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W.A.No.3037 of 2023



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

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

W.A.No.3037 of 2023
and C.M.P.No.25171 of 2023

Indian Bank
Chinniampalayam Branch
1/202, Avinashi Road,
Chinniampalayam, Coimbatore 641062

...Appellant

Vs.

1.The Sub-Registrar,
Singanallur Sub Registrar Office,
14/48, Vellalore, Coimbatore 641016.

2.P.Thirugnanam

...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the
order dated 15.09.2023 passed in W.P.No.10594 of 2023.

For Appellant : Mr.Jayesh B.Dolia
for M/s.Aiyar and Dolia

For Respondents : Mr.L.S.M.Hasan Faizal for R1
Additional Government Pleader
No appearance for R2

J U D G M E N T

Page No:1/8



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

Challenging the order of the learned Single Judge dated 15.09.2021 in

W.P.No.1059 of 2023, dismissing the said writ petition and upholding that a Refusal Check Slip issued by the Sub-Registrar, Singanallur on 25.02.2023, refusing to register the sale certificate dated 25.02.2023 issued by the appellant-bank, the appellant is before this Court.

2. The appellant bank had exercised its right as a secured creditor under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called as "SARFAESI Act" for the sake of brevity) and brought the property that was mortgaged with it for sale. The e-auction was held on 26.12.2022.

3. A challenge was made to the e-auction in a Securitization Appeal filed by the debtor in S.A.No.1163 of 2022 and the Debt Recovery Tribunal, Coimbatore passed a conditional order dated 26.12.2022 directing the debtor to pay a sum of Rs.1,40,00,000/- to the appellant/Bank. Since the condition was not complied with, the sale certificate was issued on 23.02.2023. This document was presented for registration before the concerned Sub-Registrar, who refused to register it on the ground that an



order of attachment has been passed by the learned Principal District Judge, Coimbatore in O.S.No.104 of 2016 and the same has been recorded in the encumbrance relating to the property. This refusal was put to challenge by the appellant/Bank before the Writ Court.

4. The learned Single Judge concluded that since Section 22-B of the Registration Act, 1908 prohibits registration of documents where there is an order of attachment, the Sub-Registrar was right in refusing to register the instrument. The deficiency in the stamp duty was also pointed out as a reason for refusal to register. Hence, the bank is on appeal.

5. We have heard Mr.Jayesh B. Dolia, learned counsel appearing for the appellant and Mr.L.S.M.Hasan Faizal, learned Additional Government Pleader for the first respondent. Though the second respondent has been served and his name printed in the cause list, no one has entered appearance on his behalf.

6. The issue relating to refusal to register the sale certificate issued under the SARFAESI Act on the ground that there is an attachment order passed by the Civil Court has no longer *res integra*. The Division Bench of

Page No:3/8



this Court, vide order dated 31.08.2023 in the case of ***M/s.Cholamandalam***

Investment and Finance Company Ltd., vs. The District Registrar,

Registration Department and others in W.P.(MD).No.674 of 2023 has

held that the prohibition contained under Section 22-B of the Registration Act cannot be invoked in respect of an involuntary transfer namely the sale under the SARFAESI Act. The Division Bench, after examining the provisions under Section 64 and Order XXI Rule 54 of the CPC and the provisions of Section 26-E of the SARFAESI Act, concluded that the refusal to register of a sale certificate on the ground of an attachment order is in force, is not justified. We can conveniently extract the conclusion of the Division Bench, which runs as follows:

“11. 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 2002.

12. Section 26-E of the Act, 2002 starts with a non obstante clause. Section 26-E of the Act, 2002 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



WEB COPY

W.A.No.3037 of 20



Central Government or State Government or local authority.

13. Section 26-E of the Act, 2002 expressly and unambiguously provides for a priority right to a secured creditor over all other claims.

14. The debt of the fourth respondent was an unsecured debt. The mortgage of the property in favour of the present petitioner or the judgment-debtor under the award was prior to the attachment of the property.

*15. 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**, reported in (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, 2002 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.”*

7. In view of the said conclusion, we find that the main ground on which, the registration was refused, does not survive.



8. Mr.Jayesh B. Dolia, learned counsel appearing for the appellant would submit that the purchaser would pay whatever the stamp duty that is payable as per law.

9. In view of the above, the Writ Appeal is allowed. The purchaser shall resubmit the instrument before the 1st respondent/ Sub-Registrar for registration within a period of four(4) weeks from the date of receipt of a copy of this judgment. On such presentation, the 1st respondent/Sub-Registrar shall register the same upon payment of the appropriate stamp duty and the registration charges. No costs. Consequently connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)
03.07.2024

msv

Internet : Yes / No
Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

To
The Sub-Registrar,
Singanallur Sub Registrar Office,

Page No:6/8



14/48, Vellalore, Coimbatore 641016.

WEB COPY

W.A.No.3037 of 20





WEB COPY



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