



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.NO.13785 OF 2021

AND

W.M.P.NO.14633 OF 2021

M/s. Repco Home Finance Ltd.,
Represented by its Authorised Officer,
Mr.Palpandi,
having Corporate Office at
3rd Floor, Alexander Square,
Old No.34 & 35, NO.2,
Sardar Patel Road, Guindy,
Chennai 600 032.

.. Petitioner

Vs.

1. T.M. Swaminathan
2. Divya
3. Manjula

4. The Sub-Registrar,
Sub-Registrar Office,
Ganapathy,
Coimbatore.

5. M/s. Sriram Transport Finance
Company Ltd.,
Rep. by Authorised Representative
T. Senthilkumar,
Old No.71/46, New No.7/68,
Sree Saravana Bhavan Towers,
First Floor, S.R.P.Hills Opposite,
Sivanandapuram, Saravanapatti,
Coimbatore 641 035.

6. M. Saravana Kumar
7. S. Revathi

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other appropriate Writ or order or direction in the nature of Writ to call for the records relating to the



attachment entry on the file of the Sub-Registrar, Ganapathi, Coimbatore registered as document in C.O.No.32 of 2019, dated 27.09.2019 and consequential letter, dated 25.01.2021 refusing to delete the adverse encumbrance entry and quash the same and issue a consequential direction directing the 4th respondent to delete the said adverse encumbrance entry, dated 27.09.2019 and register the sale certificate, dated 12.03.2021, executed by the petitioner in favour of auction purchasers 6th and 7th respondents herein by invoking provisions of SARFAESI Act in respect of the subject property upon payment of stamp duties and registration chargers within the period fixed by this Court.

For Petitioner .. Mr. A.Ilangovan
For R4 .. Mr. Yogesh Kannadasan
Government Advocate

ORDER

The writ petition has been filed in the nature of certiorarified mandamus seeking to delete the order of attachment which had been entered pursuant to the order obtained by the fifth respondent herein.

2. Straightway it can be stated that such a relief cannot be granted. However, the learned counsel for the petitioner, on the other hand, seeks a mandamus to register the sale certificate dated 12.3.3021 executed by the petitioner in favour of respondents 6 and 7 by invoking the provisions of the SARFAESI Act.

3. The petitioner herein/REPCO Home Finance Limited had lent money to the first and second respondent. There was a default in repayment of the loan. In view of the same, SARFAESI proceedings had been initiated. Thereafter, after going through the entire process, the petitioners had thought to sell the property and they had issued the sale certificate in favour of respondents 6 and 7. However, this was refused to be registered by the fourth respondent on the ground that the order of attachment obtained by the fifth respondent is already there and is being reflected in the encumbrance certificate.

4. The petitioner is a secured creditor and naturally, any sale certificate presented by the petitioner has to be registered by the fourth respondent. The fifth respondent has also to be in the queue with respect to the recovery of money, but, the status of the petitioner as secured creditor cannot be denied or disputed. In this connection, I may also place reliance on the decision of a Division Bench of this court reported in The Assistant Commissioner (CT), Anna Salai-III, Assessment Circle v. The Indian Overseas Bank and others (2017)



1 MLJ 769) wherein a Division Bench had answered the question in favour of the financial institution, which is a secured creditor having the benefit of mortgage of property.

5. Therefore, an obligation is placed on the fourth respondent herein to register the sale certificate and a direction is issued to the fourth respondent to register the sale certificate whenever presented in proper form by following due procedure and on payment of necessary stamp duty and registration charges and release the document to respondents 6 and 7 herein.

6. The writ petition is modified to one of writ of mandamus and is ordered accordingly. No costs. The connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ssk

To

1. The Sub-Registrar,
Sub-Registrar Office,
Ganapathy,
Coimbatore.

+lcc to M/S. A.Ilangovan, Advocate, SR.No.41337
+lcc to Government Pleader, SR.No.42084

W.P.No.13785 of 2021
and
W.M.P.No.14633 of 2021

KSM(CO)
PM(06/09/2021)