

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED: 19.05.2021

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. No.11965 of 2021 and
W.M.P. Nos.12727 and 12728 of 2021

Tamilnad Mercantile Bank Ltd.,
represented by its Authorized Officer,
Dr.Nanjappa Road Branch,
364, Dr.Nanjappa Road,
Coimbatore - 641 018. Petitioner

versus

1.The Joint I Sub-Registrar,
(In the Cadre of District Registrar),
District Registrar Office,
Coimbatore.

2.Fayaz Ahmed Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent in No.211/P1/2021 dated 21.04.2021, quash the same and direct the first respondent to register the Sale Certificate/Deed dated 17.02.2021 issued by the petitioner to and in favour of the second respondent in respect of the petition schedule mentioned property within a time frame.

For petitioner : Mr.V.Chandrasekaran

For Respondents : Mr.R.Neelakandan (for R1)
Government Advocate.

ORDER

(Order of this Court was delivered by Dr. ANITA SUMANTH,J.)

Heard Mr.V.Chandrasekaran, learned counsel for the petitioner and Mr.R.Neelakandan, learned Government Advocate, who accepts notice for the Joint Sub Registrar-I, Coimbatore, arrayed as 1st respondent. Respondent No.2, is an individual,

the successful auction purchaser. However, in the light of the order that we pass hereinbelow, no notice to R2 is necessary as the relief sought by the writ petitioner, in effect, enures to R2.

2.The petitioner ('Bank') had initiated action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'), against defaulting borrowers who had availed of financial assistance from it. Details of the borrower have not been supplied and Mr.R.Neelakandan, learned Government Advocate would insist that the borrower should have been arrayed as well. However, we find this unnecessary, bearing in mind the admitted position that the borrower is in default, as well as the relief sought for in this writ petition.

3. On account of defaults in repayment, property admeasuring an extent of 1392 sq.ft in SF No.219A/5B2, Site No.19, Door No.21/B, Vinayagar Koil Street, Gandhiji Road, Sundarapuram, Kurichi Village, Coimbatore, ('property/property in question') that had been offered as collateral and mortgaged to the bank as early as on 28.06.2016, had been brought to auction and sold in line with the provisions of the SARFAESI Act. Sale certificate dated 17.02.2021 has been issued by the petitioner in favour of the 2nd respondent, consequent upon the 2nd respondent being the successful bidder in the public auction conducted on 19.01.2021.

4. At that juncture, when the petitioner sought registration of the sale certificate, an order has come to be passed by R1 on 21.04.2021 referring to an attachment upon the property consequent to an interim order dated 05.12.2019 passed in I.A.101 of 2018 in Arbitration Case No.PR/SF/64/2018 received by R1 on 11.12.2019. Again, though there are no details supplied as regards the parties in the arbitration, such details may not be necessary in light of the relief sought for and the order that we are now passing.

5. What is relevant is that the attachment consequent upon the interim order was only by way of an interim measure and subsequent to the mortgage created by the petitioner. While the attachment by way of the interim order pending arbitration is dated 05.12.2019, the mortgage by deposit of title deeds in favour of the petitioner is dated 28.06.2016.

6. The provisions of Section 31-B of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI Act) particularly Section 31-B thereof, would protect the interests of secured creditors, Section 31 - B reading thus:

31-B Notwithstanding anything contained in any other law for the time being in force, the rights of

Secured Creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority.

Explanation- For the purpose of this Section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where Insolvency or Bankruptcy proceedings are pending in respect of Secured Assets of the borrower, priority to Secured Creditors in payment of debt shall be subject to the provisions of that Code.

7. The statutory mandate of Section 31-B is echoed in Section 26E of the SARFAESI Act as well, extracted below:

26E. Priority to Secured Creditors:- Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Explanation: For the purposes of this Section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the Borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

8. With the insertion of Section 31-B in the RDDBFI Act and Section 26E in the SARFAESI Act, the rights of secured creditors override all other statutory dues including crown debts and we thus find no justification whatsoever for the impugned order to have been passed rejecting the request for lifting of attachment and registration of sale certificate, citing an earlier attachment order consequent upon an interim order of attachment passed by the Arbitrator. Moreover, the attachment by the arbitrator is dated 05.12.2019, long after the mortgage effected in favour of the petitioner, dated 28.06.2018.

9. A Full Bench of this Court in The Assistant Commissioner (CT), Anna Salai-III Assessment Circle vs. Indian Overseas Bank and Others [(2017) 1 MLJ 769], while considering the rights of the secured creditors qua the rights of the Commercial Taxes department, has referred to Section 31-B of the RDDBFI Act

stating that the rights of the secured creditors in terms of Section 31-B will override all other debts. This decision has been followed in several subsequent decisions of this Court.

10. In a recent decision rendered by a Division Bench of this Court sitting at Madurai in W.P.(MD) Nos.6976 and 1101 of 2021 (Common Order dated 29.01.2021), the same petitioner as before us had sought an identical prayer in regard to the registration of sale certificate in very similar circumstances to those before us now. The Division Bench, considering several decisions on the issue, and citing the provisions of Section 31-B of the RDDBFI Act, concluded the issue in favour of the petitioners.

11. Additionally in that case, since the company who was a party to the arbitration was also arrayed as a respondent, a direction was issued to the Sub- Registrar to the effect that the encumbrance created consequent upon the arbitration award be deleted. In this case, such a direction has not been sought, and rightly so, as the details of arbitration and the parties involved are stated to be unavailable.

12. In the light of the discussion as aforesaid, the impugned order is set aside and a direction issued to the Joint I Sub-Registrar/1st respondent to register the sale certificate forthwith and in any event, within a period of two weeks from today. As regards the subsisting attachment qua the arbitration award, the petitioner may take such action as it may deem fit to have the same deleted, in accordance with law.

13. This writ petition is allowed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars/gya

To

The Joint I Sub-Registrar,
District Registrar Office,
Coimbatore.

+1cc to the Government Pleader, S.R.No.27267

W.P. No.11965 of 2021 and
W.M.P. Nos.12727 and 12728 of 2021

PVS (CO)
CB(12/07/2021)



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