



W.P.(MD) No.28500 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD) No.28500 of 2022

and

W.M.P.(MD)No.22505 of 2022

M/s.Siva Automotive Trading Private Limited,
No.2C, Gate Lock Road, New Ramnad Road,
Madurai-625 009.

Rep. by its Authorized Signatory,
Mr.Veeramani Arumugam,
S/o.Arumugam

... Petitioner

-vs-

- 1.The Sub Registrar,
Othakadai Sub Registrar Office,
No.869, Melur Main Road,
Othakadai, Madurai-625 107.
- 2.M/s.Pro Visual Audio Private Limited,
No.4, Pushpa Nagar, 1st Main Road,
Iyyapanthangal, Chennai-600 056.
- 3.M/s.Sukrith Motor Cars Private Limited,
Rep. by its Directors,
Mrs.N.Maheswari & Natarajan Purushothaman,
B-73, 3rd Street, Kalai Nagar,
Madurai-625 104.



W.P.(MD) No.28500 of 2022

WEB C 4.R.P.Balamurugan

5.M/s.Kotak Mahindra Bank Limited,
Rep. by its Authorised Officer,
Samson Towers, 4th floor, No.402, 403,
Pantheon Road, Egmore,
Chennai-600 008.

6.Commissioner of CGST & Central Excise,
Office of the Commissioner of CGST & Central Excise,
Central Revenue Buildings,
Bibikulam, Madurai-625 002.

7.M/s.Mahindra & Mahindra Financial Services Limited,
Rep. by its Authorised Officer,
Dr.G.M.Bhosalre Marg, P.K.Kurne Chowk,
Worli, Mumbai-400 018.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, to call for the records of the encumbrance attachment entries in vide Document Nos:8/2019, dated 11.04.2019, Document No.9/2019, dated 12.04.2019, Document Nos: 19/2019 and 20/2019, dated 26.08.2019 on the file the first respondent/Sub Registrar, Othakadai Sub Registrar Office, Madurai and quash the same and consequently, direct the first respondent to register the Sale Certificate dated 22.11.2022 issued by the fifth respondent bank to and in favour of the petitioner/Auction purchaser M/s.Siva Automotive Trading Private Limited, within a time frame.



W.P.(MD) No.28500 of 2022

WEB COPY

For Petitioner : Mr.R.Murali
for Mr.T.N.Karthikeyan

For Respondents : Mr.J.K.Jeyaseelan
Government Advocate for R1

: No Appearance for R2 to R4

: Mrs.Ananda Gomathy for R5

: Mr.N.Dilipkumar for R6

: Mr.A.P.Athithan for R7

ORDER

[Order of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

The petitioner company is an auction purchaser of the property in the nature of plots in Uthangudi village, Madurai North Taluk, Madurai North Registration District in R.S.Nos.149/4A1, 149/4A3, 149/4A and 148/2. The property was sold under SARFAESI Act, by the fifth respondent bank, being the secured creditor. A sale certificate was duly issued in favour of the petitioner on 22.02.2022. Upon producing the same for registration before the first respondent namely the Sub-Registrar, Othakadai, Madurai, the same was declined orally on the



W.P.(MD) No.28500 of 2022

WEB COPY

ground that in respect of the property purchased, there are orders of attachment passed by the Commissioner of CGST and Central Excise Madurai, the sixth respondent herein, vide Document No.8 of 2019 dated 11.04.2019 and Document No.9 of 2019 dated 12.04.2019. This apart the eighth respondent being the sole arbitrator, at the behest of seventh respondent, namely M/s.Mahindra and Mahindra Financial Services Limited had also passed attachment orders dated 26.8.2019 which are registered as Document Nos.19 of 2019 and 20 of 2019.

2. It is the case of the petitioner that the fifth respondent alone is the secured creditor and by virtue of the provisions of the SARFAESI Act, the claim of the secured creditor is paramount and has precedence over others and therefore, the registration of the above attachment orders have to be deleted and the petitioner's sale certificate is to be registered.

3. Heard Mr. R.Murali, learned counsel appearing on behalf of the petitioner, Mr.J.K.Jayaseelan, learned Government Advocate appearing on behalf of the respondents 1 to 4, Mrs. Ananda Gomathy, learned



W.P.(MD) No.28500 of 2022

counsel appearing on behalf of the fifth respondent, Mr.N.Dileep Kumar, learned counsel appearing on behalf of the sixth respondent and Mr.A.P. Adhithan, learned appearing on behalf of the seventh respondent.

