



W.P.No.24630 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.24630 of 2019
and
W.M.P.No.24288 of 2019**

Punjab National Bank,
Represented by its Chief Manager,
Asset Recovery Management Branch (ARMB),
No.448A, Dr.Nanjappa Road,
Coimbatore – 641 018.

... Petitioner

Vs.

1. M/s.Sri Anjaneya Cottons,
Represented by its Sole Proprietor,
Mr.Vankadara Prakash,
Door No.3/227, 228, Sai Kuteer Road,
Y.M.R.Colony, Proddatur Town and Mandal,
Kadapa,
Andhra Pradesh.
2. M/s.V.R.Textiles Private Limited (In Liquidation),
Represented by Official Liquidator,
Attached to High Court, Madras,
Rajaji Salai,
Chennai – 600 001.



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3. The Sub Registrar,
Punchaipuliyampatty,
Gobichettipalayam,
Erode District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the third respondent to register the sale certificate notwithstanding the attachment effect with the office of the third respondent in respect of collateral security / mortgaged property as offered by the second respondent situated at Erode District, Gobichettipalayam Registration District, Punjai Puliampatti Sub Registration District, Sathyamangalam Taluk within the limits of Bavanisagar Panchayat Union in Nallur Village comprised in various survey numbers admesuring an extent of 10.47 acres together with plant and machinery so as to enable the petitioner Bank or its successors to register the sale certificate/ sale deed in favour of auction purchaser / third party(s) in accordance with law.

For Petitioner	:	Mr.M.L.Ganesh
For Respondents	:	No appearance for R1 Mr.S.R.Sundar for R2 Mr.V.Manoharan Addl. Government Pleader for R3



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ORDER

This Writ Petition has been filed for a direction to the third respondent to register the sale certificate notwithstanding the attachment effected with the office of the third respondent in respect of collateral security / mortgaged property as offered by the second respondent situated at Erode District, Gobichettipalayam Registration District, Punjai Puliampatti Sub Registration District, Sathyamangalam Taluk within the limits of Bavanisagar Panchayat Union in Nallur Village comprised in various survey numbers admesuring an extent of 10.47 acres together with plant and machinery so as to enable the petitioner Bank or its successors to register the sale certificate/ sale deed in favour of auction purchaser / third party in accordance with law.

2. The learned counsel appearing for the petitioner submitted that the second respondent availed loan from the petitioner Bank by mortgaging its properties. However, the second respondent, i.e., M/s.V.R.Textiles Private Limited has gone into liquidation. The petitioner has sent a demand



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notice under Section 13(2) of the SARFAESI Act on 24.07.2015 directing the second respondent to repay the outstanding loan amount within sixty days thereafter. Since the notice was not responded to, the petitioner has caused a Possession Notice on 27.01.2015 and had taken symbolic possession of the secured property and physical possession on 05.05.2016. In the meanwhile, the second respondent Company has been wound up by this Hon'ble Court vide order dated 12.12.2016 in C.P.No.271 of 2016. The petitioner Bank had conducted E-auction sale and had sold the hypothecated plant and machinery and factory land and building to the successful bidder. The auction purchaser remitted the sale consideration and accordingly, received a sale certificate in favour of the petitioner. When the petitioner Bank has presented the sale certificate dated 29.03.2019 for registration, the third respondent refused to register the same by stating attachment on the said property effected by the first respondent, EPFO and CTO. The petitioner Bank states that they will have priority over the claim of the first respondent since the second respondent had mortgaged its properties prior to the date of decree obtained by the first respondent. The petitioner further



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states that they will have precedence over the said decree in terms of Section 13(13) of the SARFAESI Act. Accordingly, on the above ground, the petitioner seeks for a writ of mandamus to the third respondent to register the sale certificate notwithstanding the attachment effected with the office of the third respondent in respect of collateral security / mortgaged property as offered by the second respondent situated at Erode District, Gobichettipalayam Registration District, Punjai Puliampatti Sub Registration District, Sathyamangalam Taluk within the limits of Bavanisagar Panchayat Union in Nallur Village comprised in various survey numbers admesuring an extent of 10.47 acres together with plant and machinery.

3. The issue involved in the said Writ Petition is no longer *res integra*, the same has been exhaustively dealt with by the learned Judge of this Court in W.P.Nos.30320 of 2022 etc., batch dated 20.02.2023 and the relevant paragraphs read as follows:



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20. However, if we look at the latest judgment of the learned Judge in **Federal Bank's** case as cited supra in W.P. No. 2758 of 2023 dated 08.02.2023 is concerned, the learned Judge exhaustively has dealt with this issue, therefore, the following portions of the said order are usefully referred hereunder:

“ 19. The effect of the first proviso, is to virtually nullify the aforesaid statement of law by the Supreme Court which is binding law under Article 141. That apart, even if an order of attachment is made, any sale deed registered thereafter would be automatically void only against all claims enforceable under the attachment under the provisions of Section 64 of the Code of Civil Procedure. For example, if the attachment is made for recovery of sum of Rupees One lakh and the property value is more than One Crore, it cannot be said that entire property cannot be dealt. Such case sale is void only against claim of Rupees One Lakh and its interest and not in entirety.

