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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P.Nos. 12707, 12711 & 12713 of 2021
and

W.M.P. Nos. 13501, 13502, 13505, 13506,
13507 & 13508 of 2021

M/s. ENES Textile Mills Limited,
rep. By its Managing Partner
Mrs.N.Sumathi

... Petitioner in all W.P.s

Versus

1. The Sub-Registrar,
Sulur, Old No.113, 114,
New No.423, Tiruchy Road,
Sulur, Coimbatore-641 402.
2. State Bank of India,
Stressed Assets Management Branch,
Raja Plaza, 1st Floor, No.1112,
Avinashi Road,
Coimbatore-641 037.

... Respondents in all W.P.s

PRAYER in W.P. No.12707 of 2021 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 22.03.2021 made in RFL/SULUR/6/2021 on the file of the 1st respondent, quash the same and consequently direct the 1st respondent to register the sale certificate dated 12.01.2021 issued by the 2nd respondent to the petitioner in respect of the property being 2 acres of industrial land in Survey No.789/3A1B in Karumanthampatti Village, Sulur Taluk, Sulur District, Coimbatore.

PRAYER in W.P. No.12711 of 2021 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 22.03.2021 made in RFL/SULUR/5/2021 on the file of the 1st respondent, quash the same and consequently direct the 1st respondent to register the sale certificate dated 12.01.2021 issued by the 2nd respondent to



the petitioner in respect of the property being 2 acres of industrial land in Survey No.789/3A2 in Karumanthampatti Village, Sulur Taluk, Sulur District, Coimbatore.

PRAYER in W.P. No.12713 of 2021 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 22.03.2021 made in RFL/SULUR/7/2021 on the file of the 1st respondent, quash the same and consequently direct the 1st respondent to register the sale certificate dated 12.01.2021 issued by the 2nd respondent to the petitioner in respect of the property being 1.50 acres of industrial land in Survey No.789/3B in Karumanthampatti Village, Sulur Taluk, Sulur District, Coimbatore.

For Petitioners in all W.P.s : Mr.T.Saikrishnan

For Respondents in all W.P.s : Mr.Yogesh Kannadasan,
Govt. Advocate

O R D E R

(The case has been heard through video conference)

These Writ Petitions have been filed challenging the order passed by the 1st respondent Sub-Registrar refusing to register the sale certificate on the ground that the properties have been attached by a civil court and the encumbrance has been made in the property.

2. The grievance of the petitioner is that, the petitioner is the auction sale purchaser of the property under the SARFAESI Act and a sale certificate was also issued by the 2nd respondent. Subsequently, the petitioner wants to register the sale certificate. In the meantime, some third party said to have filed a suit against original owner of property and obtained an order of attachment before judgment. Based on that, the 1st respondent Sub-Registrar is refusing to register the document. Challenging the same, the present Writ Petition has been filed by the petitioner.

3. Mr. T.Saikrishnan, learned counsel appearing for petitioner would submit that the issue involved in these Writ Petitions is no more res integra. This Court has already held that the order of attaching the property before judgment is not a bar for registering the document in a civil court in W.P.Nos.9607 and 10811 of 2021 dated 29.04.2011 respectively. The relevant portion of the order reads as follows :-

"8. The issue involved in these Writ Petitions 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 judgment in Central Bank of India, rep. By its Authorised Officer and Chief Manager, Regional Office, Madurai in W.P.No.10724 of 2018 dated 06.12.2018 following a judgment 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 realise 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 judgment 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 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 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 judgments 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



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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."

4. In the light of the above settled legal position, this Court is of the considered view that orders impugned in these Writ Petitions refusing to register the sale certificate by the 1st respondent on the ground that there has been an order attaching the property before judgment is not sustainable in the eye of law and therefore, it is liable to be quashed.

5. In the result, these Writ Petitions are allowed and the orders impugned in these Writ Petitions are 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. These Writ Petitions are allowed accordingly with the above directions. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub-Registrar,
Sulur, Old No.113, 114,
New No.423, Tiruchy Road,
Sulur, Coimbatore-641 402.
2. The Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
Raja Plaza, 1st Floor, No.1112,
Avinashi Road, Coimbatore-641 037.



+3ccs to Mr.T.Saikrishnan, Advocate, S.R.No.28708, 28709 and 28710

+1cc to the Government Pleader, S.R.No.29010.

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W.P.Nos. 12707, 12711
& 12713 of 2021

SS (CO)
RLP (19/07/2021)