THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2022

CORAM

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.17412 of 2022

THE KARNATAKA BANK LTD.,
Company incorporated under the
Indian Companies Act 1913, carrying
the Banking Business and having its Registered
& Head Office at Mahaveera Circle,
P.B. No. 599, Kankanady, Mangaluru - 575 002
and several Branches through out
India and one of the Branch at
Thambu Chetty Street,
Chennai 600 001,
Rep. by its Chief Manager. ..... Petitioner

Versus

1. THE SUB REGISTRAR,
KONNUR SUB REGISTRAR OFFICE,
No.5, Vanagaram Road,
Athipet, Ayanambaakkam,
Kamarajapuram, Ambattur,
Chennai- 600 058.

2. M.Ravichandran

..Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the first respondent to delete the encumbrance attachment entry dated 09.03.2017 in Doc No. 20 of 2017, encumbrance attachment entry dated 09.03.2017 in Doc No. 21 of 2017, encumbrance attachment entry dated 09.03.2017 in Doc No. 22 of 2017, encumbrance attachment entry dated 12.06.2017 in Doc No. 53 of 2017 as against the subject property and consequentially direct the first Respondent to registered the sale certificate dated 25.03.2022 issued in the auction purchaser's favour.

For Petitioner	:	Mr.R.Imayavaramban For M/s.Ramalingam Associates
For Respondents	:	Mr.C.Jayaprakash, GA R1

ORDER

The petitioner has filed this writ petition seeking a direction to the first respondent to delete the encumbrance attachment entry dated 09.03.2017 in Doc No. 20 of 2017, encumbrance attachment entry dated 09.03.2017 in Doc No. 21 of 2017, encumbrance attachment entry dated 09.03.2017 in Doc No. 22 of 2017, encumbrance attachment entry dated 12.06.2017 in Doc No. 53 of 2017 as against the subject property and consequently, direct the first Respondent to register the sale certificate dated 25.03.2022 issued in the auction purchaser's favour.

2. The case of the petitioner is that the second respondent was engaged in the business of manufacturing of all types of Industrial

components like jig, fixtures, gauges, press tools etc., in the name of M/s. Umaiom Industries, who is the principal borrower. The second respondent's wife one R.Umamaheswari and one Mr.R.K.Suresh Babu, are the Guarantors. The said persons had approached the petitioner Bank seeking a Term Loan Facility in the year 2010 for purchase of new Flat. The said facility was sanctioned by a sanction letter dated 21.07.2010. To secure the said facility, the borrower and guarantors executed necessary loan documents in favour of the Petitioner's bank. The second Respondent also deposited the original title deed pertaining to the subject property with the bank and also executed memorandum of deposit of title deed dated 18.08.2010 in favor of the Petitioner bank.

3. On the request of the borrower and guarantors, the Petitioner bank had renewed an existing overdraft facility to the limit of Rs. 11.50 lakhs and fresh DPN Loan for a sum of Rs. 3.50/- lakhs and the same was sanctioned on 09.10.2013. To secure the said facilities, the borrower and guarantors had executed necessary loan documents in favor of the Petitioner bank and also extended the mortgage by executing memorandum of deposit of title deed dated 17.12.2013 in favor of the

Petitioner bank, which was registered as document No. 4962 of 2014 on the file of SRO, Ambattur. Due to default committed by the borrower and guarantors, their loan accounts were classified as 'Non Performing Asset' (NPA) on 22.04.2015 and 29.06.2015. In the meanwhile, the second respondent has been declared as 'insolvent' by an order of adjudication dated 03.09.2015. In order to recover the dues, the Petitioner bank had initiated SARFAESI proceedings filing Original application in O.A No. 349 of 2016 for the recovery of sum of Rs. 31,16,458.87. The said O.A was allowed vide order dated 23.01.2018 by virtue of the final order in DRC No. 148 of 2018 was also issued.

4. The Petitioner bank simultaneously initiated SARFAESI measures and brought the subject property for auction sale on 10.02.2022. One Mrs. Ezhilarasi has bid an amount of Rs. 32.10 lakhs and has been declared as the highest bidder. On payment of entire bid amount, the Petitioner bank had also issued sale certificate dated 25.03.2022. When the sale certificate was presented for registration before the 1st Respondent, they refused to register the same as there were subsequent attachments reflected in the encumbrance Certificate over the subject

property. Without having any other option, the petitioner Bank has filed the present writ petition before this Court.

