



W.P(MD)No.16035

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2023

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CORAM :

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN**

W.P(MD)No.16035 of 2023

The Authorized Officer,
Karur Vysya Bank Ltd.,
Asset Recovery Branch,
No.1498 C, 3rd Floor, KVB Towers,
D.O.Building, Avinashi Road,
Peelamedu, Coimbatore – 641 004.

... Petitioner

Vs.

1.The Sub-Registrar,
Tenkasi Joint – I Sub-Registrar Office,
Tenkasi District.

2.Thiru.M.Kadher Ali

3.M.S.Thangamuthu

4.T.Chellathurai

... Respondents

(R3 & R4 are added vide Court order dated 31.08.2023 in
W.P(MD)No.16035 of 2023 by CJ & CKJ)

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in Refusal Number.RFL/1 Joint Sub-Registrar Tenkasi/18/2023 dated 07.03.2023 issued by the first respondent and quash the same and consequently directing the first respondent to register the sale certificate dated 26.09.2022 issued by the petitioner bank in favour of the second respondent for the schedule mentioned properties.



For R-2 to R-4 : No Appearance

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

3. Symbolic possession of the property was taken under Section 13(4) of the Act, 2002, on 12.02.2021. The petitioner, thereafter, resorted to the sale of the property by auction. The said property was purchased by the second respondent and a sale certificate was



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issued to him on 26.09.2022. 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 04.06.2019 & 30.11.2021. The order of attachment was under Order 38 Rule 5 of C.P.C.

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

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

6. 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.

7. 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.***);
- (iii) Unreported decision of the High Court for the State of Telangana, dated W.P.No.500 of 2020 (***The Karur Vysya Bank Limited vs.***



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*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*);

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

9. The order of attachment is under Order 38 Rule 5 of C.P.C. 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.

10. 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.

11. 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 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. Section 26-E



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

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12. 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.

13. 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.

14. In light of that, the first respondent shall not refuse to register the sale certificate, dated 26.09.2022, in respect of the the property measuring an extent of western 3297.9 sq. ft. in 15 cents in Survey No.442/9A & 9B,(earlier Survey No.442/1A2 & 1D), Ilanji Special Grade Panchayat & Ilanji Village, Tenkasi Joint I Sub Registration District, Tenkasi Registration District, on the ground that there is an order of attachment before judgment by the Civil Court at the behest of the third and fourth respondents.



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

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

[K.K.R.K, J.]

28.11.2023

Index : Yes / No
Neutral Citation : Yes / No

PM

To:

The Sub-Registrar,
Tenkasi Joint – I Sub-Registrar Office,
Tenkasi District.



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THE HONOURABLE CHIEF JUSTICE
and
K.K. RAMAKRISHNAN, J.

PM

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