IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.21872 of 2023

Punjab National Bank
Zonal Sastra,
Rep.by its Chief Manager,
Royapettah High Road,
Chennai – 600 014. ... Petitioner

/vs/

1.The Assistant Commissioner of
Central Excise & Service Tax,
D Division, R-40/A1,
100 ft. road, Mogappair East,
Chennai – 600 037.

2.M/s.Chennai Kraft Paper Industries,
Rep.by its Managing partner,
Mr.Siddique Ahmed,
No.26/38, Ground floor,
Kattur Sadayappan Street,
Periyamet, Chennai – 600 003.

3.The Registrar,
Sub Registrar,
Gummidipoondi. ... Respondents

PRAYER : The writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the third respondent to register the sale certificate dated 14.11.2022 issued by the petitioner bank in respect of the secured property belonging to the 2nd respondent notwithstanding the attachment dated 21.10.2016 effected by the first respondent with the office of the third respondent.

For Petitioner	...	Mr.M.L.Ganesh
For Respondent No.1	...	Mr.S.R.Sundar Senior Standing Counsel
Respondent No.2	...	Not ready in notice
For Respondent No.3	...	Mr.P.Gurunathan Additional Government Pleader

ORDER

The writ petition has been filed to issue a Writ of Mandamus directing the third respondent to register the sale certificate dated 14.11.2022 issued by the petitioner/Bank in respect of the secured property belonging to the 2nd respondent, notwithstanding the attachment dated 21.10.2016 effected by the first respondent with the office of the third respondent.

2.The facts of the case which led to the filing of the writ petition are as follows:

(a).The 2nd respondent/Company had availed various credit faciltiies from time to time from the erstwhile United Bank of India in order to run its business operations. The 2nd rspondent and its partners had offered Primary Security of Hypothecation of raw materials, stocks, stocks-in-trade, Plant and Machinery, Receivables, Book Debts, Consumables etc., to secure the loan liability. They had also offered collateral security of their factory land and building by creating an equitable mortgage. Further, they had executed MOD on 18.03.2011 to secure the credit limits of Rs.10 crores extended by the petitioner/ Bank, which is a Nationalised Bank.

(b).While so, the 2nd respondent failed to repay the loan amount, resulting in the loan account becoming Non-Performing Asset (NPA) and a demand notice dated 06.04.2017 was issued by the petitioner/ Bank to the 2nd respondent under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter "SARFAESI Act" for the sake of brevity). Even thereafter, as the 2nd respondent failed to repay the loan amount, a possession notice under Section 13(4) of SARFAESI Act was also issued and the petitioner /Bank had taken symbolic possession of the secured asset. The 2nd respondent/Company had also become defunct since 31.12.2013 onwards. Therefore, the petitioner Bank continued the SARFAESI proceedings by causing sale notice on 12.02.2022 to bring the factory land and building for e-auction. Pursuant to the e-auction conducted on 11.08.2022, the aforesaid properties were sold to the successful bidders and a sum of Rs.5,71,10,000/- was recovered as against the outstanding amount of Rs.34,56,91,764.02 as on 30.06.2022.

(c).The petitioner's further case is that pending the SARFAESI proceedings, the United Bank of India and Oriental Bank of Commerce got merged with the petitioner/Bank and by scheme of amalgamation, the assets of United Bank of India stood transferred in favour of the petitioner/ Bank. The petitioner/ Bank, on completion of e-auction proceedings, had issued sale certificate in favour of successful bidders on 14.11.2022.

However, when the same was presented for registration before the 3rd respondent, a Refusal Check Slip dated 08.06.2023 was issued by the 3rd respondent, refusing to admit the registration of sale certificate on the ground that the 1st respondent had attached the secured property on 21.10.2016 and a sale agreement had already been entered into between the parties. Hence, the present writ petition has been filed by the petitioner/ Bank for the relief aforesaid.

3.The learned counsel appearing for the petitioner submitted that the third respondent has no authority to refuse to register the sale certificate and the 1st respondent does not have any priority over the debts of the secured creditor in terms of Section 142-A of The Customs Act, 1962 and Section 11-E of the Central Excise Act, 1944. Section 11-(E) of Central Excise Act, which came into force on 08.04.2011, clearly states as follows:

> ***"Section 11E. Liability under Act to be first charge: Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder, shall, save as otherwise provided in Section 529A of the***

Companies Act, 1956 (1 of 1956) the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) be the first chage on the property of the assessee or the person, as the case may be."