20. These issues have been thoroughly deliberated and elaborately discussed in Ramayee's case, which has also been affirmed by the Supreme Court, this Court is of the view that the effect of the first proviso is to set at naught to the above declaration of law by the Supreme Court and the Division Bench and it nullifies the several provisions of the Transfer of Property Act, as stated above. The authorities under the Registration Act have no jurisdiction to make rules which have the direct and immediate effect of restraining transactions which are permitted



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under the Transfer of Property Act. Such a restriction would be clearly illegal and violative of a citizen's right to deal with his property and would clearly infringe Article 300-A of the Constitution. It does not bear repetition that Article 300-A has now been recognised as a human right [Vidya Devi v State of Himachal Pradesh, 2020 2 SCC 569].

21. In State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77, which was also a case concerning the provisions of the Registration Act, the Supreme Court held that a subordinate legislation under the said Act which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, was invalid. In this case also, Rule 55-A being a subordinate legislation does not have any statutory guideline (for instance like the transactions mentioned in Section 22-A&B) and is opposed to the enforcement of substantive legal rights under the Transfer of Property Act. The first proviso is, therefore, invalid as it goes beyond the powers conferred on the Inspector General of Registration and is clearly ultra vires and unconstitutional to the Parent Act as well as the substantive provisions of the Transfer of Property Act.

22. Similarly, the second proviso requires the executant to produce a revenue record to show his "right over the subject property" where the property is ancestral in character and there is no original deed available. Even a tax receipt can be produced under this proviso which is opposed to the fundamental principle of law that revenue records are not documents of title



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[State of A.P. v Star Bone Mill and Fertilizer Company, 2013 9 SCC 319]. Production of revenue documents to verify the source of title only demonstrates complete ignorance of the settled position of law.

23. Similarly, the third proviso also defies logic. If the original is lost, it is not understood as to why a certified copy of that document obtained from the file of the concerned SRO cannot be produced. When the best evidence is not available, the best course is to produce a certified copy which is the next best available alternative. Instead, the third proviso requires the executant to obtain a non-traceable certificate and effect paper publication.

24. It is also well settled by the decision of the Supreme Court in *J.K. Industries Ltd. v. Union of India*, (2007) 13 SCC 673 that a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution. Furthermore, Rule 55-A is a delegated legislation which cannot go beyond the scope of the Parent Act viz., the Registration Act as well the Transfer of Property Act which is the substantive law governing the transfer of immovable properties. Hence, the first proviso is clearly *ultra vires* and unconstitutional.

....

26. In view of the above, as this Court has held that the first proviso to Rule 55-A has been found to be invalid and



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ultra vires, the respondent cannot refuse to register the document placing reliance on the aforesaid proviso.”

.....

28. Such a right of the party to transfer the property by issuance of sale certificate by the competent authority cannot be denuded or taken away by merely bringing a sub-ordinate legislation like Rule 55-A(i) and therefore, I am in agreement with the learned Judge, who has declared that the first proviso to Rule 55-A(i) is ultra vires to the Constitution. Following the said judgment of the learned Judge, I have no hesitation to hold that the reasons stated by the Registering Authority for refusing to register the respective sale certificates are concerned, is totally untenable and therefore, those reasons, in the impugned order, in the eye of law would not be sustained. In the result, the following orders are passed in these writ petitions:

- ◆ *That the impugned orders in these writ petitions are set aside and as a sequel, there shall be a direction to the respondents i.e., corresponding Registering Authority in each of the cases, to accept the sale certificate presented by the respective petitioners for registration and in this context, without insisting upon any NOC or clearance of attachment as provided under first proviso to Rule 55-A(i) as stated supra, the respective Registering Authority shall proceed to register the documents if it is otherwise in order that too without insisting any stamp duty in view of the law already been declared by the Hon'ble Supreme Court as discussed herein above.*



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- ◆ *The needful as indicated above shall be undertaken by the respondents/Registering Authority in each of the writ petitions within a period of six(6) weeks from the date of receipt of a copy of this order.*

4. Another learned Judge of this Court in W.P.No.2125 of 2022, dated 25.03.2023 has held as follows:

".....

