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W.P. (MD) Nos. 6976 of 2020 & 1101 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE **M.M. SUNDRESH**

AND

THE HONOURABLE MRS. JUSTICE **S. ANANTHI**

W.P. (MD) Nos. 6976 of 2020 & 1101 of 2021

and

W.M.P. (MD) Nos. 6403 of 2020 & 956 of 2021

W.P. (MD) No. 6976 of 2020:

Tamilnad Mercantile Bank Limited,
Chainthamani Branch,
248-B, Rekha Towers,
Kamarajar Salai,
Madurai - 625 009.
Rep. by the Chief Manager / Authorized Officer
Mr.P.Ramesh

: Petitioner

Vs.

1.The Joint I Sub Registrar,
O/o. the Joint I Sub Registrar,
Madurai South,
Madurai.

2.M/s.Tough Bags,
Rep. by its Proprietor,
L.Lalitha Ramalingam

3.Lalitha Ramalingam

4.R.Palaniappan

5.R.Thirumalaiappan

6.Sakthimala

7.M.Udayarajan

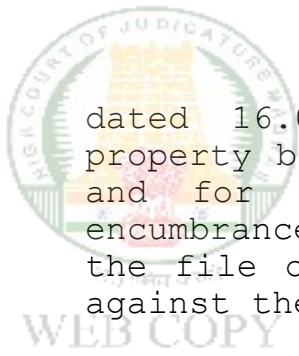
8.Hemalatha

9.Shriram Transport Finance Company Ltd.,
3rd Floor, Shop No.74, AB A.D.R. Towers,
Theni Main Road, P & T Nagar Main Road,
Kalavasal, Madurai - 625 016.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the Joint I Sub Registrar, Madurai South, Madurai to register the Sale Certificate

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dated 16.03.2020 issued in respect of the schedule mentioned property by the petitioner bank in favour of the respondents 7 & 8 and for a consequential direction to efface / delete the encumbrance attachment entry dated 20.03.2019 in Doc.No.24/2019 on the file of the Joint I Sub Registrar, Madurai South, Madurai, as against the schedule mentioned property.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.K.Sathyasingh,
Additional Government Pleader for R.1

Mr.Babu Rajendran for R.2 to R.6

Mr.R.Gowri Shankar for R.7 & R.8

Mr.H.Velavadhas for R.9

W.P. (MD) No.1101 of 2021:

Tamilnad Mercantile Bank Limited,
Chainthamani Branch,
248-B, Rekha Towers,
Kamarajar Salai,
Madurai - 625 009.
Rep. by the Chief Manager / Authorized Officer
Mr.R.Kannan

: Petitioner

Vs.

1.The Joint IV Sub Registrar,
O/o. the Joint IV Sub Registrar,
Madurai South,
Madurai.

2.M/s.V.P.R.Forms,
Rep. by its Proprietor,
R.Palaniappan

3.Lalitha Ramalingam

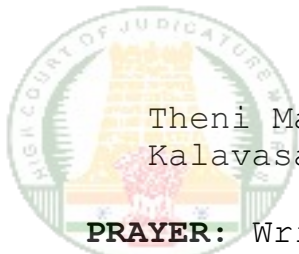
4.R.Palaniappan

5.R.Thirumalaiappan

6.Sakthimala

7.P.Karuppasamy

8.Shriram Transport Finance Company Ltd.,
3rd Floor, Shop No.74, AB A.D.R. Towers,



Theni Main Road, P & T Nagar Main Road,
Kalavasal, Madurai - 625 016.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the 1st respondent / Joint IV Sub Registrar, Madurai South, Madurai to register the Sale Certificate dated 22.09.2020 issued in respect of the schedule mentioned property by the petitioner bank in favour of the 7th respondent and for a consequential direction to efface / delete the encumbrance attachment entry dated 03.04.2019 in Doc.No.22/2019 on the file of the 1st respondent / Joint IV Sub Registrar, Madurai South, Madurai, as against the schedule mentioned property.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.K.Sathyasingh,
Additional Government Pleader for R.1

Mr.P.Balamurugan for R.7

COMMON ORDER

(Order of the Court was made by **M.M.SUNDRESH, J.**)

As both the writ petitions involve the same issue and the second respondent in W.P.(MD)No.1101 of 2021 being the sister-concern of the second respondent in W.P.(MD)No.6976 of 2020, both the writ petitions are heard together and are disposed of by way of this common order.