5. Learned counsel for the petitioner submitted that the Mortgage in favour of the Petitioner bank subsists from the year 2010 onwards and the subsequent attachments were made in the year 2017 by the Chit Fund Court, necessarily has to be deleted and on the earlier occasion. It has also brought to notice of this Court that during the earlier occasion, similar issue was came up for consideration before this Court, wherein this Court allowed the petition in favour of the petitioner Bank therein like that of the petitioner. Further, in spite of the Circular dated 09.04.2021 and another Circular dated 10.07.2021 passed by the officer of the Inspector General of Registration, various Judgments rendered by this Court in regard to the subject issue, the 1st Respondent refused to delete the entries and register the sale certificate, which is non-est in law.

6. The first respondent has filed a counter and the relevant paragraphs are extracted hereunder:

> *"4. With regard to Para11 of the affidavit, it is submitted that when the Auction Purchaser has informally enquired*

this respondent about registration of the Sale Certificate issued by the petitioner, the stamp duty and the registration fee payable on the Sale Certificate was informed and requested about the previous transaction in respect of the property covered under the Sale Certificate and it was informed that four Orders of Attachment before Judgment issued by Chit Arbitrator, Chennai under Section 68 of the Chit Funds Act. 1982 (Central Act 40 of 1982) have been received under Section 89(2A) of the Registration Act,1908 and the said attachments are reflecting in the Encumbrance.

5.With regard to Paras 12 to 14 of the affidavit, it is submitted that the petitioner on coming to know of the Orders of Attachment before Judgment issued by Chit Arbitrator, Chennai has made a representation dated 29.4.2022 requesting this respondent to delete the said Orders of Attachment from the encumbrance and register the sale certificate issued in favour of Mrs.S.Ezhilarasi. The petitioner was informed under letter No.164 of 2022 dated 17.5.2022 to present the sale certificate after generating online token for registration and pay the required stamp duty and registration charges online. Further the petitioner was informed that to cancel the attachment entries, file application before the Chit Arbitrator who passed the order as this respondent has no authority to delete such attachments. It is submitted that setting aside the Orders of Attachment before Judgment issued by Chit Arbitrator can be *made by the Chit Arbitrator or any appropriate Court and hence the petitioner has to approach the appropriate forum in the manner known to law.*

6. With regard to para 16 to 17 of the affidavit, it is submitted that this respondent is always ready and willing to register the sale certificate issued by the petitioner in favour of one S.Ezhilarasi irrespective of the subsisting orders of Attachment before judgment issued by Chit Arbitrator, Chennai provided due stamp duty and registration fee are paid and other requirements provided under Registration Act are complied with."

7. Heard the learned counsel on either side and perused the materials available on record.

8. Admittedly, the petitioner Bank is the secured creditor and the petitioner Bank advanced a loan to the second respondent. In view of the default committed by the borrower and the guarantors, the petitioner Bank initiated SARFAESI proceedings. Subsequently, the sale certificate was issued in favour the successful bidder. It appears that the successful bidder has paid entire amount to the petitioner Bank and the said certificate was presented for registration, the first respondent has refused to register on the ground that

there is a subsequent encumbrance attachment entries available as against the subject property. The very same issue was came up for consideration before this Court in W.P.(MD).No.17254 of 2020, dated 24.03.2021. For better understanding, the relevant paragraphs are extracted hereunder:

> *"6.According to the petitioner bank that the 1st respondent failed to consider the representation, but insisted that the bank should obtain orders from the Court to lift the attachments made upon the property at the instance of the respondents 2 to 4 herein. Therefore, the petitioner is before this Court.*
>
> *7.Mr.N.Dilip Kumar, learned Counsel appearing for the petitioner bank reiterated the above case and emphasised that the legal position is very clear that the bank which has prior charge over the schedule property against other attachments and the law has been settled consistently and clearly in favour of the bank.*
>
> *8.According to the learned Counsel in this case the charge has been created upon the schedule property way back on 04.07.2011 admittedly prior to the other attachments made upon the property in the year 2014 onwards and therefore, the 1st respondent legally bound to delete the other encumbrances, namely, the attachments and the entries to that effect.*
>
> *9.The learned Counsel also would submit that the auction purchaser is entitled to enjoy the property free from any encumbrance and auction sale had taken place prior to the*

attachment at the instance of the private respondents herein, such attachments entries made upon the property cannot be enforced as against the bank as well as against the auction purchaser.