7. Attention of this Court is drawn to the order passed by this Court in ***W.P.No.17901 of 2020***, order ***dated 11.12.2020***, which it is submitted is squarely applicable to the present case, and for better appreciation the relevant portions in the above said order are extracted hereunder:

"6. The issue involved in the present Writ Petition is squarely covered by the earlier Order passed by this Court in W.P.No.16523 of 2020 dt. 07.12.2020. The relevant portions in the order are extracted hereunder:

10. The issue involved in the present writ petition is squarely covered by the earlier orders passed by this Court. One such order, passed in W.P.No.7497 of 2019 dated 26.04.2019 can be relied upon for the purpose of this case. The relevant portions of the order are extracted hereunder:

"3. The issue as to whether the 2nd respondent is entitled to refuse registration of the document presented by the petitioner on the ground that the subject matter property is under Court attachment, is no more res integra, in view of the several orders passed by this Court in similar issue deciding against the Registration Department. One such recent order was



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passed by this Court in W.P.No.1094/2019 dated 26.03.2019, wherein it is observed as follows:

“8. The above issue involved in this case is no more *res integra* in view of the fact that the very same issue was already considered by this Court and decided against the registering authority in a decision made in W.P.No.10647/2007 dated 13.10.2018. In fact, this Court, while passing the said order, followed the order passed in W.P.(MD).No.2632/2012 dated 13.03.2013, which in turn, followed the decision of the Apex Court reported in 1985 (2) SCC 167 (*Balkrishan Gupta v. Swadeshi Polytex Limited*). Paragraph Nos. 7 and 8 of the said order reads as follows:

7. The point for consideration in this writ petition is whether the respondent is entitled to refuse registration of the sale deed on the ground that the subject matter properties of the sale deed are under Court attachment. The very same issue was considered by this Court in W.P.No.36079 of 2015 reported in 2016 (3) CTC 493 (*S.Praveen Bohra vs. Joint-I Sub-Registrar*) and the learned Judge found that the order of attachment cannot be a bar to register the document. In order to arrive at such conclusion, the learned Judge relied on several decisions of this Court as well as Apex Court. At paragraph Nos.6 to 9 of the said decision, the learned Judge has observed as follows:

6. It is relevant to refer to the unreported judgment of the Madurai Bench of Madras High Court in W.P.(MD) No.2635 of 2012, dated 13.03.2013, in the case of *K.D.P.Properties Private Limited v. The Sub Registrar*, relied on by the learned counsel for the petitioner, wherein, in paragraph No. 18, a reference was made to the decision of the Hon'ble Apex Court reported in (1985) 2 SCC 167, *Balkrishan Gupta v. Swadeshi Polytex*



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Limited, and it was held as follows:

“18. In (1985) 2 SCC 167 (supra), the Hon'ble Supreme Court has held as under:

“30. The consequence of attachment of certain shares of a company held by a shareholder for purposes of sale in a proceeding under section 149 of the Land Revenue Act is more or less the same. The effect of an order of attachment is what Section 149 of the Land Revenue Act itself says. Such attachment is made according to the law in force for the time being for the attachment and sale of movable property under the decree of a civil court. Section 60 of the Code of Civil Procedure, 1908 says that except those items of property mentioned in its proviso, lands, houses or other buildings, goods, money, banknotes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities of money, debts, shares in a corporation and all other saleable property, movable or immovable, belonging to a judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor, or by another person in trust for him or on his behalf, is liable for attachment and sale in execution of a decree against him. Section 64 of the Code of Civil Procedure, 1908, states that where an attachment of a property is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. What is forbidden under Section 64 of the Code of Civil Procedure is a private transfer by the judgment-debtor of the property attached contrary to the attachment, that is,



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contrary to the claims of the decree holder under the decree for realisation for which the attachment is effected. A private transfer under Section 64 of the Code of Civil Procedure is not absolutely void, that is, not void as against all the world but void only as against the claim enforceable under the attachment. Until the property is actually sold the judgment debtor retains title in the property attached. Under Rule 76 of Order 21 of the Code of Civil Procedure, 1908, the shares in a corporation which are attached may be sold through a broker. In the alternative such shares may be sold in public auction under Rule 77 thereof. On such sale either under Rule 76 or under Rule 77, the purchaser acquires title. Until such sale is effected, all other rights of the judgment debtor remain unaffected even if the shares may have been seized by the officer of the court under Rule 43 of Order 21 of the Code of Civil Procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or through an order in terms of Rule 46 of Order 21 of the Code of Civil Procedure may have been served on the judgment debtor or on the company concerned”.