4. On perusal of the material records of the case more specifically the encumbrance certificate it is clear that there is a mortgage executed in favour of the fifth respondent bank. Therefore, the fifth respondent being the secured creditor under the SARFAESI Act and the security interest being duly registered, by virtue of Section 26E of SARFAESI Act, 2002, it is only the claim of the fifth respondent bank which has priority. Section 26E of SARFAESI Act, 2002, is extracted hereunder for ready reference:

“Section 26E: *Priority to secured creditors. 26E. 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*



W.P.(MD) No.28500 of 2022

WEB COPY (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.”

5. On account of the above amendment to the SARFAESI Act, 2002, the attachment of the commissioner of CGST and Central Excise as well as the attachment under the arbitration award will stand valid if only any money which is left over after the satisfaction of the entire loan due to the fifth respondent bank.

6. Therefore, once the fifth respondent bank exercises its power of selling the property through the Authorized Officer, the attachments made by the other respondents were rendered otiose. Thereafter, the only right of the sixth and seventh respondents was to claim their dues if any surplus money is left with the Authorized Officer under the SARFAESI Act. This position is no longer res integra and is recently reiterated by the Hon'ble Supreme Court of India in ***Kotak Mahindra Bank Ltd vs. Girnar Corrugators Private Limited and Others* [2023 (3)SCC 210]** and it is useful to extract paragraph No.32 which reads as hereunder:



W.P.(MD) No.28500 of 2022

WEB COPY

“....32. At this stage, the object and purpose of the enactment of the SARFAESI Act is required to be considered. The SARFAESI Act has been enacted to regulate securitization and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interest created on property rights, and for matters connected therewith or incidental thereto. Therefore, the SARFAESI Act has been enacted providing specific mechanism/provision for the financial assets and security interest. It is a special legislation for enforcement of security interest which is created in favour of the secured creditor — financial institution. Therefore, in absence of any specific provision for priority of the dues under the MSMED Act, if the submission on behalf of Respondent 1 for the dues under the MSMED Act would prevail over the SARFAESI Act, then in that case, not only the object and purpose of special enactment/the SARFAESI Act would be frustrated, even the later enactment by way of insertion of Section 26-E of the SARFAESI Act would be frustrated. If the submission on behalf of Respondent 1 is accepted, then in that case, Section 26-E of the SARFAESI Act would become nugatory and would become otiose and/or redundant. Any other contrary view would be defeating the provision of Section 26-E of the SARFAESI Act and also the object and purpose of the SARFAESI Act.”



W.P.(MD) No.28500 of 2022

WEB COPY

7. The learned counsels appearing on behalf of the sixth and seventh respondents cannot dispute the above legal position. In this case admittedly there is no money which is left over after satisfying the loan amount of the fifth respondent bank and thus the attachments made by the sixth and seventh respondents have become completely nugatory and otiose and such are liable to be deleted as otherwise the same would create unnecessary cloud over the title of the petitioner. Useful reference in this regard can be made to the judgment of this court in ***Tamil Nadu Mercantile Bank Ltd., Vs. The Joint I Sub Registrar and Others [2021 (2)LW 622]*** whereunder in paragraph No. 13, these entries were ordered to be deleted by the Sub Registrar. The learned counsel on either side would not dispute the said legal position that similar reliefs has been granted in several other decisions also.

8. In view thereof, this writ petition is allowed on the following terms:

- (i) The writ petitioner shall once again present the sale certificate dated 22.11.2022 before the first respondent for



W.P.(MD) No.28500 of 2022

WEB COPY

registration within a period of two weeks from the date of receipt of a copy of this order. Upon such production, the first respondent shall register the same in accordance with law more specifically without reference to any of the attachment orders or encumbrances that may reflect in the records;

(ii)The first respondent shall also show the entries of attachments vide Document Nos.8 of 2019, 9 of 2019, 19 of 2019 and 20 of 2019 as deleted;

(iii) There shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

02.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sjj



WEB COPY



W.P.(MD) No.28500 of 2022

S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

sjj

To:

The Sub Registrar,
Othakadai Sub Registrar Office,
No.869, Melur Main Road,
Othakadai, Madurai-625 107.

W.P.(MD) No.28500 of 2022

02.08.2023