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W.P.No.27753 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 27753 of 2023

HDFC Bank Ltd.,
Department for Special Operations,
Prince Khushal Towers,
7th Floor, B-wing, No.96
Anna Salai,
Chennai 600 002.
Rep. By its authorised officer,
Mr.S.Surender

...Petitioner

Vs.

1.The Sub-Registrar
Pondicherry Sub Registrar Office,
Kamaraj Salai, Sakthi Nagar,
Saram,
Puducherry 605013.

2.M/s.Manakular Automobiles
Rep. By its proprietor Mr,C.Djanardane, RS No.49,
No.1 Cuddalore Main Road,
Ariyankuppam,
Pondicherry 605 007.



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3.Mr.C.Djanardane

4.Tamilnadu Mercantile Bank
Cuddalore Branch, rep. by its Branch Manager
No.19, Siva Complex, Block No.8
Ward No.6 Imperial Road,
Cuddalore 607002.

4.M.Trishna Vaishali

...Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to efface/delete the encumbrance attachment entry dated 28.12.2018 in Doc.No. 26677/1/2018 on the file of the 1st respondent / Sub Registrar, Puducherry, as against the property mentioned in the schedule to the sale certificate dated 05.08.2022 issued to the 5th respondent.

For Petitioners : Mr. Suhrith Parthasarathy

For Respondent 1: Mr. Ramasamy Meyappan
Government Advocate
(Puducherry)

For Respondent 4: Mr. N.K.S.Rukmangathan

For Respondents : No Appearance.
2, 3 and 5.



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ORDER

The Writ Petition is filed for the following relief:

“To direct the 1st respondent to efface/delete the encumbrance attachment entry dated 28.12.2018 in Doc.No. 26677/1/2018 on the file of the 1st respondent / Sub Registrar, Puducherry, as against the property mentioned in the schedule to the sale certificate dated 05.08.2022 issued to the 5th respondent.”

2. The petitioner bank granted a loan of Rs.3,10,00,000/- to the 2nd and 3rd respondents. As a security for the loan, memorandum of deposit of title deeds have been executed, in and by which the original documents were deposited into the petitioner bank. Since the borrowers defaulted in repayment, the petitioner bank exercised their rights under the SARFAESI Act. On the property being declared as a non-performing asset, the petitioner had brought the property for an auction sale and the 5th respondent was declared as a successful bidder in the auction dated 21.05.2022. The 5th respondent also paid a sale



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consideration for the property.

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3. When the petitioner and the 5th respondent attempted to register the sale certificate, the same was returned on the ground that the Tamil Nadu Mercantile Bank, had obtained an attachment order in respect of the property from the Debts Recovery Tribunal, Chennai. Therefore, the petitioner filed W.P.No.23164 of 2022, seeking a certiorarified mandamus to quash the order and to direct the 1st respondent to register the sale certificate.

4. This Court was pleased to direct the registering authority to register the sale certificate and thereafter the sale certificate was registered. However, the 1st respondent refused to delete the encumbrance created in favour of the 4th respondent. Aggrieved by the same, the petitioner has filed the Writ Petition for mandamus.

5. Heard the learned counsels on the either side and perused the records.



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6. The petitioner who is a secured creditor has exercised his powers under the Act and had sold the property by orders of this Court. The sale certificate has also been registered. The attachment entry is on the basis of the attachment obtained by the unsecured creditor. It is needless to state that the right of the secured creditor is higher than that of the unsecured creditor. Therefore, the attachment entry has to necessarily be deleted.

7. Therefore, the Writ Petition is allowed. The 1st respondent is directed to delete the entry in encumbrance by making an entry in the remarks column as against the attachment entry saying that the property has now been sold by way of a public auction and sale certificate issued. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The Sub-Registrar
Pondicherry Sub Registrar Office,
Kamaraj Salai, Sakthi Nagar,
Saram,
Puducherry 605013.



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P.T. ASHA, J,

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