



W.P.No.16279 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.16279 of 2023
and
W.M.P.No.15666 of 2023

M/s.Kotak Mahindra Bank Ltd.,
Reg. office at No.27, BKC-C-27
G Block, Bandra Kurla Complex
Bandra (W), Mumbai - 400 051
and its branch office at
No.185, 2nd Floor, Anna Salai,
Mount Road, Chennai-600 006
represented by its Authorised Officer
Mr.K.Velmurugan

... Petitioner

versus

1. The Sub Registrar
Tambaram - 600 073.

2. G.Kavitha

.....Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the first respondent herein to consider the request and register the sale certificate dated 27.03.2023 issued by the petitioner in accordance with law.

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For Petitioner : Mr.V.Balasubramani

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader for R1

No appearance for R2

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus directing the first respondent herein to consider the request and register the Sale Certificate dated 27.03.2023 issued by the petitioner in accordance with law.

2.1 The petitioner is a Banking company incorporated under the Companies Act, 1956 and registered under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and in exercise of powers conferred under Section 13 read with Rules 8 and 9 of the Security Interest (Enforcement) Rule 2002, has sold the subject property in favour of the second respondent.

2.2 Originally, the subject property was secured in favour of the assignor M/s.Bajaj Finance Limited by their borrowers Senthil Joothi.A., S.Divya Shree and M/s.Divya Shree Enterprises, Proprietor Senthil Joothi.A.,



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securing financial facility advanced to them by the assignor M/s.Bajaj Finance Ltd., which is assigned debt due and payable by the borrowers to it along with the mortgaged securities and the documents in favour of the petitioner, vide Assignment Agreement dated 23.04.2019. As per the said Assignment Agreement, the petitioner-Bank is legally entitled to receive the re-payment of the loans or any part thereof from the borrowers. Since the borrowers have created default in payment of dues, the petitioner-Bank had issued demand notice under Section 13(2) of SARFAESI Act, however, the borrowers have not come forward to settle the dues, and hence, the petitioner-Bank issued possession notice on 28.12.2020. Thereafter, the petitioner-Bank conducted an auction and had selected the second respondent as the highest bidder for purchase of the mortgaged property to the tune of Rs.33,10,000/- and handed over the subject property to the second respondent. Hence, the petitioner-Bank issued the Sale Certificate dated 27.03.2023 in favour of the second respondent herein as the successful bidder. When the petitioner approached the first respondent to register the Sale Certificate in favour of the second respondent, the petitioner came to know that subject property was attached in the Court of the Sub-



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Judge, Tambaram in E.P.No.12 of 2022 in O.S.No.219 of 2018, dated 20.02.2023 and the same was registered, vide Document No.2 of 2023 dated 22.02.2023 on the file of the first respondent. Hence, the first respondent refused to register the said Sale Certificate which was presented for registration on 26.04.2023. Despite repeated requests made by the petitioner, the first respondent has not considered the same and hence, the petitioner is before this Court.

3. The learned counsel for the petitioner submits that the petitioner is the secured creditor and their mortgage has been created much before the attachment created by the third party and hence, the petitioner is having first claim over the said mortgaged property. He further submitted that there are numerous judgments where the rights of the secured creditor to the mortgaged property would have priority over other creditors and certain directions are issued to the Sub Registrar to remove the attachment in encumbrance in respect of the property in order to facilitate and registration of document presented by the secured creditor for Registration. He further



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submitted that it would be suffice if a direction is issued to the first respondent to consider the request of the writ petitioner.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the first respondent and perused the materials available on record.

5. Despite service of notice on the second respondent and her name is being printed in the cause list, she has not chosen to enter appearance either through a counsel or in person.

6. The petitioner, who is the Financial Institution has approached the first respondent for registering the Sale Certificate issued under SARFAESI Act in favour of the second respondent and since there is no action on the side of the first respondent, the petitioner-Bank filed this Writ Petition. The Hon'ble Supreme Court and this Court, in W.P.No.13282 of 2021 in the case of Tamilnadu Mercantile Bank Ltd., Vs. The Sub Registrar, Tiruchengode Taluk, Namakkal District and others, has held that the secured creditor will have a priority to realize the debt over all the other Government dues and unsecured creditors and it also observed that if any Registering Authority refuses to register the sale, it would be deemed to be

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violation of Court's order amounting to contempt and the aggrieved parties can always initiate contempt proceedings before this Court.

7. However, considering the limited prayer sought for in this Writ Petition and also considering the settled proposition of law as stated supra, the first respondent is directed to register the Sale Certificate dated 27.03.2023, by considering the on-line application dated 26.04.2023, if it is otherwise in order, within a period of two weeks from the date of receipt of a copy of this order.

8. With the above directions, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

The Sub Registrar
Tambaram - 600 073.

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