

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.(MD)No.28962 of 2022

and

W.M.P.(MD)Nos.22937 of 2022

State Bank of India,
Represented by its Authorized Signatory,
Stressed Assets Recovery Branch - SARB,
No.8, Dr.Ambedkar Road,
Vinayaganagar Branch (Upstairs),
Madurai - 625 020.

... Petitioner

Vs.

1. The Sub Registrar,
Office of the Sub Registrar,
Arasaradi,
Madurai.
2. Shriram Transport Finance Company Limited,
PKNA Complex, 3rd Floor, No.81, Naidu Hall Upstairs,
Bye Pass Road,
Madurai.

... Respondents

(R2 is impleaded vide Court order dated
27.02.2023 in W.M.P.(MD)No.1409 of 2023 in
W.P.(MD)No.28962 of 2022 by GRSJ)

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the Refusal Check Slip in Refusal No.RFL/ARASARADI/6/2022 dated 15.12.2022 issued by the first respondent, quash the same and further direct the first respondent to register the Sale Certificate issued by the petitioner Bank.

For Petitioner : Mr.P.Pethu Rajesh

For Respondents : Mr.M.Prakash
Addl. Govt. Pleader for R1
Mr.M.Mohamed Herudeen for R2

O R D E R

This Writ Petition has been filed in the nature of certiorarified mandamus seeking interference with the Refusal Check Slip in Refusal No.RFL/ARASARADI/6/2022 dated 15.12.2022 issued by the first respondent, the Sub Registrar, Arasaradi, Madurai and direct the first respondent to register the Sale Certificate issued by the petitioner Bank.

2. Pending Writ Petition, Shriram Transport Finance Company Limited, had been impleaded as a further respondent in the Writ Petition.

3. In the affidavit filed in support of the Writ Petition, which has been filed by the State Bank of India, Stressed Assets Recovery Branch at Madurai, it had been stated that the property at Plot No.B-4, RS.No.78/4B, measuring 1845 sq.ft., Kochadai Village, Madurai South Taluk, Arasaradi Sub Registration District, Madurai, had been mortgaged with the petitioner herein by way of Memorandum of Deposit of title deed by one S.A.Saravanan on 22.01.2015. This mortgage was registered as Document No.183 of 2015 on the file of the Sub Registrar, Arasaradi. Thereafter, since the mortgagor did not pay the money, the petitioner Bank had followed the normal process and had filed necessary application before the Debt Recovery Tribunal for recovery of money and since the money was not paid even then, had initiated SARFAESI proceedings took possession of the property and brought the property to auction and also sold the property. The sale certificate was presented for registration before the respondents.

4. At that time, the first respondent issued the Refusal Check Slip informing about an attachment consequent to an arbitration award.

Therefore, the sale certificate was refused to be registered. I do not find the logic behind the same. The sale certificate will necessarily have to be registered if it is accompanied with adequate stamp duty and registration charges. It is for the holder of the decree to work out his remedy in the manner known to law. If at all there is excess money available with the petitioner after sale of his property and after adjustment of the loan amount, then, that excess amount can be paid to the holder of the decree under the arbitration award. Otherwise, it will have to be recovered in the manner known to law.

5. But merely because of property is attached, it cannot be stated that the registration cannot be effected. The encumbrance still stays. The person who purchases, can still have valid title over the property. The title is not affected. A direction is, therefore, given to the respondents to register the sale certificate if it is otherwise in order and necessary stamp duty and registration charges have been paid by the petitioner or purchaser of the property. No further orders are required. When the certificate of sale is presented within a period of 10 working days, registration should be done.

6. This Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

28.03.2023

NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

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