**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 19.01.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P(MD)No.15960 of 2020**
**and**
**W.M.P.(MD)No.13362 of 2020**

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,
1st Joint Sub Registrar Office,
Tuticorin, Tuticorin District.

2.The Assistant Commissioner (ST) (FAC),
Commercial Tax Office - III Circle,
Tuticorin, Tuticorin District.

3.M/s.Prabhat Saw Mill,
Represented by its Managing Partner,
Shivgan K.Patel.

4.Shivgan K.Patel

5.Nathu K.Patel

6.Gopal K.Patel ... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned attachment order issued by the 2nd respondent in ROC.A3/1659/2017 dated 28.11.2017 and the quash the same and thereby direct the 1st respondent to register sale certificate executed by the petitioner bank.

For Petitioner : Mr.B.Rajesh Saravanan

For Respondents : Mr.K.Sathiyasingh,
Additional Government Pleader for R1
Mrs.J.Padmavathi Devi,
Special Government Pleader for R2
No appearance for R3 to R6

**ORDER**

The writ petitioner is a nationalized bank. The third respondent had availed loan from the petitioner. To secure the same, the petition mentioned mortgage was also created on 27.02.2013. It was done by registered memorandum of deposit of title deeds in favour of the petitioner. The borrowers did not repay the loan. Therefore, their account was classified as non-performing asset. The secured asserts were brought to sale by following the provisions of SARFAESI Act. On 27.12.2019, the bank had sold the mortgaged property in favour of certain auction purchasers. The bank had also issued sale certificates in favour of the purchasers on 26.02.2020. But the sale certificates could not be registered because the second respondent had attached the properties in the meanwhile and the encumbrance certificate reflects the attachment effected by the second respondent. That necessitated filing of this writ petition.

2.In this writ petition, the bank challenges the impugned attachment order issued by the second respondent on 28.11.2017. The writ prayer is strongly contested by the second respondent. The second respondent has also filed a detailed counter. The learned Additional Government Pleader appearing for the second respondent would submit that in terms of Section 24(2) of Tamil Nadu Value Added Tax Act, the department will have priority over all other claims against the property of the dealer. The learned Additional Government Pleader places strong reliance on the order dated 17.03.2020 made in W.P.No.48989 of 2006. In the said, it has been held as follows:-

> "*The Supreme Court categorically held that the charge of the Sales Tax Department is the first charge on the property and it has priority over all other charges on the property including a mortgage. The Supreme Court categorically stated that the charge operates on the entire property of the dealer including the interest of the mortgagee therein. Referring to Dattatreya Shanker Mote's case reported in (1974) 2 SCC 799, the Supreme Court held that :*
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> ".........a charge is a wider term than a mortgage. It would cover within its ambit a mortgage also. Therefore, when a first charge is created by operation of law over any property,

that charge will have precedence over an existing mortgage."

3.The learned Additional Government Pleader would therefore contend that in light of the said decision, this Court has to recognize that the Government will have priority over all other claims against the property of the dealer. Hence, he presses for dismissal of this writ petition.

4.Though there is a considerable weight in the arguments advanced by the learned Additional Government Pleader, I am not in a position to accept the same for two reasons. I posed a direct question to the learned Additional Government Pleader, which liability was prior in point of time. It is obvious that the mortgage was created way back on 27.02.2013 while the attachment order was issued only on 28.11.2017. The attachment order also pertains to tax dues of the dealer in respect of the years 2016 - 2017. Therefore, one cannot deny the fact that the claim of the second respondent against the property in question arose later in point of time. When the bank mortgage is prior in point of time, the question is whether the Commercial Tax Department ought to be allowed to claim priority.

5.As rightly pointed by the learned counsel appearing for the petitioner, this issue has been decided in quite a few decisions in favour of the bank. He drew my attention to the order dated 18.08.2020 made in W.P.No.17620 of 2019 (Tamil Nadu Mercantile Bank Ltd., Vs. The Sub Registrar, Office of the Sub Registrar, Panruti and two others.) The Hon'ble Judge in the said decision held as follows:-

> *"(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:-*
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> > *''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.*

*(11)The petitioner is directed to represent the Sale Certificate dated 10.04.2019 before the 1st respondent along with necessary stamp duty and registration charges and the 1st respondent, on receipt of the same, shall register the document, if it is otherwise in order and release the document ot the petitioner Bank.*

*(12)This writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed."*

6.Respectfully following the aforesaid order, the impugned attachment order issued by the second respondent is quashed and the first respondent is directed to register the sale certificates executed by the petitioner/bank in respect of mortgaged property. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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.

To

1.The Sub Registrar,
1st Joint Sub Registrar Office,
Tuticorin, Tuticorin District.

2.The Assistant Commissioner (ST) (FAC),
Commercial Tax Office – III Circle,
Tuticorin, Tuticorin District.

+1 CC to SGP ( SR-1604, 1414[F] dated 21/01/2021 )

+1 CC to Mr.B.RAJESH SARAVANAN, Advocate ( SR-1490[F] dated 20/01/2021 )

**W.P(MD)No.15960 of 2020**
**19.01.2021**

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