



W.P.(MD)No.21646 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.21646 of 2023

M/s.M.L.Exports,
Represented by its Director,
Mr.Velmani,
7-A, Ramakrishnapuram I Cross,
Karur - 639 001.

... Petitioner

versus

1. The Sub-Registrar,
Mela Karur,
Karur District.
2. The Authorized Officer,
UCO Bank,
Zonal Office, First Floor,
No.22, Fathar Randy Street,
Coimbatore – 641 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 1st respondent refusal check slip in No.RFL/Melakarur/60/2020 dated 29.10.2020 and quash the same and direct the 1st respondent to register the sale certificate



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dated 28.09.2020 issued by the 2nd respondent in respect of the properties comprised in Karur District, Manmangalam Taluk, Aathur Village in Survey Nos.355/5 and 355/6.

For Petitioner : Mr.R.Murali

For R1 : Mr.P.T.Thiraviam,
Additional Government Pleader

For R2 : Mr.A.V.Sureshkumar

ORDER

This writ petition has been filed challenging the refusal slip made by the first respondent by his proceedings dated 29.10.2020 refusing to register the sale certificate issued by the second respondent in favour of the petitioner.

2. The learned counsel appearing for the petitioner submits that the petitioner has purchased properties comprised in Survey Nos.355/5, 355/6 situated at Aathur Village, Manmangalam Taluk, Karur District, in an auction conducted by the second respondent Bank on 17.09.2020. The petitioner was also issued with a Sale Certificate by the second



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respondent Bank on 28.09.2020. Thereafter, the petitioner has submitted an application to the first respondent on 29.10.2020 for registration of documents based on the sale certificate. In the meantime, a third party has filed a money suit as against one Palaniammal, a borrower of the second respondent Bank and obtained an order of attachment of the subject properties on 11.11.2014. Therefore, the first respondent has refused to register the document sale certificate issued by the second respondent on the ground that there is an order of attachment in respect of the subject properties.

3. The learned counsel appearing for the petitioner further submits that even before the order of attachment dated 11.11.2014, the subject properties were mortgaged with the second respondent Bank on 17.03.2014 and therefore, the order passed by the first respondent rejecting the documents submitted by the petitioner for registration based on the sale certificate issued by the second respondent Bank is not proper. In support of his contention, he has also relied upon a



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Judgment of this Court, in the case of ***M/s.Cholamandalam Investment and Finance Company Ltd., Tiruchirappalli vs. The District Registrar, Ariyallur and others (W.P.(MD)No.674 of 2023 dated 31.08.2023).***

4. Mr.A.V.Sureshkumar, who takes notice for the second respondent, on instructions, submits that the properties, which were sold in an auction initiated under SARFAESI proceedings were mortgaged with the second respondent Bank by the said Palaniammal on 17.03.2014, however, by way of a collusive suit, an order of attachment was obtained on 11.11.2014.

5. This Court considered the rival submissions and perused the materials available on record.

6. In the case of ***M/s.Cholamandalam Investment and Finance Company Ltd., Tiruchirappalli vs. The District Registrar, Ariyallur and others (W.P.(MD)No.674 of 2023 dated 31.08.2023)***, relied upon



by the learned counsel for the petitioner, this Court has observed as

follows:

“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.*

16. In light of that, the second respondent shall not



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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. ”

6. Admittedly, the subject property was mortgaged with the second respondent on 17.03.2014 and the date on which, charge was created in favour of the second respondent Bank. But, an order of attachment made by the Sub Court, Karur was only on 11.11.2014.

7. Following the Judgment *cited supra*, this writ petition is allowed setting aside the refusal check slip made by the first respondent dated 29.10.2020. The first respondent shall register the document produced by the petitioner based on the sale certificate dated



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28.09.2020 issued by the 2nd respondent in respect of the properties comprised in Survey Nos.355/5 and 355/6 situated at Karur District, Manmangalam Taluk, Aathur Village. No costs.

07.09.2023

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

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Karur District.
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