



Order dated 19.10.2023
in W.P.No.28861 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.10.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.28861 of 2023

--

M.Kannan

.. Petitioner

Vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate,
Pattinapakkam,
Chennai-600 028.

2. The Sub-Registrar,
Office of the Sub-Registrar,
Gudvancheri.

3. The Authorised Officer,
State Bank of India,
Stressed Assets Recovery Branch,
Red Cross Building, II Floor,
No.32, Red Cross Road,
Egmore, Chennai-600 008.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the second respondent in Refusal Number: RFL/Gooduvancheri/16/2023, dated 12.06.2023 refusing the registration pertaining to the simple mortgage deed, dated 12.06.2023, quash the same and consequently direct the second respondent to register the said simple mortgage



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deed of the petitioner, dated 12.06.2023.

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For petitioner : Mr.D.Arun

For respondents: Mr.Yogesh Kannadasan, Spl.G.P.for RR-1 & 2
Mr.M.L.Ganesh and Mr.S.Arun Kumar for

R-3

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the second respondent in Refusal Number: RFL/Gooduvancheri/16/2023, dated 12.06.2023 refusing the registration pertaining to the simple mortgage deed, dated 12.06.2023, quash the same and consequently direct the second respondent to register the said simple mortgage deed of the petitioner, dated 12.06.2023.

2. The facts in a nut-shell are as under:

The residential flat bearing No.B-805, measuring 986 Sq.Ft. with UDS of 342.68 Sq.Ft. in Block-B of the Apartment called Milano Orchard, constructed in land comprised in Sy.Nos.165/2A and 166/2, situated at Urappakkam Village in Chengalpet District, was secured in favour of the State Bank of India towards re-

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payment of the loan and the liabilities arising in the loan granted by the said Bank to M/s.AL Ameen International Limited. Later on, the above loan account went into default without any re-payment and the borrower has failed to keep their commitments to the Bank as agreed upon and it was decided by the Bank to put the said property for sale by public auction under the provisions of the SARFAESI Act, 2002. In the public auction held on 14.12.2022, conducted by the third respondent herein in respect of the above property, the petitioner offered to purchase the same for a sum of Rs.30,48,000/-. The petitioner was held as successful bidder and paid the said sum to the third respondent/Bank as per the terms of auction. The sale in favour of the petitioner was confirmed by the third respondent and the physical possession of the same was also handed over to the petitioner and a sale certificate dated 26.12.2022 was issued by the third respondent in favour of the petitioner, which shows the evidence of sale and title in his favour. Thus, the petitioner became the absolute owner/possession and enjoyment. He also obtained a new electricity connection for the property, vide No.095680254716. Since the petitioner was in need of funds to meet his urgent needs, he approached his son who is residing abroad and his son agreed to give Rs.5 lakhs to him and the petitioner being a senior citizen aged about 72 years and also being a differently-abled person, does not want to arrange for funds from any other sources and hence, with a view to avoid future complication



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arising to his son and to secure the amount lent by his son, intended to create a simple mortgage deed for the said sum of Rs.5 lakhs in respect of the above property in favour of him. The petitioner executed a simple mortgage deed, dated 12.06.2023 and took a token through online in TP/152830202/2023, fixing the time slot and date for registration of the simple mortgage deed on 12.06.2023 between 10 and 11 a.m and the petitioner also paid Rs.10,210/- through online, vide Reference No.REG202306122856452 towards stamp duty, registration fee and other charges applicable to the above said simple mortgage deed. On 12.06.2023, when the petitioner presented the document to the second respondent for registration along with all the documents, the second respondent refused to register the said simple mortgage deed stating that the said mortgage deed is not supported by a valid document of title, ignoring the sale certificate in favour of the petitioner, since it is being unregistered and passed the impugned refusal check slip. Challenging the same, the petitioner has filed the present Writ Petition for the relief stated supra.

3. Learned counsel for the petitioner submitted that the petitioner is the auction-purchaser of the property in question as per the provisions of the SARFAESI Act and the Authorised Officer of the Bank has also issued the sale certificate. When the mortgage deed was produced, he presented the same for



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registration. The Registrar insisted registration of the sale certificate. There is no necessity to register the sale certificate. The Supreme Court and this Court, time and again has settled the proposition that the sale certificate need not be registered and merely presentation of it is not necessary to be registered and it has to be produced as per Section 89(4) of the Registration Act with Schedule and it is stated that the Books of Accounts and the sale certificate have to be presented in the Book (1) as per Section 89 of the Registration Act. In the decision of the Supreme Court reported in 2021 (11) SCC 537 (Esjaypee Impex Private Limited Vs. Canara Bank), the Apex Court held as follows:

"16. We are of the view that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the authorised officer of the Bank under the SARFAESI Act to hand over the duly validated sale certificate to the auction-purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act."

Inspite of the above direction of the Supreme Court, the respondents are insisting on registration of the sale certificate. The counter affidavit filed by the official respondents also indicates the same which is against the proposition of law laid down by the Apex Court.

4. The learned Special Government Pleader appearing for the official respondents submitted that the sale certificate has to be presented before the



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Registrar in the manner known to law and even the Supreme Court in paragraph 16 extracted above, had stated so, whereas, there is no evidence to show that neither the Authorised Officer of the Bank, nor the competent authority/officer presented the sale certificate as contemplated under Section 89 of the Registration Act, more so, the Supreme Court has also clarified the same in the above said decision.

5. Admittedly, in this case, the sale certificate was not sent to the Registrar in the manner known to law. Therefore, now even the counter affidavit shows otherwise which is against the proposition of law laid down by the Supreme Court.

6. Therefore, the third respondent is directed to send the sale certificate as per the above direction of the Supreme Court and in case it has already been sent, the respondents 1 and 2 are directed to make an entry in that and the petitioner is directed to produce the sale certificate before the Registrar and the third respondent is directed to send the sale certificate to the Registrar with the form in Schedule Book-I to the Registrar in order and if the Registrar, after receipt of the complaint, stated the reasons and on receipt of it, the Registrar is directed to register the simple mortgage deed of the petitioner if



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it is otherwise in order.

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7. With the above observations and direction, the Writ Petition is disposed of. There shall be no order as to costs.

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Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

CS

To

1. The Inspector General of Registration,
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P.VELMURUGAN, J

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