2. The second respondent in both the writ petitions availed credit facilities from the petitioner Bank and executed loan documents in the year 2015. It was further renewed in the year 2017. The accounts became non-performing in the year 2018. A statutory demand notice was issued by the petitioner, followed by sale notice. The properties were brought up for sale in the year 2019. The respondents 7 & 8 in W.P.(MD)No.6976 of 2020 and the 7th respondent in W.P.(MD)No.1101 of 2021 became the successful bidders. In pursuant to the payment made, sale certificates were issued. When the aforesaid respondents along with the petitioner Bank went for registration, they were accordingly denied by the 1st respondent on the ground that the 9th respondent in W.P.(MD)No.6976 of 2020, who is also arrayed as 8th respondent in W.P.(MD)No.1101 of 2021, has lent financial assistance to the private respondents, being the borrowers and on their failure to repay the amount, by complying with the terms and conditions, an Arbitrator was appointed, who passed interim orders attaching the secured assets, mortgaged in favour of the petitioner. Needless to state that these properties were mortgaged with the petitioner Bank at the time of granting loan in the year 2015, ie., on 14.10.2015. It is not in dispute that these mortgage deeds were accordingly registered.



3. The 1st respondent declined to register the sale certificates, quoting the interim order passed by the learned Arbitrator over the properties, which are subject matter of the registered mortgage deeds and the interim attachment orders, having been recorded by the 1st respondent, the request made was declined.

4. Mr. N. Dilip Kumar, learned Counsel appearing for the petitioner Bank, submitted that the provisions under the SARFAESI Act will have primacy over the proceedings in an Arbitration Tribunal. The petitioner has got nothing to do with the arbitration. The loan obtained by the private respondents coupled with the mortgage deeds executed and registered, were admittedly prior to the loan obtained from the 9th respondent in W.P. (MD) No. 6976 of 2020 / 8th respondent in W.P. (MD) No. 1101 of 2021.

5. The learned Counsel appearing for the petitioner has also made reliance upon the following judgments to buttress his submission:

- i) 2005 (7) SCC 610, in the case of **M/s. S.B.P. & Co. v. M/s. Patel Engineering Ltd and another;**
- ii) 2017 Supreme (MAD) 274, in the case of **Express Infrastructure Private Ltd., Chennai v. B.L. Kashyap & Sons Ltd., New Delhi and others;**
- iii) 2019 Supreme (SC) 1198, in the case of **M/s. Sterling Industries v. Jayprakash Associates Ltd., and others;**
- iv) W.P. (C) No. 3875 of 2017 (H) in the case of **South Indian Bank, Thrissur and another v. Sub Registrar, Ernakulam, Kochi and others** [Kerala High Court];
- v) W.P. (MD) No. 4861 of 2018 in the case of **Tamilnad Mercantile Bank Ltd., Virudhunagar v. Joint Sub Registrar No. 1, Virudhunagar and others;**
- vi) W.P. (MD) No. 19694 of 2019 in the case of **Tamilnad Mercantile Bank Ltd., Madurai v. Sub Registrar, Chockikulam SD, Madurai and others;**
- vii) W.P. Nos. 8546 of 2020, etc., batch, in the case of **M/s. Aachi Masala Foods Pvt Ltd., Chennai v. M/s. Edelwiss Assets Reconstruction Co., Ltd., Mumbai and others;**
- viii) 2006-3-L.W.-627, in the case of **D. Senthil Kumar and others v. Commercial Tax Officer, Brough Road, Erode and another;**
- ix) (2007) 1 MLJ 1, in the case of **UTI Bank Ltd., Chennai v. Deputy Commissioner of Central Excise, Chennai II Division, Chennai and another;**
- x) (2016) 6 CTC 769, in the case of **Assistant Commissioner (CT), Anna Salai - III Assessment Circle v. Indian Overseas Bank, Central Office and another;**
- xi) 2016 SCC OnLine Mad 18565, in the case of **Ansari v. Commercial Tax Officer, Koyambedu Assessment Circle, Chennai and another;** and
- xii) 2016 SCC OnLine Mad 33329, in the case of **State Bank of**



India v. Assistant Commissioner (CT), Puraswalkam Assessment Circle, Chennai.

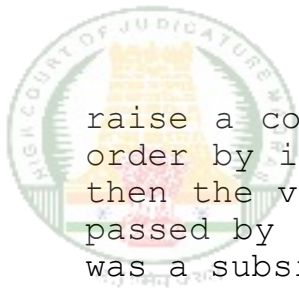
6. Mr.H.Velavadhas, learned Counsel appearing for the 9th respondent in W.P.(MD)No.6976 of 2020, who is arrayed as 8th respondent in W.P.(MD)No.1101 of 2021, submitted that the writ petition is not maintainable. The petitioner Bank indirectly seeks to set aside the interim order passed by the Arbitration Tribunal. There is a non-compliance of the mandate and the only remedy open to the petitioner is to challenge the interim order passed by the Arbitration Tribunal in the manner known to law. Thus, the petitions require to be dismissed.

7. Though the borrowers are represented by a Counsel, no valid submission is made on their behalf, as obviously they are the ones, who are responsible for the present situation.

