



W.P.No.16296 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.16296 of 2023
and
W.M.P.No.15684 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,
Ashok Nagar,
Chennai – 600 083.

2. Rupasundaramaa

.....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



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request and register the sale certificate dated 21.04.2023 issued by the petitioner in accordance with law.

For Petitioner : Mr.V.Balasubramani

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

R2 – Not ready in notice

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus directing the first respondent herein to consider the on-line application of the petitioner-Bank dated 04.05.2023, wherein and whereby, they sought to register the sale certificate dated 21.04.2023 issued by the petitioner-Bank 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



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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 M/s.Citi Financial Consumer Finance Ltd (CCFTL) by their borrowers V.Prakash and Chithra Prakash for the financial facility advanced to them by the assignor M/s.Citi Financial Consumer Finance Ltd., which is assigned debt dues and payable by the borrowers to it along with the mortgaged securities and the documents in favour of the petitioner, vide Assignment Agreement dated 18.07.2012. 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 12.09.2013. 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.86,25,000/- and



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handed over the subject property to the second respondent. Hence, the petitioner-Bank issued the Sale Certificate dated 21.04.2023 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 City Civil Court, Chennai in I.A.No.467 of 2010 in O.S.No.205 of 2010, dated 20.02.2023 and the same was registered, vide Document No.02 of 2010 dated 11.01.2010 on the file of the first respondent, and attached on the file of the City Civil Court, Chennai in I.A.No.19415 of 2011 in O.S.No.8829 of 2011 and the same was registered as Doc.No.23 of 2011 dated 08.12.2011 and also attached on the file of the City Civil Court, Chennai in E.P.No.4340 of 2012 in O.S.No.1902 of 2011 and the same was registered as Doc.No.08 of 2013 dated 10.09.2013. Hence, the first respondent refused to register the said Sale Certificate dated 21.04.2023 which was presented for registration. 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



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a secured creditor and their mortgage has been created much before the attachments 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 submitted that it would be suffice if a direction is issued to the first respondent to consider the on-line application of the petitioner-Bank dated 04.05.2023.

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. The petitioner, who is the Financial Institution has submitted on-



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line application dated 04.05.2023 to the first respondent, wherein they sought to register 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 violation of Court's order amounting to contempt and the aggrieved parties can always initiate contempt proceedings before this Court.

6. 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 21.04.2023, by considering the on-line application of the petitioner-Bank dated 04.05.2023, if it is otherwise in order, within a period of two weeks



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from the date of receipt of a copy of this order.

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7. 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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(2/2)

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

ms

To

The Sub Registrar,
Ashok Nagar,
Chennai – 600 083.

Pg.Nos.7/8



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