



W.P(MD)No.3540 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 05.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3540 of 2022

Tamilnad Mercantile Bank Ltd,
Represented by its Chief Manager,
S.F.No.235/5, Ward No.24,
Opposite to Annai Hospital,
Thuraiyur - 621 010,
Thiruchirapalli District.

... Petitioner

Vs.

1.The Sub Registrar,
Office of the Sub-Registrar,
Thuraiyur,
Thiruchirapalli District.

2.J.Santha

3.J.Rajesh

4.S.Kamaraj

5.M/s Sundaram Finance Limited,
Rep by its Senior Manager (Legal),
21, Patullos Road, Express Estate,
Royapettah, Chennai,
Tamilnadu - 600 002.

6.A.Ponnambalam

... Respondents

1/6



W.P(MD)No.3540 of 2022

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records related to the impugned Refusal Check Slip issued by the first respondent dated 16.12.2021 and quash the same and consequently direct the 1st respondent, Sub-Registrar, Thuraiyur, Trichy, to efface / delete the attachment entry dated 22.06.2020 made in Doc.No.18 of 2020 and to register the Supplemental memorandum of deposit of title deed dated 07.12.2021 executed by the 6th respondent in favour of petitioner bank pertaining to the schedule mentioned property.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.M.Siddharthan,
Addl. Government Pleader for R1.
Mr.S.Pon Senthil Kumaran for R5.
No appearance for R4 & R6.

ORDER

Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the first respondent and the learned counsel for the fifth respondent.



W.P(MD)No.3540 of 2022

2.The undisputed facts are as follows:-

WEB COPY

The respondents 2 and 3 availed finance facility from the petitioner and mortgaged the schedule mentioned property. These transactions took place between 10.07.2012 to 14.09.2015. Whiles, the second respondent approached the fifth respondent for vehicle loan on 31.12.2015. The second respondent committed default in respect of both the transactions. The writ petitioner / bank initiated proceedings under SARFAESI Act. The property was brought to sale and the sixth respondent purchased the property at an e-auction on 02.12.2019 and the sale certificate was also registered on 09.12.2019 (Document No.6193/2019. The sixth respondent thereafter mortgaged the property in favour of the petitioner on 28.09.2020. He subsequently wanted to execute supplemental mortgage by deposit of title deeds. The registering authority declined to register the supplemental mortgage by deposit of title deeds. He issued the impugned refusal check slip on 16.12.2021. The reason for issuing the impugned refusal check slip was that at the instance of the fifth respondent, an interim attachment had been made in respect of the very same property.



W.P(MD)No.3540 of 2022

WEB COPY

3.The question that arises for consideration is whether the registering authority was justified in refusing to register the supplemental mortgage by citing the interim attachment made at the instance of the fifth respondent.

4.As rightly pointed out by the learned counsel for the petitioner, mortgage in favour of the petitioner is prior in point of time. The respondents 2 and 3 dealt with the petitioner on various dated between 10.07.2012 and 14.09.2015. The transaction between the second respondent and fifth respondent was on 31.12.2015. This is clearly subsequent in point of time. The petitioner is obviously having priority. Since the petitioner's claim had priority over the debt payable to the fifth respondent, the rights of the sixth respondent cannot be clouded by the attachment made at the instance of the fifth respondent in I.A.No.51 of 2017 in ARB Case No.SSM/SF/135/2017 on 17.10.2017.

5.The impugned refusal check slip is quashed. It is brought to my notice by the learned counsel for the petitioner that pursuant to the



W.P(MD)No.3540 of 2022

interim order given by this Court, the supplemental mortgage deed was registered on 28.03.2022 itself as Document No.2344/2022. The encumbrance made at the instance of the fifth respondent shall also be deleted. This writ petition is allowed. No costs.

05.10.2023

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

To:-

The Sub Registrar,
Office of the Sub-Registrar,
Thuraiyur,
Thiruchirapalli District.



WEB COPY



W.P(MD)No.3540 of 2022

G.R.SWAMINATHAN, J.

ias

W.P(MD)No.3540 of 2022

05.10.2023