10.The learned Counsel cited a number of decisions in support of his legal contention that the secured creditor is having precedence over other claims as against the property. The legal position has been repeatedly clarified and the issue is no longer res intergra. Among the citations, the learned Counsel would rely upon a Full Bench decision of this Court in ***UTI Bank Vs Deputy Commissioner****, reported in* ***(2007) 1 MLJ 1*** *and he would draw the attention of this Court to paragraph Nos.24, 25 and 26 thereof, which are as hereunder:*

"24.All the decisions relied on by Mr. V.T. Gopalan, clearly show that the Government is entitled to claim its dues/taxes/duties in preference to other ordinary debts. In all those cases there is no provision as found in SARFAESI Act or a specific provision claiming to have "first charge."

... ... In Dena Bank case (cited supra) it is held that the Crown's preferential right to recover all debts over other creditors is confined to ordinary and unsecured creditors.

25.In the case on hand, the petitioner Bank which took possession of the property under Section 13 of the SARFAESI Act, being a special enactment, undoubtedly is a secured creditor.

26. In the light of the above discussion, we conclude,

"(i) Generally, the dues to Government, i.e.,tax, duties,

etc. (Crown's debts) get priority over ordinary debts.

(ii) Only when there is a specific provision in the statute claiming "first charge" over the property,the Crown's debt is entitled to have priority over the claim of others.”

11.The learned Counsel would also rely upon yet another Full Bench judgment in ***The Assistant Commissioner Vs. The Indian Overseas Bank,*** *reported in* ***2016 (6) CTC 769*** *and the relevant paragraphs are extracted hereunder:*

“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 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."*

3.There is, thus, no doubt that the rights of a secured creditor to realise secured 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 4 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.

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".

12.The learned Counsel would also draw the attention of this Court to the decision in the case of ***Ansari Vs Commercial Tax Officer,*** *reported in* ***2016 SCC Online Madras 18565****, wherein the learned Judge of this Court in paragraph Nos.4,5 and 6 has held as hereunder;*

"4.At this stage, it would be worthwhile to refer to the decision of the Hon'ble Division Bench of this Court in the case

in 1.D.Senthil Kumar 2.C.P.Senthil 3.C.P.Sakthivel vs. 1. The Commercial Tax Officer, Brough Road, Erode 2.The Sub-Registrar, No.1, Karungalpalayam, Erode (2006-3-L.W.627), wherein in an identical set of facts, the order of attachment was set aside. Paragraph No.12 of the judgment is usefully extracted hereunder:

"12. In the instant case, the property was sold by public auction on 10.03.2003. The sale was conducted in execution of the Recovery Certificates issued by the Debts Recovery Tribunal for recovery of dues to the City Union Bank. The appellants had paid the entire amount due on 25.3.2003 and the sale was confirmed in their favour on 23.4.2003. There is no indication of any sales tax arrears in the advertisement for auction sale and there was no application from any statutory or public authority seeking to set aside the sale. For the first time, by letter dated 25.6.2004, the Commercial Officer required the second respondent to create an encumbrance with regard to the property and consequently an entry was made in the register in respect of encumbrance of the first respondent. Thus, it is evident that the appellants had no actual notice of the charge prior to the transfer. There is also no material to show that the appellants had constructive notice of the charge and no submissions were made by the learned Special Government Pleader on this issue. In the circumstances, we are of the view that the appellants were the purchasers for value without notice for the sales tax arrears of the defaulting company or the

consequent charge on the property. Thus, the property in the hands of the appellants was free of the charge and it is not open to the first respondent to enforce the liabilities of the defaulting company in this manner against the appellants."

