



W.P. No.20742 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.09.2024

DELIVERED ON: 19.10.2024

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and**

THE HON'BLE MR.JUSTICE P.B.BALAJI

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M/s.Tamilnad Mercantile Bank,
rep. by Branch Manager,
Shevapet Branch,
No.126, Fort Main Road,
Shevapet, Salem – 636 002.

.. Petitioner

Vs

1.The Sub Registrar,
Joint 1, Sub Registrar Office,
Salem East.

2.Abu Traders,
Rep. by its Proprietor,
Mr.Abuthagheer, S/o.Abdul Gaffur,
No.91, Tahnjavur Road,
Tiruchirappalli – 620 008.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 1st respondent to delete the property mentioned in the schedule of the Writ Petition from the



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certificate of Encumbrance and direct the 1st Respondent to register the Sale Certificate dated 29.05.2024 issued by the petitioner band.

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For Petitioner : Mr.V.Chandrasekaran
For Respondents : Mr.K.Karthik Jagannath,
Government Advocate for R1
Mr.L.Sivakumar for R2

ORDER

(Order of the Court was made by MR.JUSTICE P.B.BALAJI, J.)

This Writ petition is preferred by the Petitioner Bank, a secured creditor seeking a direction to register the sale certificate in favour of the auction purchaser notwithstanding the attachment of the learned Additional District Judge, District Court No. I, Salem, dated 15.03.2024 which is subsequent to the registration of mortgage in favour of the petitioner bank on 30.11.2016 and registration under Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) dated 07.09.2023.

2. We have heard Mr.V.Chandrasekaran, learned counsel for the writ petitioner and Mr.K.Karthik Jagannath, learned Government Advocate for the first respondent and Mr.L.Sivakumar, learned counsel for the second



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respondent.

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3. According to the learned counsel for the petitioner, the petitioner Bank had obtained a mortgage by way of memorandum of deposit of title deeds on 30.11.2016 from one Mr.P.Nathan, sole proprietor, M/s New Krishna Traders, towards credit facilities availed by executing the said Memorandum of Deposit of Title Deeds dated 30.11.2016, which was registered as Document No.4290 of 2016 on the file of the Sub Registrar Office, Joint I, Salem East. The property was also registered under Section 26D of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 on 08.09.2023. (Though it is mentioned in the affidavit as 07.09.2023, on perusal of documents we find that it is 08.09.2023)

4. According to the learned counsel for the petitioner, the said loan became a non-performing asset on 31.08.2019 and the petitioner Bank invoked the provisions of SARFAESI Act and issued Section 13(2) notice on 19.09.2019, calling upon the borrower to pay Rs.78,47,877.56 as on 31.08.2019, together with future interest of 11.35% compounded- monthly



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rests and also 2% penal interest. According to the learned counsel for the petitioner, the property was sold in public auction on 28.02.2024 and one Mrs.A.Priyadharshini, bid for purchase of the said property at Rs.1,50,25,000/-. The petitioner Bank also closed the loan account on 28.05.2024 by remitting the entire sale consideration towards the loan account and issued a sale certificate in favour of the auction purchaser on 29.05.2024.

5. According to the petitioner Bank, after realization of the sale proceeds and adjustment of dues to the petitioner Bank, a sum of Rs.17,59,910.75 was available in excess and the petitioner Bank has kept it separately, considering that there is an attachment made by the Civil Court in REP. No.27 of 2023 in OS.No.36 of 2019.

6. The learned counsel for the writ petitioner would submit that the second respondent has filed a suit for recovery of money in OS.No.36 of 2019 on the file of the learned Principal District Judge, Tiruchirappalli and a decree was also passed in favour of the second respondent on 02.02.2021. In order to realize the decree amount, the second respondent had initiated



Execution Proceedings in REP.No.27 of 2023 and by the Orders of the Executing Court, the very same property was attached in Execution Proceedings on 15.03.2024. The learned counsel for the petitioner would submit that though the second respondent had approached the Court even in 2019, he obtained a decree much later and an Order of attachment was admittedly passed only in March 2024 and even the Memorandum of Deposit of Title Deeds was duly registered under section 26D of SARFAESI Act, much prior to the order of attachment. The petitioner has a first charge over the mortgaged property and therefore, the first respondent was not justified in refusing to register the sale certificate. He would place reliance on Section 26E of SARFAESI Act, which is extracted as hereunder:

“26E. Priority to secured creditors.--Notwithstanding anything contained in any other law for the time being in force, after the registration of 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.

Explanation.--For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.”

7. He would therefore pray for a direction to delete the entry pertaining to the attachment in favour of the second respondent and direct the first respondent to register the sale certificate dated 29.05.2024. He



would place reliance on *Kotak Mahindra Bank Limited v. Girnar Corrugators Private Limited and Others*, reported in (2023) 3 SCC 210.

That apart he would also invite our attention to the judgment and decree passed in OS.No.36 of 2019 to fortify his argument that the decree in favour of the second respondent was only on 02.02.2021 and the suit was only for simpliciter recovery of money and it was not a suit concerning any right or interest in the immovable property.

