IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-09-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.25363 of 2023

Dr.M.N.Sadasivam ... Petitioner

Vs.

1.The Inspector General of Registration,
100, Santhome High Road,
Mylapore,
Chennai-600 004.

2.The Sub Registrar,
Anna Nagar,
Chennai-600 040.

3.Asset Reconstruction Company (India) Limited,
The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West),
Mumbai – 400 028. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second respondent to make Book 1 entry of the Sale Certificate as per under Section 89(4) of the

Registration Act, without insisting on additional stamp duty.

For Petitioner : Dr.S.S.Swaminathan

For Respondents-1 and 2: Mr.E.Sundaram,
Government Advocate.

For Respondent-3 : Ms.S.Abitha Banu

ORDER

The relief sought for in the present writ petition is to direct the second respondent to make Book 1 entry of the Sale Certificate as per under Section 89(4) of the Registration Act, without insisting on additional stamp duty.

2. The petitioner states that he is a Practising Doctor and running Multi-Speciality Hospital in Erode District under the name of 'Maaruthi Medical Centre and Hospitals'. Based on the public notice of sale issued under Rule 8(6) of the SARFAESI Security Interest (Enforcement) Rules, 2002 in a local Daily Newspaper dated 27.12.2022, the petitioner participated in the process of public auction.

3. The Auction property comprises of land measuring an extent of 5510 sq.ft., and a building thereon at Old Survey No.134/7 and 133/1, New Survey No.134/2 and 134/3, South Chennai Registration District, Anna Nagar Sub Registration District, Nungambakkam-Egmore Taluk, within the limits of Chennai Corporation, Koyambedu Village, Door No.30, Kurungaleeswarar Koil Street, Koyambedu, Chennai-600 107.

4. The subject property was a secured asset towards the financial facilities granted by the Indian Overseas Bank, Choolaimedu Branch, Chennai to the borrower M/s.Sri Devi Hospitals, represented by its Proprietor Dr.K.Senthilnathan. The borrower committed default in repayment of loans and consequently, the Bank initiated action under the SARFAESI Act.

5. It is not in dispute that public notice was for sale was issued on 27.12.2022 and the sale notice itself explicitly reveals that 96 unsecured creditors have created attachments over the subject property in furtherance of the orders made by the City Civil Court.

6. Knowing the fact that there are other encumbrances in respect of the subject property, the petitioner participated in the public auction and was successful bidder and consequently Sale Certificate was issued by the Bank in favour of the writ petitioner. The Sale Certificate was issued by the Authorised Officer on 20.02.2023. The Sale Certificate also reveals that there are other encumbrances and the list of encumbrances as mentioned in the terms and conditions of sale also has been stated in the Sale Certificate itself.

7. That being the factum, the petitioner was aware of the other encumbrances and the attachments made by the City Civil Court.

8. Knowing the factual details regarding other encumbrances, the petitioner purchased the property.

9. Question arises the Sale Certificate issued with other encumbrances can be registered by the Registering Officer under the Registration Act either under Section 17 or under Section 89(4) of the

Registration Act.

10. The Hon'ble Supreme Court of India in the case of **The Inspector General of Registration and Another vs. G.Madhurambal and Another [2022 LiveLaw (SC) 969]**, held that entry made in Book No.I under Section 89(4) of the Registration Act, also amounts to registration and it cannot be otherwise distinguished from the Registration made under Section 17 of the Registration Act. The effect of registration is one and the same.

11. Regarding the issues relating to registration of Sale Certificate, the Court has to consider whether the procedures as contemplated under the SARFAESI Act and the Security Interest (Enforcement) Rules, are valid or not.

12. The issues are elaborately discussed by this Court in WP No.15014 of 2022 and judgment was pronounced on 05.09.2023 and the relevant paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 are as under:-

"23. Let us consider the procedures as contemplated and followed by the Bank in the present case. Section 26 E of the SARFAESI Act stipulates that "Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority." Therefore the petitioner Bank holds first charge and they are entitled to auction the property of realise the loan dues by priority. The Security Interest (Enforcement) Rules 2002, contemplates procedures.

? Rule 9 stipulates "Time of sale, issue of sale certificate and delivery of possession, etc."

? Sub Rule (6) to Rule 9 states that " On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules."

