BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.02.2021

PRNOUNCED ON: 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

W.P(MD) No.540 of 2021

Central Bank of India,
represented by its Chief Manager,
Stressed Assent Management Branch,
D.No.48/49, Montieth Road,
Ground Floor,
Egmore, Chennai - 600 008,
Chennai District. .. Petitioner

Vs

1.The Sub Registrar,
2nd Joint Sub Registrar Office,
Palani, Dindigul District.

2.The Assistant Commissioner (ST)(FAC),
Commercial Tax Office - I Circle,
Palani, Dindigul District.

3.The Assistant Commissioner (ST)(FAC),
Commercial Tax Office,
Thudiyalur Circle, Coimbatore,
Coimbatore District.

4.M/s.Gugan Paper Mills(P) Ltd,
represented by its Managing Director P.Nagarajan
No.9/45, PMP Vasantham, V.K.L.Nagar, Main Road,
Thidiyalur,
Coimbatore - 641034,
Coimbatore District.

5.M/s.Hitech Bio Products,
represented by its Partner D.Gnanavadivel,
No.10/20F, Reddy Street,
Virugambakkam,
Chennai - 600 092. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the refusal check slip, dated 28.12.2020 in Refusal Number : RFL/2nd Joint Sub Registration, Palani/38/2020 of the 1st respondent and quash the same and direct the 1st respondent to register the sale certificate dated 28.12.2020 executed in the name of the 5th respondent within stipulated time.

For Petitioner : Mr.B.Rajesh Saravanan
For R1 to R3 : Mr.k.Sathiya Singh
Additional Government Pleader

ORDER

The petitioner herein is a nationalised bank is before this Court, being aggrieved over by the refusal of the 1st respondent in registering the sale certificate issued in favour of the 5th respondent. The sale certificate, dated 28.12.2020 is exhibited in the name of the 5th respondent.

2.The brief facts of the case are stated hereunder:

(i) The 4th respondent is a Private Company Limited and it obtained loan from the petitioner bank to the tune of Rupees Twelve Crores in the year 2010. Subsequently, the said account became non performing asset and consequently, the account was migrated for recovery of the loan amount to the petitioner branch at Chennai.

(ii) At the time when the 4th respondent obtained loan, it had deposited the original title deeds and created equitable mortgage deed in regard to the subject properties. The 4th respondent had also executed a registered memorandum of deposit of title deeds, in favour of the petitioner on 13.05.2010.

(iii) The 4th respondent had defaulted in payments and the loan amount had been declared as non performing asset. Therefore, the petitioner bank initiated action under the provisions of the SARFAESI Act, which ultimately culminated in auction sale of the properties mortgaged by the 4th respondent company with the petitioner bank.

(iv) In the e-auction conducted on 05.10.2020 the properties were purchased by the 5th respondent and e-auction sale certificate had been issued to the 5th respondent on 18.11.2020 by the bank. According to the bank that while the sale certificate in favour of the 5th respondent, dated 28.12.2020 was submitted before the 1st respondent with necessary stamp duty and registration fees, at this stage, the 1st respondent refused to register the sale certificate stating that he had received objections from the 3rd respondent namely, Assistant Commercial Tax Officer (ST)(FAC), Commercial Tax Officer, Thudiyalur Circle, Coimbatore and only on obtaining no objection from the 3rd respondent, the sale certificate would be registered.

(v) According to the petitioner that the mortgage had been created earlier to the attachment letter of the 3rd respondent and therefore, the bank is entitled to register the sale certificate, not withstanding the attachment order of the 3rd respondent.

(vi) According to the petitioner bank that the refusal of the

1st respondent is contrary to the legal principles enunciated by the Courts consistently and therefore, the petitioner is before this Court challenging the refusal slip issued by the 1st respondent.

3.The learned Counsel appearing for the petitioner bank submitted that the issue, whether the sale certificate issued under SARFEASI proceedings can be refused for registration by the registering authority, is no more *res integra*, as this Court has held that secured creditor like the petitioner bank will have priority over the assets. In fact Hon'be Full Bench of this Court in ***B.Suresh Vs State of Tamil Nadu and others*** reported in ***2006 [4] CTC 805*** has held in favour of the petitioner bank that the bank will have priority over the assets.

4.The learned Counsel would draw the attention of this Court to a decision rendered in W.P(MD)No.14168 of 2018, dated18.12.2018, the detailed conclusion by the Division Bench was relied on in paragraph Nos. 3 to 7, which are extracted hereunder.

> *"3. We have heard the submissions of the learned counsel for the parties and perused the materials available on record.*
>
> *4. Similar issue came up for consideration before this Court in* ***W.P.(MD).No.10724 of 2018****, dated 06.12.2018,* ***Central Bank of India Vs the Joint Sub Registrar No.1****, wherein this Court has held as follows*
>
> > *7. In* ***Assistant Commercial Tax Officer (CT) v. Indian Overseas Bank*** *reported in* ***2016 (6) CTC 769****, the Full Bench of this Court has held as under:*
> >
> > *... 2. We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principal Act, which reads as under:-*
> >
> > *31B. 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."*

3. There is, thus, no doubt that the rights of a secured creditor to realise 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. This section introduced in the Central Act is with "notwithstanding" clause and has come into force from 01.09.2016.

4. The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.

5. The aforesaid would, thus, answer question (1) in favour of the financial institution, which is a secured creditor having the benefit of the mortgaged property.

6. In so far as question (b) is concerned, the same is stated to relate only to auction sales, which may be carried out in pursuance to the rights exercised by the secured creditor having a mortgage of the property. This aspect is also covered by the introduction of Section 31B, as it includes secured debts due and payable to them by sale of assets over which security interest is created."

