BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.11686 of 2024
and
W.M.P(MD)Nos.10432 & 10433 of 2024

The Federal Bank Limited,
Represented by its Associate Vice President,
Venkatesan C. ... Petitioner

Vs

1.The Sub-Registrar,
Office of the Sub-Registrar,
Keezhsathanur,
Trichy District.

2.S.Karthikeyan
3.CR.Selvaraju
4.Kandasamy Varappagoundar
5.Natarajan Kandasamy
6.Madeswari K
7.Rajeswari Raghupathy
8.Vijaya Samundeeswari Selvaraju
9.Kalanithi Natarajan

10.Thirunavukkarasu,
S/o.Karuppaiah,
Proprietor, M/s.Best Blue Metals,
No.60, Lakshmipuram, karudaiyampalayam Post,
Nedungur Village,
Aravakkurichi Taluk,
Karur District.

11.M/s.Pon Vinayaga Blue Metals,
Represented by its Partner,
S.Ponnusamy,
S/o.Subbaryan,

Office at S.F.No.435/4, Karudaiyam,
Palayam Village & Post,
Aravakurichi Taluk,
Karur District.

12.K.Sabarinathan ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Refusal Check Slip passed by the first respondent in RFL/Keezhsathanur/15/2023 dated 19.06.2023 and quash the same and consequently direct the first respondent Sub-Registrar to efface/delete the attachment entry dated 09.04.2022 and 22.07.2022 made in Documents Nos.8 and 18 of 2022 and the first respondent to register the sale certificate dated 18.06.2023 issued by the petitioner Bank in favor of the 12th respondent Auction purchaser in respect of the schedule mentioned property.

For Petitioner	: Mr.N.Dilipkumar
For R – 1	: Mr.Veera Kathiravan Additional Advocate General Assisted by Mr.S.P.Maharajan Special Government Pleader
For RR 2 to 4 & 6 to 8	: No appearance
For RR 5 & 9	: Unserved
For RR 10 & 11	: Mr.B.Brijesh Kishore
For R – 12	: Mr.B.Rajasekar

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent, dated 19.06.2023 whereby refused to register the sale certificate and issued refusal check slip.

2.Originally one Ponnusamy borrowed a loan from the petitioner by depositing the title deeds in respect of the subject property. In order to close the said loan, the respondents 2 to 5 had purchased the subject property by mortgaging the very same property in favour of the petitioner by depositing the title deed on 06.07.2020. They had borrowed loan to the tune of Rs.3,00,00,000/- and executed all required documents on 06.07.2020. The respondents 2 to 5 are the principal borrowers and respondents 6 to 9 are co-borrowers (in short hereinafter referred to as 'the borrowers'). The borrowers failed to repay the loan amount and committed default. As such, the loan accounts were declared as Non-Performing Assets and the petitioner proceeded under SARFAESI Act as against the borrowers. Finally, the petitioner caused an auction sale notice and brought the subject property for auction sale. On 31.03.2023, 12th respondent herein was being the successful bidder had purchased the subject property for total consideration of Rs.3,11,00,000/-. Accordingly, he was issued a sale confirmation letter and subsequently, issued a sale certificate dated 18.06.2023. When the petitioner presented the sale certificate for registration before the first respondent, the first respondent refused to register the same and issued a refusal check slip dated 19.06.2023.

3.The learned counsel appearing for the petitioner would submit that the first respondent ought not to have refused to register the sale certificate, since the sale certificate was issued in favour of 12th respondent under SARFAESI Act. Further, as per the circular issued by the Inspector General of Registration, dated 10.07.2021, the first respondent shall have to register the sale certificate issued under the SARFAESI Act. It was refused on the ground of an attachment order passed by the civil Court. The subject property was mortgaged with the petitioner by the respondents 2 to 5 on 06.07.2020, whereas the civil Court passed an order of attachment only on 26.08.2022 though the suits were filed by the respondents 10 & 11 on 13.01.2020 & 22.01.2020 ie., after deposit of title deed on 06.07.2020. In support of his contention, the learned counsel appearing for the petitioner relied upon the judgment of the Division Bench of this Court in ***W.A.No. 3037 of 2023, dated 03.07.2024 (Indian Bank Vs. The Sub Registrar and another)***.

