IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.30019 of 2022

M/s.Ganesh Textile Mills
Rep by it Managing Director
Mr.P.K.Ganeshwar
21B3, Pollachi Road,
Tiruppur District. . . . Petitioner

Vs.

1. Sub Registrar
   113/114, Coimbatore Road
   Sulur-641 402
   Coimbatore District
   Tamil Nadu

2. The Authorized officer
   Union Bank of Baroda
   SAM Branch
   Chennai . . . Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in notification No.577/2022 dated 18.10.2022 and quash the same as illegal, incompetent and without jurisdiction and further direct the 1st respondent to file the sale certificate dated 11.03.2022 sent by the 2nd respondent under Section 89(4) of the Registration Act, 1908.

For Petitioner : Mr.L.Chandrakumar
for M/s.T.Balaji

For Respondent : Mr. E.Vijay Anand
Additional Government Pleader

ORDER

The present petition has been filed seeking to quash the impugned order dated 18.10.2022 which was passed by the 1st respondent and to direct the 1st respondent to file the sale certificate dated 11.03.2022 which was sent by the 2nd respondent under Section 89(4) of the Registration Act, 1908.

2. The facts of the case is that the petitioner is a successful bidder in the auction that was conducted by the 2nd Respondent Bank under the SARFAESI Act in respect of the immovable property described in the Sale Certificate dated 11.03.2022 which was issued to the petitioner under Rule 9(6) of the SARFAESI Act. Thereafter, the second respondent forwarded the

sale certificate to the first respondent for the purpose of filing the copy of the same in Book I as per Section 89(4) of the Registration Act, 1908 and the same was rejected vide impugned order dated 18.10.2022 on the ground that the said sale certificate can be filed only after the payment of stamp duty and Registration charges. Aggrieved over the same the petitioner has filed the present petition.

3. The learned counsel for the petitioner submits that a Sale Certificate issued by an Officer authorised by a Bank under the provisions of the SARFAESI Act, would be akin to a sale by a Revenue Officer which would fall within Section 89(4) of the Registration Act. Therefore, the registration of such document is not mandatory in view of the provisions of Section 17(2)(xii) of the Registration Act. He further submits that the issue arises in this writ petition is covered by the decision of this Court in W.P.No.25237 of 2018 dated 12.09.2022.

4. The learned Additional Government Pleader appearing for the 1st respondent would submit that the sale certificate issued by a Collector or a

Revenue officer does not attract Section 89(4) of the Registration Act.

5. The issue arises in the present case was already decided by this Court in the case of ***Sangeetha & another v. The Sub Registrar and Ors*** in W.P.Nos.25139 & 25140 of 2022 vide order dated 19.09.2022 and the relevant portion of the order is extracted here as under:-

> *6. Before proceeding further it would be relevant to consider the provisions of the Registration Act and the stamp Duty which would stand attracted in the case on hand.*
>
> Section 17(2) (xii) of the Registration Act, reads as follows:
>
> *"17. Documents of which registration is compulsory : (2) Nothing in clauses (b) and (c) of sub-section (1) applies to--- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer."*
>
> Section 89 (4) of the Registration Act, reads as follows:

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> "*89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed.-*

(4) Every Revenue Officer granting a certificate of the sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.

7. A reading of Section 17(2)(xii) would show that a certificate of sale issued by a Civil or a Revenue Officer in evidence of a sale conducted by way of public auction is not compulsorily registrable. Section 89(4) imposes an obligation on the Revenue Officer, who conducts an auction sale to forward the certificate to the Registering Authority to enable him to file the same in Book-I maintained by him. Therefore, the second respondent in order to comply with Section 89(4) had forwarded the sale certificate to the first respondent who rejected the same vide impugned order in notification No.577/2022 dated 18.10.2022 on the ground that the said sale certificate can be filed only after the payment of stamp duty and Registration charges.

