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W.P.No.149 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.149 of 2024

M/s.Tamilnad Mercantile Bank Ltd.,
rep. by Branch Manager,
Panruti Branch,
71, Chennai Salai,
Panruti-607 106
Cuddalore District.

.. Petitioner

VS

1.The Sub Registrar,
Kadampuliyur,
Cuddalore District.

2.M/s.TVS Credits Services Limited,
rep. by its Authorised Signatory,
Second Floor, Royal Enclave, No.19,
100 t. Road, Mudaliarpeth,
Puducherry-605 004.

..

Respondents

Prayer : Petition filed under Article 226 of the Constitution of India



W.P.No.149 of 2024

seeking issuance of a writ of mandamus directing the first respondent to delete the entry of the attachment over the petition schedule mentioned property from the Certificate of Encumbrance on Property.

Schedule of the Property

Situated within the Cuddalore Registration District, Kadampuliyur Sub Registration District at Maligampattu Village:

Item No.	Survey No.	Extent of Area/s (in acres/hectares)	Location	Boundaries
1	Dry R.S. New No.74/1, Sub-division No.74/1C, Old No.50/2	0.16 ½ out of 0.19.5 Hec	Maligampattu village, Panruti Taluk	East of Road, West of Rayar's Land, South of Arumugam's Land, North of Rajeswari's Land

For the Petitioner : Mr.V.Chandrasekaran

For the Respondents : Mr.C.Kathiravan
Spl. Government Pleader
for respondent No.1

: Mr.Arunachalam
for respondent No.2



W.P.No.149 of 2024

WEB COPY

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.V.Chandrasekaran, learned counsel for the petitioner; Mr.C.Kathiravan, learned Special Government Pleader for the first respondent; and, Mr.Arunachalam, learned counsel for the second respondent.

2. The present writ petition is filed seeking directions against the first respondent to delete/efface the entry of attachment order dated 30.9.2022 registered as document L.No.66 of 2022 of the property as detailed in the petition, i.e., Dry R.S. New No.74/1, Sub-division No.74/1C, Old No.50/2 of an extent of 0.16 ½ Acre out 0.19.5 Hectares of Maliampattu Village, Panruti Taluk.

3. It is the contention of learned counsel for the petitioner that the petitioner is the secured creditor. The security interest



W.P.No.149 of 2024

WEB COPY

is created in respect of the subject writ property by way of deposit of title deeds, which were registered as Document No.66 of 2014 dated 8.1.2014 and Document No.226 of 2015 dated 9.2.2015 at Kadampuliyur Sub-Registrar Office, Cuddalore. The property was also registered under Section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short, "*the SARFAESI Act*"]. In view of Section 26E of the SARFAESI Act, the petitioner has priority charge and the attachment pursuant to an arbitration award in favour of the second respondent would be subservient to the charge of the petitioner. The petitioner would have a priority charge.

4. The petitioner has produced on record the details of security interest registered as required under the provisions of the SARFAESI Act. Section 26E gives the priority charge to the petitioner. The order of attachment pursuant to an award would not prevail over the security interest of the petitioner.



W.P.No.149 of 2024

Reference can be had to the judgment of the Supreme Court in the case of **Kotak Mahindra Bank Limited v. Girnar Corrugators Private Limited [(2003) 3 SCC 210]**. We have also followed the said judgment in W.P.No.19742 of 2023 with connected writ petitions under order dated 27.09.2023.

5. According to learned counsel for the petitioner, even after the sale of the secured asset, the entire amount due to the petitioner is not recovered from the borrower.

6. In the light of the settled proposition of law, we pass the following order:

"The petitioner has priority charge over the claims of the second respondent. In case there is no other impediment, then, the first respondent shall not refuse to register the sale certificate only on the ground that the order of attachment is in favour of the second



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W.P.No.149 of 2024

respondent. The entry of the attachment shall,
as such, be cancelled.”

7. The writ petition is, accordingly, allowed. There shall be
no order as to costs.

(S.V.G., CJ.)

(D.B.C., J.)

30.01.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

The Sub Registrar,
Kadampuliyur,
Cuddalore District.



WEB COPY



W.P.No.149 of 2024

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

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W.P.No.149 of 2024

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