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W.A.No.836 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.A.No. 836 of 2024
and
C.M.P.No. 5825 of 2024

Cholamandalam Investment and Finance Co. Ltd.,
Registered Office at No.719,
N.S.C.Bose Road, Parrys,
Chennai - 600 001
Represented by its Senior Manager,
Mr.K.Thiyagarajan, S/o. Kandasamy

...Appellant

Vs.

1.The Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam, Raja Annamalaipuram,
Chennai - 600 028.

2.The Sub-Registrar,
Sub-Registrar Office,
Kanchipuram.

3.The Inspector of Police,
Economic Offences Wing,
Kanchipuram District.

4.Sakthivel. S

...Respondents



Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 21.11.2023 made in W.P.No. 24297 of 2023.

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For Appellant : Mr.Srinath Sridevan, Senior Counsel
for Mr.Kishore Balasubramanian
For Respondents : Mr.L.S.M.Hasan Fizal
Addl. Government Pleader for R1 & R2
R3 & R4 - Served - No Appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

This Writ Appeal has been filed by the appellant, aggrieved by the dismissal of its Writ Petition in W.P.No. 24297 of 2023 by the Writ Court.

The prayer in the Writ Petition is as follows:-

"praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the entire proceedings culminating in the impugned Notice bearing No.Na.Ka.No.2829/Aa.Pa.Pee/2023, and dated 14.07.2023 issued by the second respondent, to quash the same and consequently direct the second respondent to forthwith register the Sale Certificate, dated 31.03.2023 executed by the petitioner in favour of the fourth respondent within a stipulated time frame."



2. The appellant was forced to approach the Writ Court seeking the aforesaid relief because a refusal check slip issued by the Sub-Registrar, Kanchipuram. The said refusal check slip cites a communication from the Inspector of Police, Economic Offences Wing, Kanchipuram and claims that a prohibitory order has been passed by the Inspector of Police, Economic Offences Wing, prohibiting registration of documents with reference to the land in Survey Nos. 122/1A1A, 122/1A2A, Devi Nagar, Ponnerikuppam Village, Kanchipuram District.

3. The appellant is a Financial Institution to which the Securitisation, Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is made applicable. The property in question was mortgaged to another Finance Company namely, M/s.Sundaram Finance Limited on 30.12.2013 and the said mortgage loan was taken over by the appellant / Finance Company on 12.10.2020. Since the borrower defaulted in payment of the loan, proceedings were launched under the SARFAESI Act, 2002 and the property was eventually sold in a public auction (E-Auction) to one Sakthivel, S/o. Siva for a sum of Rs.35,50,000/-. A sale certificate to that



effect was also issued on 31.03.2023. When the said sale certificate was presented for registration, the order impugned in the Writ Petition came to be passed on 14.07.2023.

4. The Writ Court however, dismissed the Writ Petition concluding that the impugned notice has been issued by the Sub-Registrar, pursuant to a request made by the Economic Offences Wing of the Police Department and therefore, the same cannot be said to be bad. The Writ Court went one step further and directed the Inspector of Police, Economic Offences Wing to conduct an enquiry with regard to nexus between the petitioner / Finance Company, borrower and the auction purchaser.

5. Mr.Srinath Sridevan, learned Senior Counsel for the appellant would vehemently contend that the letter of the Inspector of Police, Economic Offences Wing, Kanchipuram dated 13.06.2023 does not amount to an attachment. In any event, the Inspector of Police, Economic Offences Wing, Kanchipuram had no power to attach immovable property subject matter of an enquiry. He would also add that the sale under the SARFAESI Act being authorised by the Act as well as the Security Enforcement Rules,



2002, pursuant to a mortgage created even in the year 2013, cannot be stifled by the Inspector of Police, Economic Offences Wing by issuing a letter. Drawing our attention to the contents of the letter dated 13.06.2023, the learned Senior Counsel would submit that even the said letter does not prevent alienation or prohibit registration. It only requires the Sub-Registrar to bring it to the notice of the Inspector of Police, Economic Offences Wing.

6. Contending contra, Mr.L.S.M.Hasan Faizal, learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that this was done with a view to protect the interest of depositors, since the borrower had conducted an unauthorised Chit business and had collected Rs.1,37,21,485/- from the public and only to secure the interest of the public, the letter was issued. We are unable to accept the submissions of the learned Additional Government Pleader.

7. Admittedly, the mortgage was created in the year 2013 in favour of M/s.Sundaram Finance and the debt was taken over by the appellant in the year 2020. The offences under Sections 406, 420, 120B, 506(i) of IPC and



Sections 4(1) & 14 and 76 of the Chit Fund Act, 1986 have said to have been committed in the year 2020, long after the mortgage of the property.

The creditor cannot be prevented from enforcing the mortgage, that too, a creditor which has got the status of a Financial Institution and which has been empowered to sell the property without interference of Court under the SARFAESI Act, cannot be prevented from exercising that statutory right by an Inspector of Police. There are other measures that are available to the Police under the Criminal Law Amendment Act, 1944 or under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act, 1997.

8. Both the said enactments empower the Government to pass orders of attachment and provisions are available for the Special Court constituted under the Tamil Nadu Protection of Interest of Depositors (In Financial Institutions) Act, 1997 to make absolute orders of attachment after notice to the parties. Such is not the case here. The Inspector of Police, Economic Offences Wing, Kanchipuram has not invoked the powers of the Government to attach the provisionally attached properties subject to attachment being confirmed by the Special Court. No order of attachment



under the Criminal Law Amendment Act has also been passed. Therefore, the Sub-Registrar was not right in refusing to register the sale deed on the ground that the Police had required him to intimate them before the registration of any documents in respect of the properties in question.

9. Rule 55-A of the Registration Rules as prevailing in Tamil Nadu only prohibits registration when there is a subsisting order of attachment. On facts, we find, there is no subsisting order of attachment. In the absence of a validly passed order of attachment, the Sub-Registrar cannot refuse to register the instrument that is presented for registration. We should not be understood to have confirmed or upheld the validity of the Rule 55 which is subject matter in several other cases.

10. In view of the fact that there is no order of attachment, we are of the considered opinion, the order impugned in the Writ Petition needs to be set aside and accordingly, it is set aside. The order of the single Judge is also set aside. The Sub-Registrar namely, the 2nd respondent will register the sale certificate within a period of four weeks from the date of receipt of a copy of this order. If there is any excess money in the hands of the



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secured creditor / appellant, it will be open to Economic Offences Wing to requisition that amount to be deposited in the Criminal Court.

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11. This Writ Appeal is allowed with the above directions. No costs.

Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)
31.07.2024

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Internet: Yes / No

Index: Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No



To:-

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- 1.The Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam, Raja Annamalaipuram,
Chennai - 600 028.
- 2.The Sub-Registrar,
Sub-Registrar Office,
Kanchipuram.
- 3.The Inspector of Police,
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