



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.12833 of 2021

and

W.M.P. (MD) .No.9953 of 2021

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Canara Bank,
Represented by its Chief Manager,
Manapparai Branch,
9, Ponnagaram Dindigul Road,
Manapparai,
Trichy-621 306.

...Petitioner

Vs.

1.The Sub Registrar,
Manapparai, Trichy District.

2.Udhayakumar

3.Sannasi

4.N.S.Radhakrishnan

5.M.Anburaj

6.Hemalatha

7.Mohammed Meera

8.Ibrahim Kadhar

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order of the first respondent passed in proceedings No.140/19, dated 16.07.2021 and quash the same and consequently direct the first respondent to register the sale certificate dated 13.07.2021 in favour of the seventh and eighth respondents within the time fixed by this Court.

For Petitioner

: Mr.C.Deepak

For R-1

: Mr.M.Lingadurai

Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned proceeding of the first respondent, dated 16.07.2021 and for a
<https://hcservices.ecourts.gov.in/hcservices/>



consequential direction to the first respondent to register the sale certificate, dated 13.07.2021, executed in favour of the 7th and 8th respondents.

2.The case of the petitioner bank is that the second respondent had borrowed housing loan from the bank and he had executed a registered memorandum of deposit of title deeds, on 14.01.2015, which was registered as document No.189 of 2015 before the first respondent. The second respondent did not repay the loan and his account was declared as a non performing asset and the petitioner initiated proceedings under SARFAESI Act. Ultimately, the property that was mortgaged was brought for sale and the 7th and 8th respondents were declared as the successful bidders in the auction. The petitioner executed a sale certificate in favour of the 7th and 8th respondents and this certificate was presented for registration before the first respondent. The first respondent by virtue of the impugned proceedings, dated 16.07.2021, refused to register the sale certificate on the ground that there are existing Court attachment orders passed by the II Additional Sub Judge, Trichy, in four suits. Aggrieved by the same, the present writ petition has been filed before this Court.

3.Heard Mr.C.Deepak, learned counsel for the petitioner and Mr.M.Lingadurai, learned Government Advocate for the first respondent.

4.The issue that is involved in the present case is squarely covered by the earlier order passed by this Court in W.P.(MD). No.7897 of 2021, dated 16.04.2021. The relevant portions in the order are extracted hereunder:

"6.The issue involved in the present case is squarely covered by the earlier orders passed by this Court. It will be relevant to take note of the order passed by this Court in W.P.No.9037 of 2020, dated 10.07.2020. The relevant portions in the order are extracted hereunder:

"5.The learned counsel for the petitioner submitted that the property was mortgaged in favour of the Bank by a registered mortgage deed dated 20.03.2014, in Document No.2500/2014. The learned counsel further submitted that the alleged attachment of the property had taken place much after the property was mortgaged, only in the year 2018. The learned counsel submitted that the attachment of the property after the property has already been mortgaged in favour of the Bank, will not in any way bind the Bank and that is not a ground for rejecting the registration of the Sale Certificate.



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6.The learned counsel for the petitioner in order to substantiate his submissions relied upon the order passed by this Court in WP(MD). No.4007/2019, dated 28.02.2019 and the relevant portions of the order is extracted hereunder:

"5.The issue on hand is no longer resintegra. As rightly pointed out by the learned counsel appearing for the petitioner, in a catena of decisions this Court has held that there can be no bar for registering the sale certificate in the case of attachment order passed by the Civil Court. One such order is enclosed at Page No.25 of the typed set of papers vide order dated 24.02.2015 in W.P.No.31061 of 2012. It was held that the Bank being a secured creditor is entitled to exercise their power under the SARFAESI Act and execute the sale certificate in favour of the purchaser and that the registration cannot be refused by registering authority on the ground that an order of attachment has been obtained in respect of the property in question."

7.The learned counsel further submitted that the issue that is involved in the present writ petition is directly covered by the judgment of this Court in the case of S.Praveen Bohra vs. Joint-I Sub-Registrar (In the cadre of District Registrar) Office of the Registration of Coimbatore, No.102, State Bank Road, Coimbatore - 641 018 reported in 2016 3 LW 513.

8.Mr.T.M.Pappiah, Special Government Pleader appearing on behalf of the respondent submitted that the respondent is barred from entertaining the Sale Certificate for registration since admittedly there is an attachment order passed by a Competent Civil Court and the same is reflected in the Encumbrance Certificate. The learned counsel submitted that in the light of the order of attachment, if any registration is made, it may be construed as a violation of the order passed by a Competent Civil Court. Therefore, the learned counsel sought for the dismissal of the writ petition.

9.The issue involved in the present writ petition is no longer res-integra. It has been consistently held by this Court that the order of attachment is not a ground to refuse registration of a Sale Certificate. In fact



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this position of law has been holding the field from the year 2013 onwards and this Court in the case reported in [2013 1 CTC P 609] has also taken the very same view. The latest judgment of this Court in the case of Pegasus Assets Reconstruction Pvt. Ltd. vs. Inspector of General Registration, Government of Tamil Nadu is reported in [2019 4 CTC P 851]. Therefore, this Court need not undertake the exercise and it is enough if the settled law is once again reiterated."

7.In the present case, the mortgage was created by deposit of title deeds in the year 2013. The order of attachment came to be passed subsequently in the year 2015 and this order of attachment will not bind the bank. The order referred to supra makes this position very clear. Therefore, the first respondent cannot refuse to register the Sale Certificate based on the attachment order passed by the Civil Court in the year 2015."

5.In the present case, the mortgage by deposit of title deeds was created in the year 2015 and the attachment orders came to be passed in the year 2017. Hence, the order of attachment will not bind the bank. Therefore, based on these attachment orders, the first respondent cannot refuse to register the sale certificate executed in favour of the 7th and 8th respondents.

6.In view of the above, the impugned proceedings of the first respondent, dated 16.07.2021, is hereby quashed and there shall be a direction to the first respondent to entertain the sale certificate presented for registration and register the same, if it is otherwise in order and necessary registration fees and stamp duty are paid. The sale certificate shall be released after registration.

7.This writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM



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.

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To

The Sub Registrar,
Manapparai, Trichy District.

+1 CC to M/s.SPL GP (SR-24714[F] dated 30/07/2021)

+1 CC to M/s.C.DEEPAK, Advocate (SR-24339[F] dated 29/07/2021)

**W.P. (MD) .No.12833 of 2021
28.07.2021**

RD(9.08.2021) 5P 4C