



W.P(MD)No.3823 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD)No.3823 of 2023

and

W.M.P.(MD)No.3606 of 2023

Canara Bank,
Rep. by its Chief Manager,
Bodinayakanur Branch,
No.16, Kamarajar Bazar,
Bodinayakanur, Theni-625513.

... Petitioner

Vs.

1.The Sub Registrar,
Bodinayakanur, Theni District.

2.Anand
3.Rathinavel
4.Shanthi
5.Kumaravel

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 1st respondent dated 02.12.2022 issued in Refusal No.RFL/Bodinayakanur/20/2022 and quash the same and consequently, to direct the 1st respondent to register the sale certificate in favour of the 2nd respondent within the time fixed by this Court.



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For Petitioner : Mr.C.Deepak
For R1 : Mr.M.Siddharthan,
Additional Government Pleader
For R2 : No Appearance
For R3 : Door Locked
For R4 : Died
For R5 : Mr.K.Prakash

ORDER

According to the petitioner Bank, the respondents 3 and 4 executed a registered memorandum of deposit of title deeds in favour of the petitioner Bank on 28.05.2009, 08.02.2010 and 29.07.2015. Since they failed to repay the loan, SARFAESI proceedings were initiated, which culminated into issuance of sale certificate in favour of the third party / 2nd respondent herein. In the meanwhile, the 5th respondent has filed a money suit in O.S.No.121 of 2019 against the respondents 3 and 4, wherein the civil Court passed an attachment order before attachment by the petitioner Bank, which has been communicated to the registering authority and reflected in the encumbrance certificate. Therefore, when the sale certificate executed by the petitioner Bank is presented for registration, the 1st respondent, vide refusal check slip dated 02.12.2022, refused to register the same, citing the Court attachment order. Challenging the same, the petitioner has filed this Writ Petition.



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2. At the outset, this Court is of the view that the refusal order of the 1st respondent is clearly non-application of mind. The secured interest is already created in favour of the petitioner Bank in the year 2009 itself and the proceedings had been initiated later under SARFAESI Act, which culminated into issuance of sale certificate in favour of the 2nd respondent. The unsecured creditor has filed money suit in the year 2019 and obtained attachment order. Any subsequent attachment order passed by the civil Court is always subject to the priority right created in favour of the petitioner Bank in the year 2009 and it will have no significance. In such view of the matter, merely on the basis of the attachment order passed by the civil Court, the registration of the sale certificate cannot be refused. Therefore, the impugned order of the 1st respondent is quashed and this Writ Petition is allowed with a direction to the 1st respondent to register the sale certificate presented by the petitioner Bank within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

25.09.2024
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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Yuva

N.SATHISH KUMAR, J



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Yuva

To
The Sub Registrar,
Bodinayakkanur, Theni District.

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