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W.P.No.33219 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

W.P.No.33219 of 2023

Canara Bank
Rep.by its Branch Manager
A.Shenbakavalli

... Petitioner

Vs.

The Sub Registrar
Periyanaickenpalayam
Coimbatore North Taluk
Coimbatore District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in respect of the Refusal check slip dated 17.08.2023 issued by the respondent and quash the same and direct the respondent to register the sale certificate dated 07.12.2022 issued by the petitioner Bank in favour of Mrs.SusheelaJayarani in respect of the property comprised in Survey No.527/1, bearing No.168, Sri Balaji Gardens, Press Colony Post, No.4, Veerapandi Village, Town Panchayat, Periyanaickenpalayam, Coimbatore District.



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For the Petitioner : Mr.K.S.Viswanathan
Senior Counsel
for Ms.T.Hemalatha

For the Respondents : Mr.Yogesh Kannadasan
Spl. Government Pleader

ORDER

Challenging the refusal check slip dated 17.08.2023, the petitioner has filed the present Writ Petition.

2. By consent of both the parties, this Writ Petition is taken up for final disposal at the admission stage itself.

3. It is the case of the petitioner/Bank that M/s Aaron Industries, represented by its Proprietor – Mr.A.Kevin Anto, availed credit facilities from the petitioner/Bank, to the tune of Rs.31 Lakhs, by executing a Loan Agreement dated 29.11.2018. In order to secure the said loan, one Ambrose Andrew, father of Kevin Anto, executed a Memorandum of Deposit of Title Deeds on 03.10.2018, bearing Document No.14899/2018 at the office of the



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Sub Registrar, Periyanaickenpalayam, in order to create mortgage over the house property comprised in S.F.No.527/1, No.168, Sri Balaji Gardens, Press Colony Post, No.4, Veerapandi Village, Periyanaickenpalayam, Coimbatore District.

4. While so, the said M/s Aaron Industries defaulted in repayment of loan liabilities and the same was therefore classified as Non Performing Asset, since 01.01.2021. Therefore, the petitioner/Bank issued Demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as 'SARFAESI Act') on 08.04.2021 to the borrowers, followed by Possession notice dated 21.10.2021. Symbolic possession was taken and thereafter, the petitioner/Bank has issued Sale notice dated 13.09.2022 for E-auction. When the sale was fixed on 23.11.2022, the subject property was auctioned through online and one Susheela Jayarani was the highest bidder for a sum of Rs.35,40,000/-. Upon due payment of the bid amount by the auction purchaser, sale certificate dated 07.12.2022 was issued and physical possession of the property was also handed over to the auction purchaser.



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5. Be that as it may It came to the knowledge of the petitioner/Bank that one Surabhi Transport Finance had filed an Arbitration case against the Kewin Anto along with two others in A.C.P.No.17 of 2022, in respect of a Loan agreement and dispute between the parties. In the Arbitration proceedings, by way of an interim order, the property belonging to Ambrose Andrew, which was originally mortgaged with the petitioner/Bank, in connection with the credit facilities availed by one Kewin Anto, was attached. Thereafter, when the auction purchaser presented the sale certificate for registration before the SRO, Periyanaickenpalayam, the same was refused, vide the order impugned in this Writ Petition.

6. The learned Senior Counsel appearing for the petitioner/Bank submitted that in respect of the property, security interest has already been created in favour of the petitioner/Bank. The Arbitral Tribunal, without ascertaining the encumbrance over the property, had proceeded to issue an interim order of attachment over the very same property. He would further submit that this Court and the Hon'ble Supreme Court, time and again, had held that the Arbitral Tribunal has no jurisdiction to affect the rights and



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remedies of third parties / secured creditors in the course of determining dispute pending before it. In support of his submission, the learned Senior Counsel relied upon the Judgment of the Hon'ble Supreme Court in the case of *State Bank of India Vs. Ericsson India Private Limited and others*, reported in *(2018) 16 Supreme Court Cases 617*.

7. The learned Special Government Pleader appearing for the respondent submitted that as per the subsequent amendment of Section 22 (b) (iii) of the SARFAESI Act, if any attachment or any other encumbrance is made, subsequent document cannot be registered and therefore, the impugned order passed by the respondent stands good and does not require any interference by this Court.

8. Heard the learned counsel on either side and perused the material records available in this case.

9. Admittedly, the petitioner/Bank brought the secured property for sale and public auction was conducted and after following due process of law, sale was also confirmed. Upon due payment by the auction purchaser, sale



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certificate was issued on 07.12.2022. However, when the auction purchaser attempted to register the said sale certificate, the respondent issued the order impugned in this Writ Petition. Further, the principles of Order XXXVIII Rule 5 of Civil Procedure Code are not at all satisfied in this case. It is settled proposition of law that the scope and object of the SARFAESI Act is peculiar in nature and it has been clearly established in the case of ***State Bank of India Vs. Ericsson India Private Limited and others*** cited supra, wherein it has been held as follows:-

“5. There can be no dispute that the Arbitral Tribunal has no jurisdiction to affect the rights and remedies of the third party-secured creditors in the course of determining disputes pending before it. Moreover, the impugned order does not comply with the mandate of Rules 5 and 10 of Order 38 CPC. Thus, the impugned orders cannot be sustained and are accordingly set aside. It is, however, made clear that the secured creditors will proceed against the asset(s) of the debtor(s) in accordance with law. This order will not affect any of the remedies of either of the parties. We have not gone into any other issue except the



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validity of the impugned order.”

10. Applying the ratio laid down in the above case to the present case on hand, this Court is of the view that the attachment by the Arbitral Tribunal is subsequent to the proceedings of the secured creditors, i.e., the Arbitral proceedings are of the year 2022, however, the petitioner/Bank initiated sale of the subject property in the year 2021 itself. Therefore, the impugned refusal slip dated 17.08.2023 issued by the respondent is set aside and the respondent is directed to register the sale certificate dated 07.12.2022 sent by the petitioner/Bank, if it is otherwise in order, within a period of two weeks from the date of receipt of a copy of this order.

11. With the above direction, this Writ Petition stands allowed. No costs.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

The Sub Registrar
Periyanaickenpalayam
Coimbatore North Taluk
Coimbatore District.



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P.VELMURUGAN, J.,

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