



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2021

CORAM :

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.8968 of 2021

and

W.M.P. (MD)No.6760 of 2021

Tamil Nadu Mercantile Bank Limited,
Nagercoil Branch,
229-A, Charles Miller Street,
College Road,
Nagercoil-629 001,
Kanyakumari District,
represented by the Chief Manager/Authorised Officer,
Mr.A.Raja

...Petitioner

Vs.

1.The Sub Registrar Joint I,
Nagercoil,
Kanyakumari District.

2.P.T.Jeyaram
3.J.Mangalam
4.S.Nixon
5.R.Kumar

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the first respondent, the Sub-Registrar Joint I, Nagercoil, to register the Sale Certificate, dated 24.02.2021, issued in respect of the schedule mentioned property by the petitioner Bank in favour of the fifth respondent and for a consequential direction to efface/delete the encumbrance attachment entry Doc.No.11/2011, registered on 11.03.2011 on the file of the first respondent, the Sub Registrar Joint I, Nagercoil, as against the schedule mentioned property.

For Petitioner : Mr.N.Dilip Kumar
For R1 : Mr.K.Sathiyasingh
Additional Government Pleader

ORDER

This writ petition has been filed for issuance of a writ of mandamus, directing the first respondent to register the Sale Certificate, dated 24.02.2021 and to release the document in favour of the fifth respondent.



2. The case of the petitioner is that loan facilities were extended to the second respondent and the third respondent stood as guarantor for the said loan. The further case of the petitioner is that the third respondent deposited the original title deeds with respect of the subject property on 13.04.2007, at the time of availing the loan. That apart, the third respondent had also executed a registered mortgage deed, on 17.04.2007, in favour of the petitioner Bank and the document was registered before the first respondent as document No.1255/2007.

3. The respondent Nos.2 and 3 after having availed the loan, committed default and their account was classified as a Non - Performing Asset with effect from 25.01.2008. Thereafter, steps were taken by the petitioner Bank under the SARFAESI Act and ultimately the subject property was brought for auction sale.

4. The fifth respondent was the successful bidder in the public auction that was held on 25.01.2021. Upon the entire sale consideration being paid, the petitioner Bank issued a Sale Certificate in favour of the fifth respondent on 24.02.2021.

5. The grievance of the petitioner is that when the Sale Certificate was presented for registration before the first respondent, the same was refused to be registered on the ground that there was an entry regarding an order of interim attachment that is said to have been passed in a Civil suit instituted by the fourth respondent in O.S.No.125 of 2010. Aggrieved by the same, the present Writ petition has been filed before this Court, seeking for appropriate directions.

6. Heard Mr.N.Dilip Kumar, learned counsel for the petitioner and Mr.K.Sathiya Singh, learned Additional Government Pleader for the respondent No.1.

7. The issue that is involved in the present writ petition is squarely covered by various judgments passed by this Court. One such judgment was passed in W.P.(MD).No.17254 of 2020, dated 24.03.2021. The relevant portions in the judgment are extracted hereunder:

"13.The petitioner has also cited the latest judgment of this Court in the case of Tamil Nadu Merchantile Bank Limited Vs the Joint-I Sub Registrar Office, Madurai and others [W.P(MD)Nos.6976 and 1101 of 2021, dated 29.01.2021] and referred to paragraph Nos.8,9 and 13, which read as follows:

"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].

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."

14.The learned Counsel would thus submit that the issue has been settled in favour of the petitioner bank, giving no room for any adjudication in this writ petition, anymore.

15.Mr.K.Sathiya Singh, learned Additional Government Pleader appearing for the 1st respondent would submit that as far as the legal position is concerned he has nothing to add, as the Courts have consistently been holding that the secured creditor will have precedence over the other attachments. He would therefore, submit that any direction issued by this Court, the 1st respondent would comply with the same.



.....
19. In view of the catena of decisions and a few of which, referred to for the sake of brevity, this Court being bound by the decisions has to mandatorily follow the legal precedents on the subject matter. Moreover, there appears to be no dispute in regard to the factual narrative as mentioned above and therefore, this Court has to allow this writ petition without any hesitation."

8. It is now well settled that the Bank gets priority over all the other charges and that apart any order of attachment passed by the Civil Court will bind the parties therein with respect to the transaction, which is the subject matter in the said suit. Such an order of attachment will never bind the Bank to which the mortgage has already been created by the debtor.

9. In the considered view of this Court, the so called order of attachment obtained by the fourth respondent in a suit can never be put against the petitioner Bank and the first respondent will have to necessarily register the Sale Certificate.

10. In the result, this writ petition is disposed of with a direction to the first respondent to receive the Sale Certificate, dated 24.02.2021 and register the same, if it is otherwise in order and the necessary stamp duty and registration charges are paid. The document shall be released after registration in favour of the fifth respondent. The first respondent is also further directed to permit the petitioner Bank to register this order to ensure that the earlier attachment order that is reflected in the encumbrance certificate gets reversed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar(CS)

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

tsg

To

The Sub Registrar Joint I,

<https://hcservices.ecourts.gov.in/hcservices/>



Nagercoil, Kanyakumari District.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-18230[F] dated 30/04/2021)

+1 CC to M/s.GP (SR-18370[F] dated 03/05/2021)

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Order made in
W.P. (MD) .No.8968 of 2021

Dated:

30.04.2021

GS (16.06.2021) 5P 4C