4.Further, the learned counsel for the petitioner submitted that the 1st respondent being an unsecured creditor, does not have priority over secured creditor, in the light of Section 26-E of SARFAESI Act, 2002 and Section 31-B of Recovery of Debts and Bankruptcy Act, 1993. Section 26-E of SARFAESI Act, 2002 states that the debts due to any secured creditor shall be paid in priority over all other claims. Therefore, according to the learned counsel, the 1st respondent has no legal right or authority to attach the secured property belonging to the 2nd respondent in 2016 with the office of the 3rd respondent, subsequent to the equitable mortgage created on 18.03.2011.

5.In support of his contentions, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Apex Court in ***Civil Appeal No.2196 of 2012*** (***Punjab National Bank Vs. Union of India & Ors)***

dated 24.02.2022; the decision of the Division bench of this Court ***dated 27.06.2022 in Writ Appeal No.3249 of 2019 (Assistant Commissioner of Customs (Bonds) Office of the Principal Commissioner of Customs, Chennai – III Commissionerate, Customs House, No.60, Rajaji Salai, Chennai – 600 001*** and also the judgment ***dated 31.08.2023 of the First Bench of this Court*** rendered in ***W.P.(MD)No. 674 of 2023 (M/s. Cholamandalam Investment and Finance Company Ltd. V. The District Registrar, Rgistration Department, Ariyallur Registration District, Ariyallur and 4 others).*** Therefore, according to the learned counsel, direction has to be issued to the Registrar/the third respondent to register the sale certificate, notwithstanding any attachment by any statutory authority or any other authority.

6.The learned counsel appearing for the first respondent submitted that an amendment to Section 22-B of Registration Act, 1908 came into force on 16.08.2022 and therefore, based on the amended provision, the third respondent passed the refusal order and further, he would submit that a similar issue with regard to first charge on property and recovery came up before this Court in ***W.P. No. 33833 of 2022 (Sundaram Home Finance Limited V. The Inspector General of Registration and 2 others)*** and this Court, by order dated 26.07.2023, considering the ingredients of Section 22-B(3) of the said Act, which states that the registering authority is empowered to refuse to register a document, if there is an attachment either permanently or provisionally by a competent authority under Central Act or State Act or the Tribunal, dismissed the writ petition filed by the financial institution. Therefore, according to the learned counsel for the 1st respondent, the refusal order passed by the 3rd respondent is in order.

7.Heard the submission made by the learned Additional Government Pleader appearing for the third respondent.

8.I have considered the matter in the light of the submissions made by the learned counsel appearing for the petitioner as well as the learned Senior Standing Counsel appearing for the first respondent and the learned Additional Government Pleader appearing for the thrid respondent and perused the materials available on record.

9.On a perusal of the records, it is seen that, admittedly, the 2nd respondent had availed loan amount from the petitioner/Bank and on account of default committed by the 2nd respondent in repaying the loan amount, recovery proceedings were initiated. By invoking SARFAESI proceedings, the petitioner had also taken symbolic possession of the property of the 2nd respondent. When the property was brought for public auction, a third party had purchased the property and after completion of the entire proceedings, the writ petitioner/Bank issued a sale certificate in favour of the auction purchaser and the sale certificate was sent for registration before the third respondent. At that time, the third respondent, on finding that the property had already been attached for the dues payable to the first respondent, refused to register the same and also issued a Refusal Check Slip.

10.Considering the scope of the Special Act, namely the SARFAESI Act and in the light of the decision of the Hon'ble Apex Court dated **24.02.2022** in the case of ***Punjab National Bank V. Union of India (Civil***

Appeal No. 2196 of 2012), wherein it was held that since SARFAESI Act is a special enactment for a special purpose, it would prevail over all other Acts including the Central Excise Act, even after insertion of Section 11E in the Central Excise Act, 1944 with effect from 08.04.2011. However, the scope of the issue is very limited, i.e, as to whether the third respondent can refuse the registration of the sale certificate or not. The question as to whether the first respondent has right to recover or not is not the issue before this Court and also this is not a writ for removal of the entry regarding the attachment made by the first respondent. The issue is only whether the third respondent can refuse to register the sale certificate issued by the writ petitioner. As pointed out by the learned counsel for the first respondent, Section 22-B of Registration Act, 1908 came into force on 16.08.2022 only and based on the same, the Sub-Registrar has refused to register the sale certificate. However, it has to be noted that even after that amendment, this Court and also the Apex Court, have held that the SARFAESI Act would prevail over all the other Acts.

11.Though the petitioner has sought for issueance of Mandamus, taking into consideration of the facts and circumstances, this Court quashes the Refusal Check Slip dated 08.06.2023 issued by the third respondent and directs the third respondent to register the sale certificate dated 14.11.2022, if it is otherwise in order.

12.With the above direction, the writ petition is allowed. No costs.

Index : Yes/No **08.11.2023**
Speaking Order: Yes/No
Neutral Case Citation: Yes/No
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To
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P.VELMURUGAN,J.

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