8. Considering the similar issue, a Division Bench of this Court, in which one of us [Hon'ble Mr.Justice M.M.SUNDRESH] is a party, in a batch of writ petitions in **W.P. (MD) Nos. 8546 of 2020, etc., batch**, by order dated 09.09.2020, was pleased to hold that the proceedings under the SARFAESI Act would have primacy, especially in a case where the mortgage in favour of the Bank was earlier. The aforesaid decision was rendered after taking note of the judgment rendered by the Division Bench of the Gujarat High Court in **Bank of India v. State of Gujarat** [Manu/GJ/0130/2020] and a Full Bench judgment of this Court in **Assistant Commissioner (CT), Annasalai III Assessment Circle v. Indian Overseas Bank** [(2016) 6 CTC 769].

9. Reliance has been made on the order passed by the learned Single Judge in **Govindhji Jewat & Co., v. Rukmani Mills Ltd.**, reported in **2020 (6) CTC 313**, wherein, the aforesaid principle has been reiterated. In the said case, the learned Single Judge has held that the mortgage being earlier, it creates a right in favour of the mortgagee and therefore, even the order of attachment passed by the Civil Court will have to yield. In the said judgment also, the learned Single Judge made reliance upon the judgment of the Division Bench in **S.Senthamarai Kannan v. Chief Manager, Canara Bank, Palani Branch, Dindigul District** [CDJ 2020 MHC 2555].

10. In the case on hand also, the registered mortgage was admittedly prior. The 9th respondent in W.P.(MD)No.6976 of 2020 / 8th respondent in W.P.(MD)No.1101 of 2021 sought for an attachment in an arbitration proceedings, in which, the petitioners Bank was obviously not a party, as the transaction has got nothing to do with it. The said order was also subsequent to the mortgage created in favour of the petitioner. Now, a third party right has also been created through the sale certificate issued in favour of the auction purchasers, viz., respondents 7 & 8 in W.P.(MD)No.6976 of 2020 and the 7th respondent in W.P.(MD)No.1101 of 2021. If the 1st respondent



raise a contention that in view of the recording of the attachment order by it already, the subsequent sale deed cannot be registered, then the very act of recording the said interim order of attachment passed by the Tribunal itself ought not to have been done, as there was a subsisting mortgage on that date.

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11. The learned Counsel appearing for the 9th respondent in W.P. (MD) No. 6976 of 2020 / 8th respondent in W.P. (MD) No. 1101 of 2021 submitted that there is a procedure violation. We are not concerned with the said issue. The question for consideration is as to whether the earlier mortgage would prevail as against the subsequent interim attachment. The question of procedural violation can only be raised by the borrower, who did not do so. Therefore, the said contention has got no relevance to the case on hand.

12. The submission made on the maintainability of the writ petitions is also rejected. We are not on the merits of the order passed by the Arbitration Tribunal, which is by way of an interim measure. The question is with regard to the upholding of one's own existing right, which is prior to the loan given by the 9th respondent in W.P. (MD) No. 6976 of 2020 / 8th respondent in W.P. (MD) No. 1101 of 2021, in favour of the borrowers. Certainly, a mortgage deed creates right over the properties mentioned thereunder in favour of the mortgagee.

13. Therefore, looking from any perspective, we are of the view that the petitioner Bank cannot be denied the relief as sought for. In such view of the matter, both the writ petitions stand **allowed**. The first respondent in both the writ petitions are directed to register the sale certificates issued by the petitioner Bank in favour of the respondents 7 & 8 in W.P. (MD) No. 6976 of 2020 and the 7th respondent in W.P. (MD) No. 1101 of 2021. Consequently, the encumbrance / attachment entry made on the file of the first respondent with respect to the properties, which are subject matter of the two mortgage deeds and the subject matter of these writ petitions, are directed to be deleted by the first respondent. The aforesaid exercise shall be carried out within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

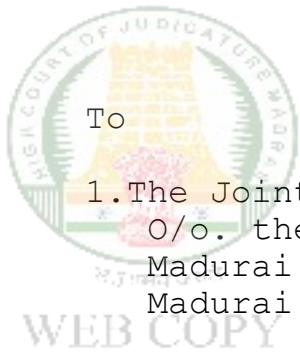
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Sub Assistant Registrar (CS)

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To

1. The Joint I Sub Registrar,
O/o. the Joint I Sub Registrar,
Madurai South,
Madurai.

2. The Joint IV Sub Registrar,
O/o. the Joint IV Sub Registrar,
Madurai South,
Madurai.

+1 CC to M/s. BABU RAJENDRAN, Advocate (SR-2534[F] dated 01/02/2021)

+1 CC to M/s. H. VELAVADHAS, Advocate (SR-2540[F] dated 01/02/2021)

+1 CC to M/s. GP (SR-2571 & 2572[F] dated 01/02/2021)

+2 CC to M/s. N. DILIP KUMAR, Advocate (SR-2487 & 2485[F] dated
29/01/2021)

+1 CC to M/s. B. Balamurugan, Advocate, in SR.No.2904.

W.P. (MD) Nos. 6976 of 2020 & 1101 of 2021

and

W.M.P. (MD) Nos. 6403 of 2020 & 956 of 2021
29.01.2021

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