



W.P.No.5363 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM :

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

AND

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

W.P.No.5363 of 2024

The Authorised Officer
Central Bank of India
Pallavaram Branch
No.198, GST Road, Chromepet
Chennai 600 044.

.. Petitioner

Vs.

1. The Sub Registrar
Pammal, Chennai 600 075.
2. M/s. Reliance Chits (India) Pvt. Ltd.
Rep. by its Director K.Nandakumar
Having its Registered and Central Office at
No.5, Padmanaba Nagar, Adyar
Chennai 600 020.
3. K.Nandakumar
4. Preetha Nandakumar
5. R.Ganesan
6. G.Venkatesan
7. Y.Durga Devi
8. Aravindhan Parthasarathy

.. Respondents



W.P.No.5363 of 2024

WEB COPY

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of Mandamus directing the first respondent to register the sale certificate executed by the petitioner bank in favour of the eighth respondent notwithstanding an attachment obtained by the respondents 5 to 7 being unsecured creditors.

For the Petitioner : Mr.M.L.Ganesh

For the Respondents : Mr.T.K.Saravanan
Government Advocate
for Respondent-1

Mr.M.Sriram
for Respondents 5 to 7

Not ready in notice
for Respondents 2 to 4

No appearance
for Respondent-8

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.M.L.Ganesh, learned counsel for the petitioner, Mr.T.K.Saravanan, learned Government Advocate for the first respondent and Mr.M.Sriram, learned counsel for the respondents 5 to 7.



W.P.No.5363 of 2024

WEB COPY

2. The respondents 2 to 4 are the borrowers of the petitioner (creditor). Their accounts were declared as non-performing assets. The petitioner exercised his right under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. The physical possession of the property was taken under Section 14 of the Act on 21.10.2023. The petitioner, thereafter, resorted to the sale of the property by auction. The said property was purchased by the eighth respondent. However, the Sub Registrar refused to register the sale certificate purportedly, on the ground that there is an order of attachment by the Civil Court.

4. The action of the Sub Registrar in refusing to register the sale certificate has propelled the petitioner to file the present writ petition.

5. Learned counsel for the petitioner submits that under Section 26-E of the Act, the petitioner, being a secured-creditor, has a priority



W.P.No.5363 of 2024

charge. The attachment of the property, which was mortgaged in favour of the secured-creditor much prior in point of time, would not affect the rights of the petitioner.

6. To buttress his submissions, learned counsel for the petitioner relies on the following decisions:

(i) *City Union Bank Limited v. Sub Registrar [(2018) 5 ALT 279 (DB)]*;

(ii) *Secretary, Keechery Service Co-operative Bank Ltd. v. Sajitha Nizar alias Sajitha.P.M.* [Unreported Judgment of the High Court of Kerala, dated 04.06.2020 in W.A.No.634 of 2020];

(iii) *The Karur Vysya Bank Limited v. The State of Telangana, represented by its Principal Secretary, Stamps and Registration Department* [Unreported decision of the High Court for the State of Telangana, dated W.P.No.500 of 2020]; and

(iv) *The South Indian Bank Limited v. Sub Registrar and others* [Unreported decision of the



W.P.No.5363 of 2024

WEB COPY

High Court of Kerala, dated 02.12.2022 in W.P.(C)
No.37558 of 2022].

7. Learned counsel appearing for the respondents 5 to 7, in whose favour order of attachment is issued, contends that the attachment of the property by the Civil Court is prior in point of time. On the date the property was attached, the petitioner had not initiated any proceedings. In view of that, the respondents 5 to 7 have a right to proceed ahead with the property.

8. The order of attachment certainly would be resorting to Order XXI, Rule 54 of the Code of Civil Procedure. The genesis of Order XXI, Rule 54 C.P.C., would lie in Section 60 of C.P.C.

9. After the property is attached, Section 64 of C.P.C. bars any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.



W.P.No.5363 of 2024

WEB COPY

10. Section 64 of C.P.C. bars private transfer. The transfer in the present case is an involuntary transfer. It is the secured-creditor, who has exercised its right under the Special Act viz., the Act of 2002.

11. Section 26-E of the Act starts with a non-obstante clause. Section 26-E of the Act provides that notwithstanding anything contained in any other law for the time being in force, after the registration of the 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.

12. Section 26-E of the Act expressly and unambiguously provides for a priority right to a secured creditor over all other claims.

13. The debt of the respondents 5 to 7 was an unsecured debt.



W.P.No.5363 of 2024

WEB COPY

The mortgage of the property in favour of the present petitioner or the judgment-debtor was prior to the attachment of the property.

14. 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 [(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 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.

15. In light of that, the first respondent shall not refuse to register the sale certificate in respect of the property measuring an extent of 2275 sq.ft. of land together with the house and building thereon, in Plot No.9, Door No.6, Nallathambi Street, Cholavaram Nagar, Chromepet, Chennai 600 044, comprised in Old Paimash



W.P.No.5363 of 2024

WEB COPY

Nos.755/2, 755/1, 756/1, 757/1 & 745/1, Old Sy.No.208/4 and Old R.S.No.208/3B and present R.S.No.208/29 situated in Pammal Village, Alandur Taluk, Kancheepuram 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 respondents 5 to 7.

16. The writ petition is allowed in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

(S.V.G., C.J.)

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

02.04.2024

Index : Yes/No
Neutral Citation : Yes/No

kpl

To

The Sub Registrar
Pammal, Chennai 600 075.



WEB COPY



W.P.No.5363 of 2024

THE HON'BLE CHIEF JUSTICE
AND
J.SATHYA NARAYANA PRASAD, J

(kpl)

W.P.No.5363 of 2024

02.04.2024