



W.P.(MD) No.674 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

CORAM:

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

W.P.(MD) No.674 of 2023

and

W.M.P.(MD) Nos.679, 680 & 13373 of 2023

M/s.Cholamandalam Investment
and Finance Company Ltd.,
No.B-11, Star Towers
First Floor
Colony Main Road
11th Cross Street
Thillai Nagar
Tiruchirappalli
represented by its Authorized Officer
P.Velmurugan

... Petitioner

-VS-

- 1.The District Registrar
Registration Department
Ariyallur Registration District
Ariyallur
- 2.The Sub Registrar
Thuraiyur
Tiruchy District
- 3.Shyamala



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4.M/s.Sundaram Finance Limited
No.21, Patullous Road
Chennai-600 002
rep.by its Authorized Officer

5.Kumar

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the impugned check slip in Refusal No.RFL/Thuraiyur/227/2022, dated 08.12.2022 issued by the second respondent and subsequently direct the second respondent to register the sale certificate dated 08.12.2022 relating to the property measuring to an extent of 2400 sq.ft., in Plot No.9, in Survey No. 252/11, having T.S.No.59/1 (including its pathway rights in Survey No. 233/4), Kalappu Colony, Malaiyappan Salai, Thuraiyur Municipality, Tiruchirappalli District and efface / delete the adverse attachment entry of the fifth respondent relating to the above said property in the encumbrance certificate within a reasonable time fixed by this Court.

For Petitioner : Mr.V.Sukumar

For Respondents : Mr.J.Ashok
Additional Government Pleader for R1 & R2
Mr.S.Pon Senthil Kumaran for R4
Mr.N.Syed Ali for R5



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ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

The third respondent is the borrower of the petitioner (creditor). The account of the third respondent was declared as non-performing asset. The petitioner exercised his right under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter, referred to as “the Act, 2002”).

2. By issuing a notice under Section 13(2) of the Act, 2002, on 01.08.2020, symbolic possession of the property was taken under Section 13(4) of the Act, 2002, on 15.10.2020. The petitioner, thereafter, resorted to the sale of the property by auction. The said property was purchased by the fifth respondent and a sale certificate was issued to him on 08.12.2022. However, the Sub Registrar refused to register the sale certificate purportedly, on the ground that there is an order of attachment by the Civil Court on 13.12.2016. The order of attachment was pursuant to the execution proceedings filed by the fourth respondent for execution of the award passed by the Arbitrator.



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3. The action of the Sub Registrar in refusing to register the sale certificate has propelled the petitioner to file the present writ petition.

4. We have heard the learned counsel on either side.

5. Learned counsel for the petitioner submits that under Section 26-E of the Act, 2002, the petitioner being a secured-creditor has a priority of charge. The attachment of the property, which was mortgaged in favour of the secured-creditor much prior in point of time, would not affect the rights of the petitioner.

6. To buttress his submissions, learned counsel for the petitioner relies on the following Judgments:

- (i) ***City Union Bank Limited vs. Sub Registrar***, reported in ***(2018) 5 ALT 279 (DB)***;
- (ii) Unreported Judgment of the High Court of Kerala, dated 04.06.2020 in W.A.No.634 of 2020 (***Secretary, Keechery Service Co-operative Bank Ltd., vs. Sajitha Nizar alias Sajitha.P.M.***);



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Unreported decision of the High Court for the State of Telangana, dated W.P.No.500 of 2020 (***The Karur Vysya Bank Limited vs. The State of Telangana, represented by its Principal Secretary, Stamps and Registration Department***); and

- (iv) Unreported decision of the High Court of Kerala, dated 02.12.2022 in W.P.(C) No.37558 of 2022 (***The South Indian Bank Limited, vs. Sub Registrar and others***);

7. Learned counsel appearing for the fourth respondent, in whose favour the award is passed by the Arbitrator and the order of attachment is issued in execution of the award, contends that the attachment of the property by the Civil Court is prior in point of time. On the date, the property was attached, the petitioner had not initiated any proceedings. Already, the fourth respondent has an award in his favour. The award is akin to a decree. In view of that, the fourth respondent has a right to proceed ahead with the property.



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8. We have considered the submissions canvassed by the learned counsel appearing for the respective parties.

9. The order of attachment in execution of an award certainly would be resorting to Order XXI Rule 54 of the Code of Civil Procedure. The genesis of Order XXI Rule 54 C.P.C., would lie in Section 60 of C.P.C.

10. After the property is attached, Section 64 of C.P.C. bars any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

11. Section 64 of C.P.C. bars private transfer. The transfer in the present case is an involuntary transfer. It is the secured-creditor, who has exercised its right under the Special Act *viz.*, the Act 2002.

12. Section 26-E of the Act, 2002 starts with a *non obstante* clause. Section 26-E of the Act, 2002 provides that notwithstanding anything contained in any other law for the time being in force, after the registration of



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the 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.

13. Section 26-E of the Act, 2002 expressly and unambiguously provides for a priority right to a secured creditor over all other claims.

14. The debt of the fourth respondent was an unsecured debt. The mortgage of the property in favour of the present petitioner or the judgment-debtor under the award was prior to the attachment of the property.

15. The rights of the secured-creditor have a priority charge. The Apex Court, in the case of ***Kotak Mahindra Bank Limited vs. Girnar Corrugators Private Limited and others***, reported in ***(2023) 3 SCC 210***, has held that the legislature has expressly and unambiguously provided for a legal framework exclusively on the issue of 'priority' of payment of debt by including Section 26-E in the Act, 2002. In the said case, it was held that the recovery under the Act, 2002 with respect to the secured asset would prevail over the recovery of the award amount under the Micro, Small and Medium Enterprises Development Act, 2006.



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16. In light of that, the second respondent shall not refuse to register the sale certificate dated 08.12.2022 in respect of the the property measuring an extent of 2400 sq.ft., in Plot No.9, bearing Survey No.252/11 and T.S.No.59/1 (including its pathway right in Survey No.233/4), Kalappu Colony, Malaiyappan Salai, Thuraiyur Municipality, Tiruchirappalli District, on the ground that there is an order of attachment of the Civil Court in the execution proceedings taken at the behest of the fourth respondent.

17. The writ petition is allowed in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

[S.V.G., .C.J.]

[C.K., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Registration Department,
Ariyallur Registration District,
Ariyallur.
- 2.The Sub Registrar,
Thuraiyur,
Tiruchy District.



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