? Sub Rule (7) to Rule 9 states that " Where the immovable property sold is subject to any encumbrances, the authorised officer may, if the thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him."

? Sub Rule (8) to Rule 9 states that "On such deposit of money for discharge of the encumbrances, the authorised officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly." ? Sub Rule (9) to Rule 9 denotes that "The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above."

? Sub Rule (10) to Rule 9 indicates that "The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free

from any encumbrances known to the secured creditor or not."

24. Pertinently, in the present case, the sale certificate issued by the authorised officer indicates that there are known encumbrances to Commercial Taxes Department, Omalur; Central Excise and Service Tax, Salem Division and Tamil Nadu Electricity Board. When, there are known encumbrances at the time of auctioning the secured assets, the procedures as contemplated under Rule 9 has been followed by the petitioner-Bank or not, is to be examined.

25. The petitioner Bank is entitled to auction the secured assets. On confirmation of sale by the Secured creditors / petitioner Bank, the authorized officer, exercising the power of sale, shall issue certificate of sale of the immovable property in favour of the auction purchaser in the form given in Appendix-V. Appendix-V provides sale certificate format. There is a column to indicate list of encumbrances. In the present case, the sale certificate issued in favour of the second respondent indicates known encumbrances for 3 organisations (Central Government, State

Government and Tamil Nadu Electricity Board). Under Sub Rule (7) to Rule 9, the authorised officer has to examine if there is any encumbrances. In the event of any encumbrance, whether statutory or non-statutory, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances to meet out the contingencies. On such deposit of money, for discharge of the encumbrances, the authorised officer shall issue or cause the purchaser to issue and accordingly clear the encumbrances.

26. On compliance of Sub Rule (7) and (8) after issuing the sale certificate, the authorised officer shall deliver the property to the purchaser, free from encumbrances known to the secured creditor on deposit of money as specified under Sub Rule (7).

27. The procedures contemplated under Rule 9 of the Security Interest (Enforcement) Rules 2002, unambiguously stipulates that the secured creditors / Bank has got responsibility and accountability to consider the statutory creditors and their dues, while dealing with the secured assets. Unilateral actions, by neglecting *the statutory creditors, are impermissible, since the procedures contemplated under the rules indicate the protections provided to unsecured creditors, statutory creditors etc. While realising the loan dues, the secured creditors are mandated to protect the interest of the unsecured creditors, statutory creditors etc. The spirit of the Rules amplifies that the sale must be made free from all encumbrances to the third party auction purchaser, who is not expected to suffer unnecessarily on account of the procedural violations, if any committed by the secured creditors/ Banks.*

28. On issuance of sale certificate under Sub Rule (6) to Rule 9, the purchaser may be allowed to deposit the money required to discharge the other encumbrances. On such deposit of money, the encumbrances may be cleared by the authorised officer. After clearing all the encumbrances, the authorised officer shall deliver the property to the purchaser free from any encumbrances. Sub Rule (10) to Rule 9 denotes that " The certificate of sale issued under Sub-rule (6) shall specifically mention that whether the purchaser has purchased the *immovable secured asset free from any encumbrances known to the secured creditor or not."*

29. Therefore, the secured creditors are empowered to make two kind of auction sales. Firstly they can auction the secured assets and issue sale certificate under the form given in Appendix-V of the Rules by indicating the other encumbrances. While indicating the other encumbrances, steps have to be taken by the secured creditors to clear the other encumbrances. Thereafter, under Sub Rule (9) to Rule 9, the authorised officer shall deliver the property to the auction purchaser, free from encumbrances. The process does not complete on issuance of the sale certificate by the authorised officer. Sub Rules (7) to (10), to Rule 9, indicate the subsequent procedures to be followed by the authorised officer to protect the other encumbrances / non-secured statutory or other creditors. It is not as if the secured creditors/ Banks can auction the secured assets, issue the sale certificate and wash off their hands. They have duty towards the other nonsecured statutory creditors under the provisions of the Security

Interest (Enforcement) Rules 2002. In the event of non-compliance of the statutory rules issued under the SARFAESI Act, the Bank is not entitled for any relief from the hands of the Constitutional Courts. Unilateral actions of the secured creditors, at no circumstances be appreciated. They, being a public sector, is duty bound to protect the interest of the other statutory creditors as it is Crown's debt. The power conferred under the SARFAESI Act cannot be exercised, so as to deprive the other statutory creditors from realising their dues. This exactly is the reason why the legislature thought fit and contemplated the procedures so as to protect the interest of the Crown's debt and the interest of the non-secured creditors. Thus, mandatory procedures contemplated under the Rules, if violated or not complied with, then the secured creditor/ Bank is not entitled for the relief to lift the attachment without clearing the dues or to remove the attachment from the encumbrance certificate under the provisions of the Registration Act.