8. In this regard it would be relevant to consider the decision pointed out by the learned counsel for the petitioner wherein this Court while dealing with the identical issue in W.P.No.25237 of 2018 dated 12.09.2022 has held as under:

> ***24**. Recently a Division Bench of this Court in **Tripower Properties Limited v. The Inspector General of Registration,** reported in **2021 SCC Online Mad 15097, G.Madhurambal v. The Inspector General of Registration** and **V.Krsihnamoorthy v. The Inspector General of Registration,** had held that a sale by an officer appointed under the SARFAESI Act, would be exempt from registration and the Authorised Officer of a Bank would be a Revenue Officer. The Division Bench*

went a step ahead and held that a sale held by a Commissioner pursuant to a direction of this Court would also fall within ambit of Section 89(2) of the Registration Act. Of course it does not appear from the reports that the dictum of the Full Bench and other Division Benches of this Court were brought to the notice of the Hon'ble Division Bench which decided in ***Tripower Properties Limited v. The Inspector General of Registration,***

25. From the above discussion, it could be seen that in view of the pronouncement of the Hon'ble Supreme Court in Esjaypee Impex Pvt Ltd v. Assistant General Manager and Authorised Officer, Canara Bank, the law as it stands today is that an Authorised Officer, who conducts a sale under the provisions of the SARFAESI Act, would be a Revenue Officer and the certificate issued by him in evidence of such sale, would be a document which is not compulsorily registrable under Section 17(2)(xii) of the Registration Act. It would be sufficient, if the document is lodged with the Registrar under Section 89(4) to be filed by him in the Book-I maintained by him. The decisions of this Court in the Inspector General of Registration v. K.K.Thirumurugan, (Division Bench,) The Inspector General of Registration v. Kanagalakshmi Ganaguru, (Division Bench), Dr.R..Thiagarajan v. Inspector General of Registration, (Full Bench) and The Inspector General of Registration v. Prakash Chand Jain, (Division Bench) are no longer good law, in view of the pronouncement of the Hon'ble Supreme Court in Esjaypee Impex Pvt Ltd v. Assistant General Manager and Authorised Officer, Canara Bank

27. Insofar as the registration charges are concerned, the State Government has fixed the registration charges at 1% under Section 78 of the Registration Act and the same has been published in the Tamil Nadu Government Gazette, as required under Section 79 of the Registration Act. By G.O.Ms.No.49 dated 08.06.2017, the following proviso was added to

Article 1 of the table of the fees: "Provided further that notwithstanding anything contained in this Table, in case of deeds of conveyance, exchange, gift and settlement among non family members, the Registration Fee shall be levied at the rate of Rupees four per Rupees hundred or part thereof on the value or amount on which stamp duty under the Indian Stamp Act, 1899 (Central Act II of 1899) is payable".

28. It is the contention of Mr.Sharath Chandran, learned counsel 28. It is the contention of Mr.Sharath Chandran, learned counsel for the petitioner that the proviso would apply only in cases of deeds of conveyance, exchange, gift and settlement among non-family members. Inasmuch as a sale certificate would not amount to a conveyance, the registration fee payable would be as provided under Article 1 that is at 1% and nothing more. The judgment of this Court in Sakthi Foundations Pvt. Ltd., v The Inspector General of Registration, supports the contention of the learned counsel for the petitioner on this point. This Court after examining the language of the proviso had held that it would not apply to a sale certificate issued under SARFAESI Act. This renders the collection of registration charges at 4% from the petitioner also illegal.

***29**. In the upshot of the above discussions, the Writ Petition has to be necessarily allowed and the excess fee and the stamp duty collected will have to be refunded by the respondents. The Writ Petition stands **allowed,** a Writ of Mandamus will issue directing the respondents to refund the excess stamp duty and registration fee to the tune of Rs.19,72,620/- with interest at 9% per annum from the date of filing of this Writ Petition till date of payment. There shall be no order as to costs.*

9. On a fair reading of the above decision rendered by this Court and the provisions relating to this issue under Section 17(2)(xii) would show that a certificate of sale issued by a Civil or a Revenue Officer in evidence *of a sale conducted by way of public auction is not compulsorily registrable and Section 89(4) imposes an obligation on the Revenue Officer, who conducts an auction sale to forward the certificate to the Registering Authority to enable him to file the same in Book-I maintained by him. .*

10. In view of the above discussions and taking note of the Judgment rendered by this Court, this Court is of the considered view that the said sale certificate should be entered in Book I as per Section 89(4) of the Registration Act. Accordingly this Writ Petition is allowed. No costs.

15.11.2022

NHS

Index : Yes / No
Internet : Yes / No

To

1. Sub Registrar
   113/114, Coimbatore Road
   Sulur-641 402
   Coimbatore District
   Tamil Nadu

2. The Authorized officer
   Union Bank of Baroda
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M.DHANDAPANI, J.

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