4.The first respondent filed a counter-affidavit and Mr.Veera Kathiravan, learned Additional Advocate General appearing for the first respondent would submit that 12th respondent is none other than the son of the second respondent. The 10th respondent instituted a suit in Commercial O.S.No.01 of 2020 and obtained an order of attachment in I.A.No.02 of 2020 in Commercial O.S.No.01 of 2020 by order dated 17.08.2020 and 11th respondent instituted a suit in Commercial O.S.No.03 of 2020 and obtained an order of attachment in I.A.No.01 of 2020 in Commercial O.S.No.03 of 2020 by order dated 21.04.2021. The suit in C.O.S.No.01 of 2020 was decreed in favour of 10th respondent on 26.08.2022. Therefore, in order to cheat the persons, who initiated proceedings as against the property ie., respondents 10 & 11, the sale certificate was issued in favour of 12th respondent. When there is an order of attachment passed by the Court, the first respondent cannot register the sale certificate issued by the petitioner. There is a clear bar under

Section 22-B of the Registration Act, 1908. Therefore, the request made by the petitioner was rightly rejected by the first respondent and directed to raise the attachment before the Court of law to register the sale certificate.

5.In support of his contention, the learned Additional Advocate General appearing for the first respondent relied upon the order of this Court passed in ***W.P(MD)No.4553 of 2024, dated 18.03.2024 (Tamil Nadu Mercantile Bank Limited Vs. The Sub Registrar and others)***. The Inspector General of Registration had issued a circular dated 10.07.2021, much prior to the insertion of Section 22-B in the Registration Act. Therefore, the first respondent had rightly refused to register the sale certificate, without raising the Court attachments, as per the provisions of Section 22-B(3) of the Act. He further submitted that the respondents 10 & 11 instituted the suits even before the deposit of the title deed and obtained an order of attachment of the subject property. Only thereafter, in order to defeat the claims of the respondents 10 & 11, the original borrower namely Ponnusamy while pending litigation in respect of the subject property had executed a sale deed in favour of the respondents 2 to 5. In turn, they borrowed a loan from the petitioner by mortgaging the said property. During the auction, 12th respondent, who is being the son of the second respondent, had purchased the subject property. It shows the collusion between the petitioner and the respondents 2 to 9 & 12. Therefore, the contention of the petitioner that the mortgage is prior to the order of attachment of the property has no force.

6.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7.The subject property was mortgaged with the petitioner by name Ponnusamy and availed loan. In order to settle the loan amount, the respondents 2 to 5 had paid the entire loan amount and purchased the subject property by registered sale deed, dated 06.07.2020. On the same day, they had mortgaged the said property and availed loan by depositing the title deeds. Thereafter, they committed a default in payment of the loan and the loan account was declared as a Non-Performing Asset. Subsequently, the petitioner initiated proceedings under the SARFAESI Act and brought the subject property for auction sale. The 12th respondent, who was being the successful bidder, purchased the subject property and he was issued a sale certificate after sale confirmation. The sale certificate was presented for registration. It was refused on the ground that the subject property was already attached in the suit proceedings initiated by the respondents 10 & 11 who are the lenders of the loan in favour of the original borrower namely Ponnusamy.

8.It seems that the said Ponnusamy borrowed a loan from the respondents 10 and 11 and committed a default. Therefore, they filed a suit for recovery of money in O.S.Nos.1 and 3 of 2020 before the Principal District Court, Karur on 13.01.2020 & 22.01.2020. They also filed applications in I.A.No.02 of 2020 in Commercial O.S.No.01 of 2020 and I.A.No.01 of 2020 in Commercial O.S.No.03 of 2020 on the file of the District Court, Karur for attachment of the subject property. Both the petitions were ordered by order dated 17.08.2020 and 21.04.2021 whereby attached the subject property. Admittedly, both attachment orders were passed after the mortgage of the subject property with the first respondent on 06.07.2020. Further, the subject property was brought for auction sale under the SARFAESI Act. The 12th respondent purchased the same and he was issued a sale certificate under the SARFAESI Act. As per the Circular, dated 10.07.2021 issued by the Inspector General of Registration, the registration of the sale certificate could not be denied even when the exists entry as per the civil Court order.