30. If the above procedures are not complied with and the sale certificate has not been issued stating that the purchaser has *purchased the immovable secured asset free from any encumbrances, then the sale certificate issued would fall under the second category, i.e., with encumbrance.*

31. The second category of sale certificate, in the form given in Appendix-V of the Rules, indicates that the list of encumbrances must be furnished in the sale certificate. In the present case, such list of encumbrances are furnished by the authorised officer including the attachment, made by the first respondent in respect of the secured assets. In the event of mentioning the list of encumbrances in the sale certificate, then it is to be construed that the sale certificate was not issued free from encumbrances. When the sale certificate was issued with encumbrances then such sale certificate cannot be registered under the Registration Act nor encumbrances made can be removed without lifting the same.

32. Question arises, whether the interest of the third party purchaser can be protected in such circumstances, when the sale certificate was issued with encumbrances? The simple answer is that the third party auction purchaser, knowing the encumbrances notified by the secured *creditor, has purchased the property through public auction. When the purchaser is aware of the encumbrances, then he has to discharge the encumbrances and convert the sale free from encumbrances for the purpose of registering the sale certificate or for alienating the property. By Applying the principles of Caveat emptor, the third party purchaser, who purchased the property through public auction was made aware of the encumbrances. Once the purchaser has the knowledge about the encumbrances and purchased the property through auction, then it is his obligation to discharge the encumbrances and convert the encumbered property free from encumbrances. The Bank cannot file a writ petition so as to protect the interest of the third party, who has purchased the property knowing the fact that there are other encumbrances. Once the Bank auctioned the property and issued a sale certificate under Sub Rule (6) to Rule 9 of Security Enforcement Rule 2002 by mentioning the list of other encumbrances, then such sale certificate cannot be registered by the registering authority. Thus, only on lifting the attachment, necessary entries can be made in the encumbrance* *certificate or to remove the encumbrances under the provisions of the Registration Act.*

33. The legislative intention of the SARFAESI Act and Security Interest (Enforcement) Rules, 2002, is not restricted by providing priority to the secured creditors / Banks, but extents its protection to the non-secured and statutory creditors. Therefore, the secured creditors / financial institutions, while invoking the provisions of the SARFAESI Act, and the rules framed thereunder are mandated to follow the procedures scrupulously so as to ensure that other non-secured creditors are not deprived of their rights to realise their statutory or other dues.

34. Under the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules 2002, the Auction Sale by the secured creditors, completes on delivery of the secured assets to the auction purchasers, free from all encumbrances. Violation of procedures, if any committed by the secured creditors, if resulted in denial of the rights of other non-secured creditors and statutory dues, then the secured creditors are not entitled for a direction from the High Court to *remove the encumbrances notified. While realising the loan dues by the secured creditors, they are equally bound to provide space for the non-secured creditors to realise their dues. Thus, compliance of the procedures contemplated in the rules are not only mandatory but the non-compliance would result in denial of an opportunity to the non-secured creditors to recover their dues.*

35. No doubt, in the present case, the secured creditor is not in a position to recover their dues in entirety. In such circumstances, Sub Rule (10) of Rule 9 contemplates that the certificate of sale issued under Sub Rule (6) shall specifically mention whether the auction purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not. If the auction sale is made with encumbrances, then the registering authority under the Registration Act cannot remove the same.