5. Further, in the decision in the case of Senthil Kumar vs. Assistant Commissioner, Chennai and Others, in W.P.No.9928 of 2009, dated 22.12.2010, the Hon'ble Division Bench, in somewhat identical circumstances, has held as follows:

"17. However in this case, the property was sold under the provision of SARFAESI Act for non-payment of dues to the Bank, the Third Respondent which brought the property for auction through tender-cum-auction sale on 19.5.2008; The Sale Certificate was also issued on 19.5.2008 and possession and also stated to be given to the petitioners. The rights already got accrued to the petitioners in view of the sale under the SARFAESI Act. The First respondent's communication dated 24.12.2008 to the Third Respondent-Bank reads as follows:

"The Sub-Registrar, Virugambakkam has issued an Encumbrance Certificate on 24.12.2008 with the Commercial Tax Officer as one of the purchaser cannot claim the right on the said property."

The aforesaid communication would show that the

Encumbrance (tax arrears) Certificate was only reflected on 24.12.2008. Whereas the Encumbrance Certificate dated 15.5.2008 issued by the Sub-Registrar Office, Virugambakkam did not reflect any encumbrance except the Sale Ded dated 9.6.1998 and no claim of the First Respondent was reflected. The sale was conducted on 19.5.3008 and subsequent only the encumbrance of the First Respondent was made on 24.12.2008. It is clear from Sale Notice dated 20.09.2008 by the First Respondent, the sales tax arrears were due from 1991-92 to 1996-97. However, the petitioners had no notice of charge over the property in question, in spite of their due verification of Encumbrance Certificate dated 15.5.2008. Hence, it has to be held that the petitioners are bona fide purchasers without notice of charge under Section 24(2) of th TNGST Act and the rights accrued to them cannot be interfered with. For the reasons stated above, the respondents 1 and 2 belatedly could not proceed against the petitioner's property for the arrears of sales tax due of the Company which availed the loan from the Third Respondent-Bank."

6. In the light of the above, the writ petition is allowed and the impugned attachment is quashed and the second respondent is directed to delete the said entry and make appropriate entries stating that the said attachment has been lifted. The above direction shall be complied with by the second respondent within a period of four weeks from the date on which the petitioner approaches the second respondent by way *of representation, accompanied by a copy of this order. No cost. Connected miscellaneous petition is closed.”*

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.*

16.Mr.S.Ponsenthilkumaran, learned Counsel appearing for the 4th respondent has made his factual submission in regard to the attachments made at the instance of his client. For respondent Nos.2 and 3, there is no representation despite notice being served and the names have been printed in the cause list for the today's hearing

17.In any case, when the legal principle has been well settled in favour of the petitioner claim, the presence and absence of the private respondents would not be material at all in disposing of this writ petition.

18.In consideration of the above narrative, this court is of the view that as contended by the learned Counsel for the petitioner, the claim of the petitioner has to be necessarily allowed. The facts would disclose that the charge has been created by the bank as early as on 04.07.2011 itself, that is much prior to the attachments made on the schedule property at the instance of the respondents 2 to 4 herein.

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.*

20.In the above said circumstances, a writ of Mandamus is issued to the 1st respondent to delete the encumbrances, namely the attachment entries as stated by the petitioner in the prayer of the writ petition, in respect of the schedule property, made at the instance of the respondents 2 to 4 herein. The 1st respondent is directed to implement this direction within a period of four weeks from the date of receipt of a copy of this order. The bank is also directed to make available a copy of the affidavit filed in support of the writ petition for the 1st respondent to act in pursuance of the above direction of this Court.

21.In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

9. In view of the above settled position, this Court directs the first respondent to delete all the encumbrance attachment entry dated 09.03.2017 in Doc No. 20 of 2017, encumbrance attachment entry dated 09.03.2017 in Doc No. 21 of 2017, encumbrance attachment entry dated 09.03.2017 in Doc No. 22 of 2017, encumbrance attachment entry dated 12.06.2017 in Doc No. 53 of 2017 as against the subject property and to register the sale certificate dated 25.03.2022 issued in favour of the auction purchaser, after collection of necessary stamp duty and

registration charges, within a period of six weeks from the date of receipt of a copy of this order.

10. In fine, the Writ Petition stands allowed. No costs.

14.09.2022

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Index : Yes/No

To
THE SUB REGISTRAR,
KONNUR SUB REGISTRAR OFFICE,
No.5, Vanagaram Road,
Athipet, Ayanambaakkam,
Kamarajapuram, Ambattur,
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