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W.P.(MD)No.310 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.310 of 2023

Tamilnadu Mercantile Bank Limited

Aranthangi Branch

D.No.32/1, R.H.Complex,

Old Hospital Road, Aranthangi - 614 616,

Pudukkottai Distrit.

Represented by the Chief Manager / Authorised Officer,

A.Raja

... Petitioner

Vs.

1.The Sub Registrar,

Aranthangi, Pudukkottai District,

2.M/s.VAP Steel Panthal and Aqua Agencies,

Prop:A.Dinesh

3.A.Dinesh

4.V.Adaikalam

5.A.Deepan

6.M/s.Shriram Transport Finance Co.Ltd.,

Hsna Complex,

No.21, Kallupattarai Road,

Aranthangi & Taluk,

Pudukkottai District - 614616.

... Respondents



PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent, Sub Registrar, Aranthangi, Pudukottai District, to efface/delete the encumbrance attachment entry Doc. No. 22/2021, registered on 18.12.2021 and Doc. No. 23/2021, registered on 22.12.2021 as against the schedule mentioned property in the light of the petitioners representation dated 20.07.2022.

For Petitioner : Mr.N.Dilip Kumar
For R1 : Mr.N.Satheeskumar,
Additional Government Pleader
For R3 and R4 : Mr.R.Suriyanarayanan
For R6 : Mr.M.Mohamed Sherbudeen

* * *

ORDER

Heard the learned counsel for the writ petitioner, the learned Additional Government Pleader for the first respondent, the learned counsel for the sixth respondent and the learned counsel for the respondents 3 and 4.

2. The respondents 2 to 5 availed mortgage loan from the writ petitioner bank. The petition mentioned property was offered as security. This took place on 19.12.2016. The borrower committed default. The bank exercising its power as that of secured creditor, initiated



SARFEASI proceedings. The sale notice has also been issued but it did not elicit any bidder. This is because of the entry in the petition-mentioned encumbrance register. The borrowers had also approached the sixth respondent for loan. They committed default and they did not repay the loan taken from the sixth respondent also. Sixth respondent therefore initiated arbitration proceedings and secured an award against the borrowers. The award was entered in the encumbrance register. It is too obvious that the secured creditor is given priority by the SARFEASI Act. That apart, the mortgage executed in favour of the writ petitioner is prior in point of time.

3.The writ prayer cannot be granted as such. This is because, as rightly pointed out by the learned Additional Government Pleader for the first respondent, Rule 143 of the Tamil Nadu Registration Rules, 1983 will come in the way. The said Rule reads as follows:

"143. A certificate of encumbrance shall contain a complete list of all acts and encumbrance affecting the property in question."

4. The petitioner will have the first charge and preferential right over the petition mentioned property. Whatever right which the



sixth respondent may have is subject to and subordinate to the right of the writ petitioner. The auction purchaser from writ petitioner is not answerable to the sixth respondent. The first respondent is directed to register this order.

5. Whatever has happened cannot be effaced. However, relief has been granted to the writ petitioner. This writ petition is disposed of on these terms. The sale certificate issued by the petitioner shall also be registered by the first respondent without reference to the award registered at the instance of the sixth respondent.

6. This writ petition is disposed of. No costs.

28.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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To

The Sub Registrar,
Aranthangi, Pudukkottai District.



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G.R.SWAMINATHAN,J.

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