36. Registering Authority, under the Registration Act is bound by the provisions of the Act. When the Sale Certificate was issued with known encumbrances and the auction purchaser *purchased the property accepting the known encumbrances, the Registering Authority is empowered to refuse registration, so also he cannot remove encumbrances.*

37. The auction purchaser is made aware of the known encumbrances by the secured creditors. The secured creditors, to cover up their misdeeds, cannot file a writ petition and seek a direction against the Registering Authority to remove the encumbrances, which would deprive the other nonsecured creditors from realising their dues. Importantly, such directions, if issued to remove the encumbrances, the public in general would be misled on account of such entries in the public records and there is a possibility of fraud, misrepresentation or otherwise at the time of further alienation of properties. Further the non-secured creditors and the statutory creditors would loose their opportunity to recover their dues permanently. The principle of 'Buyer Beware' would be applicable in respect of the auction purchase made by the persons along with the known encumbrances. It is not in dispute that the secured creditor notified the encumbrances even at the initial stage of publication of auction *notice. Thus, the purchasers are aware of the fact regarding the other encumbrances. High Court cannot grant waiver of other encumbrances, thereby depriving the non-secured creditors from realising their dues. Such waiver would result in infringement of the statutory rights of the non-secured creditors and therefore, the secured creditors are duty bound to follow the procedures as contemplated under the rules scrupulously.*

38. If the auction sale has been completed in all respects in compliance with the provisions of the SARFAESI Act and Rules, then alone the sale certificate issued by the authorised officer can be construed as free from all encumbrances as stipulated under Rule 9 of the Security Interest Enforcement Rules. In the event of notifying any other encumbrances in the sale certificate, then it is to be construed as sale certificate with encumbrances. In respect of the sale certificate issued with known encumbrances, then the Registering Authority under the Registration Act is not empowered to remove encumbrances. Such refusal is made in order to protect the interest of the non-secured statutory creditors and to protect the public interest and therefore, such actions of *the Registering Authority cannot be held to be infirm or perverse.*

39. In the present case, the petitioner / Indian Overseas Bank conducted public auction of the secured assets. They recovered their dues partly. The sale certificate was issued by the authorised officer notifying the known encumbrances. The petitioner Bank thereafter filed the present writ petition seeking a direction against the Sub-Registrar to register the sale certificate, but the sale certificate was issued by the Authorised Officer with known encumbrances. Thus, the sale certificate issued cannot be construed as free from encumbrances as contemplated under Rule 9 of the Security Interest Enforcement Rules. Thus, the sale certificate issued with encumbrances is non-registrable and the Registering Authority is not empowered to remove encumbrances at the request of the Bank.

40.The auction purchaser purchased the property along with the known encumbrances. After realising the dues partly by the secured creditor, the auction purchaser, along with the secured creditors/ Bank, cannot deprive the statutory rights of the other non-secured or *statutory creditors under various enactments to realise their dues. The secured creditors has no right to cause infringement of the rights of the other nonsecured creditors and statutory creditors. Thus, adherence of the Security Interest Enforcement Rules scrupulously is of paramount importance in order to protect the other encumbrances and any violation by the secured creditors would disentitle them from seeking the relief of direction to remove encumbrances under the Registration Act. Thus, the writ petition is not only premature but also the sale certificate issued with encumbrances cannot be registered under the provisions of the Registration Act, nor encumbrances can be removed, at the request of the Bank since such removal would result in misguidance to the public in general for further alienation of the properties. Unless, the encumbrances are cleared, the attachment will continue, and it cannot be removed as such sought for by the petitioner Bank."*

13. The Sale Certificate under Rule 9(6) of the Security Interest (Enforcement) Rules can be issued with encumbrances or without

encumbrances. Once such Sale Certificate has been issued free from encumbrances under Rule 9 (10) of the Rules, then such Sale Certificates are registrable under the provisions of the Registration Act, either under Section 17 or under Section 89(4), as the case may be and by following the procedures as contemplated. If the Sale Certificate has been issued with encumbrances, then the Registering Authority is empowered to refuse registration by invoking the powers conferred under Section 22-B of the Registration Act.

14. In the present case, 96 attachments were in force even at the time of issuance of the public sale notice and the petitioner had purchased the property knowing the fact that there are other encumbrances and thus, he is at liberty to clear the encumbrances and retain the Sale Certificate free from all encumbrances and in the event of submitting the Sale Certificate along with encumbrances, the Registering Authority is empowered to refuse registration of the same.

15. This being the principles to be followed and the Rules in this regard are elaborately considered by this Court in the judgment, cited

supra, the petitioner is not entitled for the relief as such sought for in the present writ petition.

16. Accordingly, the present writ petition stands dismissed. However, there shall be no order as to costs.

08-09-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

1.The Inspector General of Registration,
100, Santhome High Road,
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Anna Nagar,
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S.M.SUBRAMANIAM, J.

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