8. The learned counsel would also place reliance on the decision of Division Bench of this Court in *Cholamandalam Investment and Finance Company Limited v. The District Registrar, Registration Department, Ariyallur and others*, in WP(MD).No.674 of 2023 dated 31.08.2023, reported in MANU/TN/4992/2023 where the Division Bench of this Court held Section 26E starting with a non obstante Clause, shall have priority over all debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local Authority. The Hon'ble Division Bench directed the Sub Registrar concerned in that matter to entertain Registration of the sale certificate despite the order of attachment by the Civil Court in the Execution Proceedings.



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9. Per contra, the learned counsel for the second respondent who is the decree holder and who also has the benefit of an order of attachment of the Civil Court submitted that a valid decree has been passed by a competent Court of law and the second respondent has put it to execution and the Executing Court has also ordered attachment of the property. He would therefore submit that without approaching the Execution Court, there can be no order raising the order of attachment in favour of the second respondent that too, by way of filing a Writ Petition where factual aspects cannot be gone into. He would therefore pray for the dismissal of the Writ Petition.

10. We have carefully considered the submissions advanced by the learned counsel on either side.

11. The prayer in the Writ Petition comprises of two limbs, firstly, to register the Sale Certificate dated 29.05.2024 issued by the petitioner Bank in favour of the auction purchaser Mrs.A.Priyadharshini and secondly, to delete the entry pertaining to the charge in favour of the second respondent by way of an order of attachment passed by the Civil Court in REP.No 27 of



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12. With regard to the first limb of the Writ Petition prayer, we see no difficulty in directing the Sub Registrar to register the sale certificate issued by the petitioner Bank in favour of the auction purchaser. As already held by the Hon'ble Supreme Court in *Kotak Mahindra* case (referred herein supra) and the said ratio also being followed by the Division Bench of this Court in *WP (MD) No.674 of 2023* (referred herein supra), the statutory provisions contained in the SARFAESI Act gives a priority charge in favour of the secured creditor, the petitioner Bank in the instant case and this priority is even over the claims of the central and state Governments. That being the position, the secured creditor had every right to exercise such priority charge over the property and bring the property to sale and consequently, the sale certificate issued by the petitioner Bank has to necessarily be registered on the file of the first respondent/Sub Registrar. The refusal of the first respondent/Sub Registrar to register the sale certificate is totally unjustified, since there is no legal impediment for registering the sale certificate conveying right, title and interest over the property. It is trite law that attachment runs with the property. Therefore,



even where there is an attachment in respect of the property which is the subject matter of conveyance, there can be no legal impediment for selling or conveying the said subject property which is under attachment. It is only that the subsequent purchaser will be bound by such order of attachment. In other words, the subsequent purchaser will take the property subject to the order of attachment already made over the said property. It cannot be said that the property cannot be sold at all merely because there is an attachment over the property. In view of the above position, we direct the first respondent/Sub Registrar to register the sale certificate in favour of the petitioner Bank.

13. Coming to the second limb of the prayer to delete the entry, we find that the request of the Writ Petitioner cannot be acceded to for more than one reason. The order of attachment has been passed by a competent Civil Court pursuant to a decree which has not been set aside till date. Therefore, the only recourse open to any person seeking to raise the said order of attachment will be to approach the concerned Execution Court and make appropriate Application under the provisions of the Code of Civil Procedure, 1908. Without doing so, by filing a Writ Petition the petitioner



Bank cannot seek for deletion of entry reflecting the attachment Order passed in favour of the second respondent. Even according to the petitioner Bank, there is a surplus of Rs.17,59,910.75, which amount may have to be paid out to the second respondent subject to further orders of Execution Court in REP.No.27 of 2023. Therefore, we see no merit in the argument of the learned counsel for the petitioner with regard to deletion of entry pertaining to the attachment in favour of the second respondent that too by a competent Civil Court. It is for the petitioner Bank and/or the second respondent to take out appropriate Applications in the pending Execution Proceedings, especially with regard to the surplus sum of Rs.17,59,910.75 available at the hands of the petitioner Bank and consequent to obtaining suitable orders from the Executing Court alone there can be any further orders passed, that too only by the Executing Court/Civil Court alone regarding the attachment order in favour of the second respondent and not by the Writ Court exercising jurisdiction under Article 226 of the Constitution.

14. For the foregoing reasons, Writ Petition is partly allowed, limited to directing the first respondent to register the sale certificate issued by the



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petitioner Bank in favour of the auction purchaser, A.Priyadarshini. Insofar as the other prayer regarding deletion of entry, we direct the parties to approach the Executing Court where proceedings are already pending and obtain suitable orders. No costs.

(D.K.K.J.) (P.B.B.J.)

19.10.2024

Internet: Yes/No
Index : Yes/No
Speaking Order/Non Speaking Order
rkp

To
The Sub Registrar,
Joint 1, Sub Registrar Office,
Salem East.



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D. KRISHNAKUMAR. J.,

and

P.B.BALAJI, J.

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Pre-delivery Order in

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19.10.2024