7. We, thus, answer the aforesaid reference accordingly."

8. For the sake of convenience, Section 26-E of the SARFAESI Act, is extracted hereunder:

"26E. 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, 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."

5. 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.*

6. 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 20.03.2018 issued in favour of the fifth respondent.

7. Accordingly, this writ petition is allowed and the impugned order passed by the first respondent is quashed and consequently, the first respondent is directed to register the sale certificate dated 20.03.2018 issued by the petitioner bank in favour of the fifth respondent, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed."

5.The learned Counsel appearing for the petitioner also relied on the latest judgment of a learned Single Judge of this Court in ***W.P.No.17620 of 2019***, dated 18.08.2020, wherein the learned Judge of this Court in similar circumstances, allowed the claim of the bank there by indicating yet another earlier order passed by this court in W.P.No.1680 of 2020, dated 03.08.2020.

6.The summation of the learned Singe Judge from the earlier order in ***W.P.No.17620 of 2019***, dated 18.08.2020 from paragraph Nos.4 to 10 are extracted here under:

(4)The issue involved in the present writ petition, is directly covered by the earlier order passed by this Court dated 03.08.2020 in WP.No.1680 of 2020. The relevant portion of the order is extracted hereunder:-

"12.It is now a well settled principle of law that the Bank has a priority over all the debts and the Government dues. The Hon'ble Full Bench of this Court

in the case of ***The Assistant Commissioner [CT] Vs. Indian Overseas Bank*** *reported in* ***2016 [6] CTC 769*** *has held that on a conjoint reading of Section 26[E] of the SARFAESI Act and Section 31[b] of the Recovery of Debt Due to Bank and Financial Institutions Act, 1993, it is the secured creditor who has a priority to realise the debt over all the other Government dues and unsecured creditors. Thus, the first respondent Bank will have a priority when it comes to realising the debt of a secured creditor."*

(5)It is clear from the above order that a secured creditor like the petitioner Bank will have the priority over the assets. This issue has also been settled by a Full Bench judgment of this Court in ***B.Suresh Chand V. State of Tamil Nadu and Others*** *reported in* ***2006 [4] CTC 805.***

(6)In view of the above settled position of law, the reason for refusing to register the document by the 1st respondent is not sustainable and the same requires interference of this Court.

(7)Accordingly, the impugned Rejection Letter of the 1st respondent dated 11.04.2019 is quashed.

(8)The learned Special Government Pleader appearing for the 1st respondent submitted that an appeal has been filed before the Hon'ble Apex Court against the judgment of the Full Bench and the same is pending. He further submitted that there is an order of status quo passed by the Hon'ble Supreme Court of India.

(9)This was also considered in an earlier order passed by this Court in WP.No.26749 of 2018 dated 22.01.2019 and paragraph No.6 of the said order is extracted hereunder:-

6.The said Full Bench Court decision was taken up on Special Leave Petition, wherein it was ordered that status quo to be maintained by the parties. In the absence of any order of stay, the registration of the Sales Certificate cannot be refused. It is also stated that WP Nos.9750, 11199, 17829 of 2011 and 5382 of 2015 are pending, which are filed by the Government, where the question of the priority over the property was to be decided and the same is pending. As on date, the decision of the Full Bench is very clear that the priority right over the secured debt finds favour only with the Bank having the benefit of the mortgage properties. Therefore, the Registering Authority cannot refuse to register the sale certificate, if it is presented in the manner known to law and the same is otherwise in order. It is also stated that the sale *proceeds is not appropriated and the same is with the Bank."*

(10)It is, therefore clear that even on an earlier occasion, the filing of the appeal before the Hon'ble Supreme Court of India was brought to the notice of the learned Single Judge and since there was no order of stay, this Court has consistently passed orders to the effect that there is no bar for the concerned Sub Registrar to receive the document and register the same. This Court, therefore, does not want to take a different view in this writ petition."

7.The learned Counsel submitted that in view of the above rulings, the 1st respondent is bound to act accordingly and in that view of the matter, refusal by the 1st respondent is *per se* illegal and liable to be interfered with.

8.Mr.K.Sathiya Singh, learned Additional Government Pleader appearing for the 1st respondent would fairly concede the legal position that the issue in this writ petition is covered by the decisions cited supra.

9.In view of the legal position cited above, this Court does not think that there is any scope for adjudication. In all fours the issue has been covered by several rulings of this Court, in view of the Hon'ble Full Bench of this Court, followed by the Hon'ble Division Bench of this Court and a single Judge.

10.In the light of the above discussion, the writ petition is allowed. The impugned refusal check slip, dated 28.12.2020 in Refusal Number : RFL/2nd Joint Sub Registration, Palani/38/2020 of the 1st respondent is hereby set aside. The 1st respondent is directed to register the sale certificate dated 28.12.2020 submitted by the petitioner bank, if the same is otherwise in order, within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (Cs-I)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The Sub Registrar,
2nd Joint Sub Registrar Office,
Palani, Dindigul District.

2.The Assistant Commissioner (ST)(FAC),
Commercial Tax Office - I Circle,
Palani, Dindigul District.

3.The Assistant Commissioner (ST)(FAC),
Commercial Tax Office,
Thudiyalur Circle, Coimbatore,
Coimbatore District.

+1 CC to M/s.SPL GP (SR-4883[F] dated 15/02/2021)

+1 CC to M/s.T.SEKAR, Advocate (SR-5051[F] dated 15/02/2021)

W.P(MD) No.540 of 2021
11 .02.2021

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