



W.P.No.26302 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.26302 of 2023

Canara Bank,
rep. by Authorized Officer,
Regional Office
Plot No.92/P, 6th West Cross Road,
Suthanthira Ponvizha Nagar,
Gandhinagar West,
Gandhinagar,
Vellore, Tamil Nadu-632 006.

.. Petitioner

VS

1.The Sub Registrar,
Registering Authority,
Sub Registrar Office,
Walajapet, Railway Station Road,
Walajapet-632 513.

(R1 cause-title amended vide order dated 22.9.2023
made in WMP.No.27364 of 2023)

2.Deepika Naresh
3.Vinoth

.. Respondents

(Respondent Nos.2 and 3 impleaded vide order
dated 22.9.2023 made in WMP.No.27365 of 2023)



W.P.No.26302 of 2023

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the encumbrance attachment entry in Document Number 16/2021 dated 10.5.2021 on the file of the first respondent and quash the same and consequently direct the respondent to register the sale certificate dated 20.1.2023 issued by the petitioner bank to and in favour of the auction purchaser.

For the Petitioner : Mr.M.A.Abdul Wahab
for M/s.K.V.Subramanian
Associatez

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for respondent No.1

: Mr.T.P.Prabakaran
for respondent No.3

: R2 – Not Ready in Notice

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.M.A.Abdul Wahab, learned counsel for M/s.K.V.Subramanian Associatez, learned counsel for the petitioner and Mr.P.Muthukumar, learned State Government Pleader for the first respondent.



W.P.No.26302 of 2023

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2. This writ petition is filed seeking directions against the first respondent to register the sale certificate dated 20.01.2023 issued by the petitioner bank.

3. It is submitted that the sale certificate dated 20.1.2023 issued to the auction-purchaser is not registered by the Sub Registrar on the ground that the civil court has passed an order of attachment. The order of attachment before judgment was passed by the civil court on 10.05.2021.

4. The petitioner bank, exercising power under Section 13(4) of the Act, sold the property in public auction.

5. Section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "*the Act of 2002*") provides 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,



W.P.No.26302 of 2023

cesses and other rates payable to the Central Government or State Government or local authority.

6. The secured creditor has priority charge over all other creditors. Though respondents 2 and 3 may have an order of attachment and/or decree in their favour, the property, that was sold in public auction, was mortgaged to the bank. A security interest was created in favour of the bank. In view of that, the bank has priority charge. Reference can be had to the judgment of the Apex Court in the case of *Kotak Mahindra Bank Limited v. Girnar Corrugators Private Limited and others*, reported in (2023) 3 SCC 210. The Division Bench of this Court has consistently followed the said judgment. Reference can be had to the judgment and order dated 2.8.2023 passed in W.P.(MD) No.28500 of 2022 [*M/s.Siva Automotive Trading Private Limited, Madurai v. The Sub Registrar, Othakadai Sub Registrar Office, Othakadai, Madurai*], in which one of us (*D.Bharatha Chakravarthy, J.*) is a member.

7. In case all other requirements are complied with, the concerned Sub Registrar shall not refuse to register the sale



W.P.No.26302 of 2023

certificate only on the ground that the civil court has passed an order of attachment in favour of respondents 2 and 3. In that event, the attachment may also be removed from the relevant record.

8. With these observations, the writ petition stands disposed of. There will be no order as to costs. Consequently, W.M.P.No.25711 of 2023 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

14.12.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

The Sub Registrar,
Registering Authority,
Sub Registrar Office,
Walajapet, Railway Station Road,
Walajapet-632 513.



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W.P.No.26302 of 2023

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

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W.P.No.26302 of 2023

14.12.2023