BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.11.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.14358 of 2024

M/s. Indian Overseas Bank
Represented by its Authorised Officer,
Regional Office, Plot No.40, 80 Feet Road,
Anna Nagar, Madurai - 625 020. ... Petitioner

/Vs./

1. The Commissioner GST and Central Excise, Dindigul Range, Dindigul.

2. The Sub Registrar
Naagal Naicken Patti,
Dindigul.

3. Gunaseelan Mahalingam
4. Raja.K
5. Sakthivel. M
6. Shanmugasundarm Kanthasamy ... Respondents

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to delete the entry made over the attachment of the first respondent dated 23.04.2003 in Document No. 12/2003 and consequently register the Sale Certificate dated 07.03.2024.

For Petitioner : Mr.K.R.Ananda Gomathy

For Respondents : Mr.R.Gowri Shankar
Central Government Standing Counsel for R1
: Mr.M.Sarangan
Additional Government Pleader for R2

ORDER

This Writ Petition has been filed for direction, directing the second respondent to delete the entry made over the attachment of the first respondent dated 23.04.2003 in Document No. 12/2003 and to register the Sale Certificate dated 07.03.2024.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The one M/s.Sri Krishnakanth Textiles Pvt. Ltd, had availed loan to the tune of Rupees Two Crores and Fifty Lakhs only, by mortgaging the property by way of execution of registered memorandum of deposit of titles vide Document No.7804/2010 dated 03.11.2010 and Document No.1974/2011. Subsequently, the borrower company

committed default of making payments and his account was declared as Non Performing Asset (NPA) on 30.09.2015 and the petitioner Bank initiated proceedings under SARFAESI Act as against the borrower, by issuance of demand notice. After issuance of demand notice, the subject property under mortgage was taken symbolic possession by the petitioner by issuing possession notice. The property was brought for e-auction. In the e-auction, the respondents 3 to 6 have purchased in the subject property for valid sale consideration to the tune of Rs.4,23,30,000/- (Rupees Four Crores Twenty Three Lakhs and Thirty Thousand only). The said sale certificate was presented for registration before the second respondent. However, the second respondent issued refusal slip on the ground that there was an attachment over the property by the first respondent and unless or otherwise the order of attachment lifted, the sale certificate could not be registered.

4. The learned counsel for the petitioner would submit that immediately after deposit of memorandum of deposit of title deeds, the mortgage has been registered with CERSAI, whereas, the attachment by the first respondent herein, is of the year 2003, it has not been registered

with CERSAI. As per Section 26C(2) of SARFAESI Act, Chapter – IV, it was extended to all the creditors other than secured creditors. It is mandatory to file with the Central Registry about the attachment order and such registration constituted Public notice Section 26C(2) of SARFAESI Act, it mandates that the claim of the creditor over the secured creditor can have priority when the security interest or attachment order in favour of the secured creditor are filed for the purpose of Registration under the provisions of Chapter IV of the SARFAESI Act. Further, as per Section 26(E), once the property is registered in favour of the secured creditor under CERSAI, the debt due to the secured creditor shall be paid in priority over all other debts, revenues, taxes, cesses and other rates payable to the first respondent.

5. The judgment of the Hon'ble Division Bench of this Court dated 31.08.2024 made in W.P.(MD)No.674 of 2023 (***M/s.Cholamandalam Investment and Finance Company Ltd., V. The District Collector***) quoted the judgment of the Hon'ble Supreme Court, in the case of ***Kotak Mahindra Bank Limited vs. Girnar Corrugators Private Limited and others,*** reported in ***(2023) 3 SCC 210***, and 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.

6. Section 26E of SARFAESI Act, 2002, is extracted hereunder for ready reference:

> *“Section 26E: Priority to secured creditors : Notwithstanding anything contained in any other law for the time being in force, after the registration of 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.*
>
> *Explanation.- For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower,*

priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

6. Accordingly, the attachment of the first respondent as well as the attachment under the Arbitration Award will stand valid, if only any money, which is left over after satisfaction of the entire loan is due to the petitioner. The above liquidation cannot be disputed by the respondents 1 and 2. Therefore, the second respondent ought to have registered the sale certificate in favour of the respondents 3 to 6. In view of the above, the petitioner is directed to present the sale certificate in favour of the respondents 3 to 6 before the second respondent. On receipt of the same, the second respondent is hereby directed to register and delete the same and necessary entries are to be made in the encumbrance forthwith.

7. With the above direction, this Writ Petition is allowed. No costs.

25.11.2024

Index : Yes / No
Internet : Yes/No
NCC : Yes / No
LS

TO:-

1. The Commissioner GST and Central
   Excise, Dindigul Range,
   Dindigul.

2. The Sub Registrar
   Naagal Naicken Patti,
   Dindigul.

G.K.ILANTHIRAIYAN, J.

LS

Order made in
W.P.(MD)No.14358 of 2024

Dated:
25.11.2024