



WP No.1434 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

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M/s.City Union Bank,
rep. By its Authorised Officer,
M.Ayyappa

: Petitioner

versus

1.The Sub Registrar, Vazhapady

2.K.S.Gautam

3.K.Murali

(R-3 impleaded vide or in WMP No.4294/2024
dated 07.03.2024)

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 1st respondent to efface/delete the adverse attachment entry made through EP No.113/2017 in OS No.251/2014 on the subject property from the encumbrance certificate within a reasonable time fixed by this Court in order to handover the same to 2nd respondent / auction purchaser free of encumbrance.



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For Petitioner : Ms.K.R.Aananda Gomathy
For Respondent No.1 : Mr.C.Kathiravan,
Special Government Pleader
For Respondent No.3 : Mr.D.Sathya,
for M/s.Zeenath Begum
R-2 Not ready in notice

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Ms.K.R.Aananda Gomathy, learned counsel for the petitioner; Mr.C.Kathiravan, learned Special Government Pleader for the first respondent and Ms.D.Sathya, learned counsel appearing for the third respondent.

2. The petitioner has sold the property mortgaged to it by an auction conducted under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to the second respondent. The encumbrance of attachment by the Civil Court at the behest of the third respondent exists.



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3. According to learned counsel for the third respondent, the third respondent has filed a suit in O.S.No.251 of 2014 and an order of attachment is also passed in respect of subject property, in E.P.No.113 of 2017. According to learned counsel, in view of the decree passed by the Civil Court, the third respondent is entitled to recover the amount from the property attached by the Civil Court.

4. The issue is no longer *res integra* and has been settled by a catena of judgments, wherein it has been held that in view of Section 26E of the Act of 2002, the secured creditor has a priority charge over all other creditors, including decree of the Court. Reference can be had to the case of *Assistant Commissioner (CT) Anna Salai-III Assessment Circle vs Indian Overseas Bank and Another* [AIR 2017 Mad 67 (FB)]. The Full Bench of the Bombay High Court in the case of *Jalgaon Janta Sahakari Bank Ltd. and another vs Joint Commissioner of Sales Tax and another* [2022 Online SCC Bom 1767] held that the secured creditor would have the priority charge, as contemplated under Section 26E of the SARFAESI Act, 2002.



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5. In view of the law laid down by the Courts as above, the order of attachment cannot come in the way of the proceedings initiated under the Act of 2002. It is submitted that sale certificate is already registered.

6. In light of the above, entry of encumbrance will have no relevance and the order of attachment would not be an encumbrance upon the property. The writ petition is accordingly allowed. There shall be no order as to costs.

(S.V.G., CJ.)

(J.S.N.P., J.)

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Index : Yes/No
Neutral Citation : Yes/No
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