



W.P (MD).No.14940 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2024

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

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M/s.Vistarr Financial Services Private Limited,
Represented by its Authorized Signatory
K.Mathu

... Petitioner

Vs.

The Sub-Registrar,
Ambasamudram,
Tirunelveli District.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned refusal check slip issued by the respondent dated 26.06.2024 and quash the same as illegal and direct the respondent to register the "Sale Certificate" executed by the petitioner bank in favour of the auction purchaser Mr.K.Muthu Saravanan and efface/delete the adverse attachment entry made as per the order of the learned Sub-Court, Ambasamudram in I.A.No.2 of 2022 in O.S.No.395 of 2022 dated 14.02.2024.

For Petitioner : Mr.M.Kannan

For Respondent : Mr.D.Sadiq Raja
Additional Government Pleader



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ORDER

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This writ petition has been filed challenging the refusal check slip issued by the respondent, dated 26.06.2024 thereby, refused to register the sale certificate on the ground that there is an attachment order passed by the Civil Court.

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

3. The petitioner lent loan to one Chellaiah and co-borrower Tmt.M.Vijaya to the tune of Rs.20,00,000/- (Rupees Twenty Lakhs only) in order to facilitate to their business under the registered memorandum of deposit of title deeds with regard to the property comprised in Natham Survey No.77/1 admeasuring 1592.5 sq.ft at Ward No.5, North Street, Pananjandi Village, Pallakal Ambasamudram Sub Registrar Office. The borrower committed default and as such, the loan account was classified as 'Non Performing Asset'. Hence, the petitioner has initiated SARFAESI proceedings and finally, the subject property was brought for auction. In the auction, one K.Muthu Saravanan, being a successful bidder, was issued sale certificate on 11.06.2024. Thereafter, one of the financier, who lent loan to the original borrower, filed a



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suit in O.S.No.395 of 2022 and also filed an application in I.A.No.2 of 2022 thereby, attached the subject property and the same has been entered into Encumbrance Certificate. When the petitioner presented the sale certificate for registration, which was refused to register on the ground that there is an attachment order passed by the Civil Court in I.A.No.2 of 2022 in O.S.No.395 of 2022. It is a settled law that the registering authority cannot refuse to register the sale certificate on the ground that there is an attachment order passed by the Civil Court. It has been held that the rights of the secured creditors in terms of Section 31-B of the Act will override all other debts. It is relevant to extract Section 31-B of the Act.

“31-B Notwithstanding anything contained in any other law for the time being in force, the rights of Secured Creditors to realise Secured Debts due and payable to them by sale of assets over which Security Interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority.

***Explanation:** For the purposes of this Section it is hereby clarified that on or after the commencement of Insolvency and Bankruptcy Code, 2016, in cases where Insolvency or Bankruptcy proceedings are pending in respect of Secured*



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Assets of the borrower, priority to Secured Creditors in payment of debt shall be subject to the provisions of that Code.”

4. Therefore, the respondent cannot refuse to register the sale certificate. That apart, now the act itself amended and inserted the provision under Section 26-E and the said act is extracted hereunder:-

"26-E. 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."

5. Accordingly, the petitioner must be given priority as a secured creditor for the loan borrowed by the borrowers. Therefore, this issue is no longer *res integra*, since the secured creditor shall be paid in priority over all other debts including the decree of the Court.

6. In view of the above, the order of attachment cannot come in the way of registration of sale certificate issued by the petitioner. Accordingly, the impugned order cannot be sustained and it is liable to be quashed.



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7. Accordingly, this writ petition is allowed and the impugned order dated 26.06.2024, passed by the respondent, is hereby quashed. The petitioner is directed to represent the sale certificate for registration. On receipt of the same, the respondent is directed to register the sale certificate and release the deed forthwith. No costs.

Internet : Yes
Index : Yes/No
Speaking/Non Speaking order
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19.11.2024

To

The Sub-Registrar,
Ambasamudram,
Tirunelveli District.



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G.K.ILANTHIRAIYAN, J.

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