as the borrowers failed to repay the loan amount, their loan account was declared as Non Performing Assesses (NPA) and a proceedings was also initiated under The Securitisation and on Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the SARFAESI Act") and possession was also taken on 11.10.2019. Subsequently, the property was brought for auction sale on 03.03.2021, ultimately it was sold to the 2nd respondent and a sale certificate was also issued in his favour on 26.03.2021. When the above sale certificate was presented for registration on 16.04.2021, the 2nd respondent refused to register the same on the ground that the secured assets were subjected to an order of attachment before judgement in I.A.No.2 of 2020 in O.S.No.79 of 2020 on the file of the Additional District Court, Coimbatore. Challenging the same, the present writ petition has been filed.

3. Considering the relief sought for in the writ petition and the nature of the order which is proposed to be passed in this writ petition, notice to the private respondents is not necessary and therefore, the notice as against the respondents 2 to 5 is dispensed with.

4. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the 1st respondent.

5. The learned counsel for the petitioner would submit that the equitable mortgage was created by depositing the title deeds relating to the property as early as on 28.07.2017 whereas the order of attachment before the judgement was passed by the civil court only on 08.03.2020 and therefore, the same will not bind on the petitioner, who is secured creditor.

6. The learned counsel for the petitioner 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. Further, according to the learned counsel, the suit is a collusive one filed by the unsecured creditor at the instigation of the 3rd respondent herein and the unsecured creditor had managed to get an ex parte order of attachment before judgement without impleading the petitioner as a party to the proceedings and therefore, the order of attachment will not bind on the petitioner.

7. Per contra, the learned Special Government Pleader appearing for the 1st respondent would contend that the property for which sale certificate has been issued is subjected to an order of attachment by a civil court and an Encumbrance has also been made in the register. In those circumstances, the 1st respondent was absolutely right in refusing to register the sale certificate and such order cannot be termed as illegal. Therefore, the learned Special Government Pleader prayed this court to sustain the order passed by the 1st respondent and to dismiss the writ petition.

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 26.03.2021 issued in favour of the 2nd respondent.

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 check slip impugned in this writ petition refusing to register the sale certificate by the 1st respondent on the ground that there is 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 refusal check slip impugned in this writ petition is quashed and the 1st 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 Sub Registrar, Office of the Sub Registrar Sulur, Old No.113, 114, New No.423, Tiruchy Road, Sulur 641402.

+1cc to Mr.K.J.Parthasarathy, Advocate SR.No.26197

+1cc to Government Pleader SR.No.26747

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

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