



W.P.(MD) No.273 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2023

CORAM:

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

**W.P.(MD) No.273 of 2023
and
W.M.P(MD)No.237 of 2023**

M/s.Cholamandalam Investment and Finance Company Limited,
2/3, GV Tower,
Melakkal Main Road,
Madurai.

Represented by its authorised Officer,
P.Velmurugan

: Petitioner

-vs-

1.The District Registrar,
Registration Department,
Madurai North Registration District,
Madurai.

2.The Sub Registrar,
Tallakulam,
Madurai District.

3.Thangapandi

4.M/s.Shriram Transpot Finance Limited,
1st Floor,Sri Alagar Plaza,
GST Road, Thirunagar,
Madurai-625 006.

5.Selvaprabhu

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorarified Mandamus, to call for the records relating to



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the impugned check slip in Refusal No.RFL/Tallakulam/8/2022, dated 13.12.2022 and quash the same and consequently, direct the second respondent to register the sale certificate dated 13.12.2022 relating to the land in S.No.2721/1 (Part) in which Plot No.78, Tiruvalluvar Nagar, Survey Ward No.10, Madurai North Village, Madurai South Taluk, Madurai District and efface/delete the attachment entry of the fourth respondent relating to the above said property in the Encumbrance Certificate within reasonable time fixed by this Court.

For Petitioner	: Mr.V.Sukumar
For R1 & R2	: Mr.J.Ashok Additional Government Pleader
For R3	: Tapal Returned
For R4	: Mr.Anand C.Rajesh
For R5	: No Appearance

ORDER

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

This Writ Petition is filed with a prayer to issue a Writ of Certiorarified Mandamus to quash the impugned check slip in Refusal No.RFL/Tallakulam/8/2022, dated 13.12.2022 and consequently to direct the second respondent to register the sale certificate dated 13.12.2022 relating to the land in S.No.2721/1 (Part) in which Plot No.78, Tiruvalluvar Nagar, Survey Ward No.10, Madurai North Village, Madurai South Taluk,



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Madurai District and efface/delete the attachment entry of the fourth respondent relating to the above said property in the Encumbrance Certificate.

2. The case of the petitioner is that the third respondent in the writ petition availed loan from the petitioner's financial institution and executed a memorandum of deposit of title deeds in favour of the petitioner thus creating an equitable mortgage by a registered document No.3191/2017 and 1982/2018. The third respondent failed to repay the loan amount and as such it was classified as a 'Non Performing Asset'. The petitioner initiated proceedings under Section 13 of the SARFAESI Act, 2002 and ultimately as against a balance outstanding amount for a sum of Rs.55,95,882/-, the property was sold in favour of the fifth respondent for a total sale consideration of Rs.28,10,000/- and a sale certificate dated 13.12.2022 was issued in favour of the fifth respondent. When the same was presented for registration before the second respondent, namely, the Sub Registrar, Thallakulam, Madurai District, the second respondent refused to register the same vide cheque slip dated 13.12.2022. It is under the said circumstances, this writ petition is filed challenging the same.

3. Heard *Mr.V.Sukumar*, the learned counsel appearing for the petitioner and *Mr.J.Ashok*, the learned Additional Government Pleader



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appearing on behalf of the respondents 1 and 2 and *Mr.Anand C Rajesh*,
the learned counsel appearing on behalf of the fourth respondent.

4. It can be seen that the sale certificate was refused to be registered only on the ground that there is an entry in the form of an order of attachment pending arbitration proceedings.

5. The learned counsel appearing on behalf of the fourth respondent would submit that even though there is priority as per Section 26E of the SARFAESI Act, 2002, the Arbitration and Conciliation Act, 1996 is equally a special legislation and when Section 17 of the said Act permits the arbitrator to grant such orders by way of interim measure, it cannot be said that Section 26E would override the attachment made by the arbitrator and therefore, he would submit that eventhough he does not have any objection for registering the sale certificate, the attachment shall be subsisting and the fourth respondent will be entitled for such relief as may be further decided in the arbitration.

6. We are not in agreement with the said submission of the learned counsel appearing for the fourth respondent. Firstly, the fourth respondent is not a secured creditor. The property is mortgaged in favour of the petitioner and as such the petitioner as a secured creditor is in a higher



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pedestal. The sale of the property has been conducted under the SARFAESI Act and Section 26E clearly grants priority to the secured creditor over the other debtors. It contains a non-obstante clause. Therefore, the sale conducted under the SARFAESI Act, by virtue of Section 26E will have priority and notwithstanding the attachment made before judgment, the sale is valid. As far as the entry is concerned, once property has been sold in favour of the fifth respondent and the title has been conveyed, the attachment order will not serve any purpose for the fourth respondent concerned as there is no money left after satisfying the debt of the secured creditor. On the other hand it would remain as a confusing cloud on the title of the auction purchaser. This question is no longer *res integra* as this Court had recently considered the very same issue in detail in ***Siva Automative Trading Private Limited Vs. The Sub Registrar, Othakadai and others***¹ and held that the sale certificate is entitled to be registered and also the entries of attachment will have to be deleted.

7. In that view of the matter, this Writ Petition is allowed on the following terms:

(i) The petitioner/fifth respondent shall represent the sale certificate for registration within a period of two weeks from the date of receipt of a

¹ W.P.(MD)No.28500 of 2022, dated 02.08.2023 (*MANU/TN/4471/2023*)



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copy of this order. Upon which, the second respondent shall duly register the same in accordance with law;

(ii) The first and second respondents shall also show the entry of encumbrance relating to the order in I.A.No.1 of 2020 in Arbitration Case No.KP16 of 2020 as deleted in respect of the subject matter property;

(iii) No costs.

(iv) Consequently, connected miscellaneous petition is closed.

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

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

1.The District Registrar,
Registration Department,
Madurai North Registration District,
Madurai.

2.The Sub Registrar,
Tallakulam,
Madurai District.



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