9.It is also relevant to extract the provision under Section 22-B of the Registration Act, 1908:

'Section 22-B. Refusal to register forged documents and other documents prohibited by law:- Notwithstanding anything contained in this Act, the registering officer shall refused to register the following documents namely:-

(1) forged document;

(2) document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;

(3) document relating to transfer of immovable property by way of sale, gift, lease, or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;

(4) any other document as the State Government may by notification, specify.'

10.It cannot be invoked in respect of an involuntary transfer namely the sale under SARFAESI Act. This issue has been dealt with by the Hon'ble Division Bench of this Court in ***W.A.No. 3037 of 2023, by order dated 03.07.2024 (Indian Bank Vs. The Sub-Registrar and another)***. The Hon'ble Division Bench of this Court referred the Judgment of the Division Bench of this Court in ***W.P(MD)No.674 of 2023 in the case of M/s.Cholamandalam Investment and Finance Company Limited Vs. the District Registrar and others***, in which, the Hon'ble Division Bench concluded that the refusal of registration of a sale certificate on the ground of an attachment order is in force, is not justified. The relevant paragraph of the Judgment is extracted hereunder:

> *'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.*
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> *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 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.'

11.Thus, it is clear that Section 26-E of the SARFAESI Act, 2002 expressly and unambiguously provides for a priority right to a secured creditor over all other claims. The debt of the respondents 10 and 11 was an unsecured debt whereas the mortgage of the subject property by depositing title deeds in favour of the petitioner was prior to the attachment of the subject property. Therefore, the first respondent ought not to have refused to register the sale certificate issued under the SARFAESI proceedings. Though the learned Single Judge of this Court held in ***W.P(MD)No.4553 of 2024, dated 18.03.2024 (Tamil Nadu Mercantile Bank Limited Vs. The Sub Registrar and others)*** that the petitioner or the buyer succeeds in raising the attachment, the registering authority cannot be called upon to register the sale certificate. No writ Court can issue Mandamus contrary to law. Section 22-B(3) of the Registration Act cannot be lost sight of.

12.In view of the Judgment passed by the Hon'ble Division Bench of this Court in ***W.A.No.3037 of 2023, by order dated 03.07.2024 (Indian Bank Vs. The Sub-Registrar and another)***, the order passed by the learned Single Judge of this

Court is not applicable to the case on hand. That apart, the original borrower was one Ponnusamy. In order to settle the loan amount, he sold out the subject property in favour of the respondents 2 to 5 on 06.07.2020. In turn, the respondents 2 to 5 availed loan by mortgaging the very same property once again and settled the entire loan amount borrowed by the said Ponnusamy. Therefore, on the date of attachment of the subject property, no property stands in the name of the said Ponnusamy. Even then, the civil Court passed an attachment order in respect of the subject property as if stands in the name of the said Ponnusamy. The registration of the sale deed and the mortgage by deposit of title deed were clearly entered into the Encumbrance Certificate. Without even verifying the same, the civil Court attached the subject property which was not in the name of the said Ponnusamy.

13.Therefore, the petitioner gets priority over all other charges and any order of attachment passed by the civil Court subsequently, will never bind the petitioner to which the mortgage has already been created by the debtor. In fact, the attachment order was passed not as against the respondents 2 to 5. It was passed as against the original borrower Ponnusamy. Therefore, the order of attachment obtained by the respondents 10 & 11 cannot be put against the petitioner and it will not bind the first respondent.

14.In view of the above, the order passed by the first respondent, dated 19.06.2023 is liable to be quashed and the same is quashed.

15.Accordingly, the Writ Petition is allowed. The petitioner is directed to represent the sale certificate for registration in favour of 12th respondent before the first respondent and on receipt of the same, the first respondent shall register and release the document forthwith. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

05.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

The Sub-Registrar,
Office of the Sub-Registrar,
Keezhsathanur,
Trichy District.

G.K.ILANTHIRAIYAN, J.

ps

Order made in
W.P(MD)No.11686 of 2024

05.11.2024