



WEB COPY



W.P.No.23164 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.23164 of 2022

HDFC Bank Ltd.,
Department for Special Operations,
Prince Khushal Towers, 7th Floor, B-Wing,
No.96, Anna Salai, Chennai -600 002.
Rep. By its Authorized Officer,
Mr.S.Sunder

... Petitioner

Vs

- 1.The Sub Registrar,
Pondicherry Sub Registrar Office,
Kamaraj Salai, Sakthi Nagar, Saram,
Puducherry – 605 013.
- 2.M/s.Manakular Automobiles,
Rep. By its Proprietor Mr.C.Djanardane,
RS.No.49, No.1, Cuddalore Main Road,
Ariyankuppam, Pondicherry – 605 007.
- 3.C.Djanardane
- 4.Tamil Nadu Mercantile Bank,
Cuddalore Branch,
Rep. By its Branch Manager, No.19,
Siva Complex, Block No.8, Ward No.6,
Imperial Road, Cuddalore – 607 002.

5.M.Trishna Vaishali

... Respondents



W.P.No.23164 of 2022

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent under his proceedings bearing pending document P.No.667/2022, dated 05.08.2022 and to quash the same as erroneous, illegal and consequently to direct the 1st respondent to register the Sale Certificate dated 05.08.2022 (Pending document P.No.667/2022) issued by the petitioner bank to and in favour of the 5th respondent/Auction Purchaser Mrs.M.Trishna Vaishali, within a time frame and for a consequential direction to efface/delete the encumbrance attachment entry dated 28.12.2018 in Doc.No.26677/1/2018 on the file of the 1st respondent /Sub Registrar, Puducherry, as against the property mentioned in the Schedule to the Sale Certificate dated 05.08.2022.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.Ramasamy Meyyappan
Government Advocate for R1

: Mr.N.K.S.Rukmangathan for R4

: No appearance for R5

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the 1st respondent under his proceedings bearing pending document P.No.667/2022, dated 05.08.2022 and to quash the same as erroneous, illegal and consequently to direct the 1st respondent to register the Sale Certificate dated 05.08.2022 (Pending Document No. P.No.667/2022) issued by the petitioner Bank to and in favour of the 5th respondent/Auction Purchaser Mrs.M.Trishna Vaishali, within a time frame



W.P.No.23164 of 2022

and for a consequential direction to efface/delete the encumbrance attachment entry dated 28.12.2018 in Doc.No.26677/1/2018 on the file of the 1st respondent /Sub Registrar, Puducherry, as against the property mentioned in the Schedule to the Sale Certificate dated 05.08.2022.

2. The property pertaining to Pending Document No.667/2022 on the file of the 1st respondent belongs to originally the 2nd and 3rd respondents who deposited the title deeds to the petitioner Bank at the earliest and got advancement.

3. Subsequently the 4th respondent Bank attached the said property for repayment of loan by the very same 2nd and 3rd respondents and based on such attachment, they already registered the order of attachment with the Sub Registrar office concerned, based on which when subsequently the 5th respondent who purchased the property by way of auction sale conducted by the petitioner Bank approached the 1st respondent Sub Registrar for registration of the Sale Certificate, that has been refused through the impugned order of the 1st respondent on the ground that, the property in question already been attached with the 4th respondent Bank that is how this



W.P.No.23164 of 2022

writ petition has come up against such refusal order made by the 1st respondent against the said pending Document No.667/2022.

4. Assailing the said reasoning given by the Sub Registrar for not registering the sale certificate, Mr.Suhrith Parthasarathy, learned counsel appearing for the petitioner has submitted that, the petitioner who is having the first charge as a secured creditor and the original documents i.e. title deeds were deposited by the original owners i.e. respondents 2 and 3 to the petitioner Bank, based on which since the loan has not been repaid, the property was brought for sale by way of auction, through the auction it was taken by the 5th respondent and accordingly the sale certificate has been issued by the petitioner Bank to and in favour of the 5th respondent and therefore, the subsequent attachment made by the 4th respondent Bank would not anyway detain the 1st respondent from registering the sale certificate issued by the petitioner Bank.

5. In this context, the learned counsel for the petitioner has relied upon a decision of the Division Bench of this Court dated 25.06.2021 in W.P.No.13282 of 2021 in the matter of *Tamil Nadu Mercantile Bank*



W.P.No.23164 of 2022

Limited, rep. By its Authorised Officer, Ellampillai, Salem District Vs. The Sub-Registrar, Mallasamudram, Sub-Registrar Office, Trichengode Taluk, Namakkal District and others.

6. On the other hand, Mr.N.K.S.Rukmangathan, learned Standing Counsel appearing for the 4th respondent would submit that, insofar as the property in question is concerned, it has been attached by the orders of this Court and the 4th respondent is also a secured creditor it is also equally entitled to recover the money from the 2nd and 3rd respondents. Therefore, against the property in question since the loan was advanced to the 2nd and 3rd respondents, the right of the 4th respondent cannot be defeated merely because that the title deeds have already been deposited with the petitioner Bank, therefore the learned counsel for the 4th respondent would submit that, the reason given by the 1st respondent Sub Registrar in not registering the sale certificate is to be justified.

7. Heard Mr.Ramasamy Meyyappan, learned Government Advocate appearing for the 1st respondent.



W.P.No.23164 of 2022

8. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9. Insofar as the claim of the petitioner Bank as a secured creditor in whose favour the original documents pertaining to the property in question belongs to the 2nd and 3rd respondents had been deposited is concerned, by virtue of that the petitioner Bank has become the first charge creditor that too a secured creditor and therefore any subsequent order passed by the Court with regard to the attachment pertaining to the 4th respondent will be subject to the earlier charge created in the same property.

10. In support of this position, the Division Bench judgment referred to above can be pressed into service.

11. In fact the said order was passed in the writ petition instituted by the very same 4th respondent Bank. Therefore the legal position is very clear knowing well to the 4th respondent they cannot make any successful attempt to sustain the order or reason passed or reason given by the 1st respondent



W.P.No.23164 of 2022

Sub Registrar in not registering the sale certificate issued by the petitioner Bank to and in favour of the 5th respondent. In that view of the matter, this Court has no hesitation to hold that the 1st respondent has no justification in refusing to register the sale certificate issued by the petitioner in favour of the 5th respondent, therefore that reason cited in the impugned communication is liable to be interfered with, accordingly this Writ Petition is disposed of with the following orders:

That the impugned communication is set aside. As a sequel there shall be a direction to the 1st respondent to register the sale certificate dated 05.08.2022 issued by the petitioner to and in favour of the 5th respondent and the aforesaid needful shall be undertaken by the 1st respondent within a period of three weeks from the date of receipt of a copy of this order.

12. With this direction, this Writ Petition is ordered accordingly. No costs.

04.01.2023

Index : Yes/No
Speaking Order : Yes/No

Sgl



W.P.No.23164 of 2022

WEB COPY

To

- 1.The Sub Registrar,
Pondicherry Sub Registrar Office,
Kamaraj Salai, Sakthi Nagar, Saram,
Puducherry – 605 013.

- 3.The Branch Manager,
Tamil Nadu Mercantile Bank,
Cuddalore Branch, No.19,
Siva Complex, Block No.8, Ward No.6,
Imperial Road, Cuddalore – 607 002.



WEB COPY



W.P.No.23164 of 2022

R.SURESH KUMAR, J.

Sgl

W.P.No.23164 of 2022

04.01.2023