19. The dictum laid down in the above judgment (1985) 2 SCC 167 (supra), gives a fitting answer to the issue raised in this writ petition. So far as the order of attachment passed by the DRT is concerned, the transfer is not void generally but it is void only as against the claims enforceable under the said attachment. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale. However, if the 2nd respondent bank exercises its right as against the property, the petitioner cannot raise any objection because the sale of the vendor in favour of the petitioner is void in respect of the order of attachment obtained by the 2nd respondent bank. So, even if the property is sold in favour of the petitioner,



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the 2nd respondent bank can always exercise its right as against the said property.

20. In view of the above finding, I am of the opinion that the sale of the subject property pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Therefore, the sale of the property, which is under attachment, cannot be said as illegal.

In the light of what is stated above, the writ petition is allowed and the 1st respondent-Sub Registrar, Kochiada, Madurai, is directed to release the registered document in favour of the petitioner within a period of one week from the date of receipt of a copy of this order. No costs."

7. It is also worthwhile to refer to the unreported judgment of Madurai Bench of Madras High Court in W.P.(MD) No. 14388 of 2014, dated 01.09.2014, in the case of M. Chitra v. The Sub Registrar, relied on by the learned counsel for the petitioner, wherein, in paragraph No. 5, it was held as follows:—

"5. In such circumstances, merely because there is an order of attachment passed by a Civil Court, the same cannot be a ground to refuse to register the Memorandum of Deposit of Title Deeds. If any deposit of title deeds is created in respect of the said property pursuant to the right acquired by the petitioner, vide settlement deed, dated 04.07.2011 it is always subject to further orders to be passed by the Civil Court. The petitioner's case is that she acquired title by way of settlement deed dated 04.07.2011, much prior to the order of attachment. Further, the learned counsel appearing for the petitioner placed reliance on Order 38, Rule 10 C.P.C. stating that attachment before judgment shall not affect the rights,



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existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree. The lending bank namely, Canara Bank, Vadamadurai if satisfies with the title of the petitioner over the property, can request the Registrar to register the document. In such circumstances, merely because an order has been passed by the Civil Court effecting attachment, cannot be a bar for entertaining a document for registration. Hence, the reasons assigned by the respondent refusing to register, vide his memo, dated 25.07.2014, is not in accordance with law beyond the scope of Section 71 of the Act."

8. Thus, it is crystal clear that it is well settled principle of law that the order of attachment cannot be a bar to register the document. Therefore, I am of the view that there is no need for this petitioner to file an appeal. I am of the opinion that the sale of the subject property, pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale.

4. Accordingly, I find that the reasons stated by the 2nd respondent in refusing to register the document, cannot be sustained. Thus, the Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the 2nd respondent to consider the document viz., Decree dated 03.03.2018, submitted by the petitioner, for registration. Such exercise shall be done by the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order. No costs."



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11. It can be seen from the above order that the learned Single Judge has placed reliance upon the orders passed by the Hon'ble Division Bench and also the Judgment of the Hon'ble Apex Court, which was in turn relied upon by the Division Bench. The ratio in the above order is that an order of attachment cannot be a bar to register a document. The reason being that the sale of a subject property pending the order of attachment is void only as against the claims enforceable under the order of attachment and not in respect of other claims. Therefore, the sale of the property, which is under attachment, cannot be said to be illegal where the parties to the transaction have nothing to do with the pending proceedings in which the order of attachment was passed.

7. The Attachment Order passed in the Civil Suit will not in any way bind the 2nd respondent Bank since the mortgage was created in the year 2009 itself and the Suit in question was filed only in the year 2017. The 2nd respondent being a secured creditor, will have a priority in recovering the debt. Even otherwise the sale of property which is under attachment, cannot be said to be illegal where the parties to the transaction have nothing to do with the civil proceedings in which the Attachment Order was passed. The Order of Attachment cannot be a bar to register the Sale Certificate presented for registration before the 1st respondent."

5. Though the name of the first respondent has been printed in the cause list, none appeared on behalf of the first respondent either in person or through counsel.



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6. The learned counsel for the second respondent has no serious objection for the petitioner's request.

7. Considering the facts and circumstances of the case and the earlier orders passed by this Court in similar matters, there shall be a direction to the third respondent / Registering Authority to entertain the document submitted by the petitioner, if it is otherwise in order, on payment of requisite stamp duty and registration charges.

8. This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

1. The Sole Proprietor,
M/s.Sri Anjaneya Cottons,
Mr.Vankadara Prakash,
Door No.3/227, 228, Sai Kuteer Road,
Y.M.R.Colony, Proddatur Town and Mandal,
Kadapa,
Andhra Pradesh.
2. The Official Liquidator,
M/s.V.R.Textiles Private Limited (In Liquidation),
Attached to High Court, Madras,
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