BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.4255 of 2023
and
WMP(MD)No.4029 of 2023

State Bank of India,
Stressed Asset Recovery Branch (SARB),
Represented by Chief Manager,
N.Suresh Babu,
No.8, Dr.Ambedkar Road,
1st Floor, Madurai-625 020. ... Petitioner

vs.

1. The Sub Registrar Joint 1,
Tirunelveli Registrar Office,
Tirunelveli District.

2. The Sub Registrar Joint 2,
Tirunelveli Registrar Office,
Tirunelveli District.

3. The Assistant Commissioner (ST),
Commercial Tax Department,
Palayamkottai Assessment Circle,
Palayamkottai, Tirunelveli-627 002.

4. M/s.H.M.Textiles Private Limited,
Represented by its Director,
Kishore M.Sethia, No.66, Robertson Road,
R.S.Puram, Coimbatore-641 002. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding of the 1st respondent dated 15.02.2023 in RFL/Tirunelveli Joint 1/6/2023 and quash the same and direct the 1st Respondent to register the Sale Certificate dated 07.09.2022 issued in respect of the schedule mentioned property in favour of the 4th Respondent and consequently direct the 1st and 2nd Respondents to efface / delete the encumbrance attachment entry L.No.1/2022 registered before the 1st Respondent and to efface / delete the encumbrance attachment entry Doc.No.3029/2017, registered before the 2nd Respondent as against the schedule mentioned property.

For Petitioners	:	Mr.N.Dilip Kumar
For R1 to R3	:	Mr.M.Prakash Additional Government Pleader

ORDER

(Order of the Court was made by R.SUBRAMANIAN, J.)

Challenge in this writ petition is to the Check Slip issued by the Registering Officer on 15.02.2023 refusing to register a sale certificate issued by the Bank on the ground that an attachment made by the Commercial Taxes Department on 15.09.2017 for tax arrears to the tune of Rs.1,83,93,095/- is subsisting.

2. Mr.Dilip Kumar, learned counsel appearing for the petitioner Bank would submit that in view of Section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Bank's claim has a priority over all other claims. The said provision reads as follows:-

> *"26E. Priority to secured creditors.—Notwithstanding anything contained in any other law for the time being in force, after the registration of 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.*
> *Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.]"*

3. He would further submit that mortgages in favour of the petitioner Bank were created on 02.07.2003, 06.07.2007, 10.11.2008 and 08.04.2013. Action under the SARFAESI Act was initiated and Bank issued a possession notice on 17.09.2014. An application under Section 14 was filed before the District Collector,

Tirunelveli, on 07.08.2015 and physical possession of the property was taken by the Bank on 23.09.2015. Thereafter, the Bank took steps to sell the property and eventually, the property was sold in the auction that was held on 17.05.2022 and a sale certificate was issued on 07.09.2022.

4. He would also invite our attention to the judgment of the Full Bench of this Court reported in **2016 (6) CTC 769, Assistant Commissioner vs. The Indian Overseas Bank,** wherein, the Full Bench of this Court had held that in view of Section 41 of the Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Actof 2016, the Bank's right under the mortgage will supersede the right of the Commercial Taxes Department under the attachment. He would also draw our attention to the judgment of the Division Bench of this Court in **Tamil Nadu Mercantile Bank Limited vs. The Joint-I Sub Registrar Office, Madurai and others** reported in **2021 (1) Writ Law Reporter 462,** wherein also, the same view was reiterated.

5. In view of the above categorical pronouncements and in

view of the fact that the amendment that was introduced by the State adding Rule 55A of the Tamil Nadu Registration Rules enabling Sub Registrars to refuse registration during subsistence of attachments, has also been struck down by this Court in **W.P.No. 2758 of 2023 dated 08.02.2023 [The Federal Bank Ltd., Rep. by its Senior Manager, Coimbatore Division, Coimbatore-641001 vs. The Sub Registrar, Coimbatore Road, Pollachi-642001 and two others]**, the order impugned in this writ petition cannot be sustained and the same has to be necessarily set aside. We, therefore, have no hesitation in allowing the writ petition.

6. The Writ Petition stands allowed and the impugned Check Slip issued by the Registering Officer on 15.02.2023 is set aside. There will be a direction to the first respondent to register the sale certificate. Registration shall be done within a period of 30 days from today. No costs. Connected miscellaneous petition is closed.

[R.S.M.,J.] & [L.V.G.,J.]
07.03.2023

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

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R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

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ORDER MADE IN
W.P(MD)No.4255 of 2023
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