



W.P(MD).No.19092 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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Bajaj Housing Finance Ltd.,
rep., by its Autohrised Signatory,
Karthick Charan B
Having its Regd Office at
Mumbai Pune Road,
Akurdi, Pune 411 035.

... Petitioner

Vs.,

- 1.The Joint IV Sub Registrar
Madurai South, Madurai.
- 2.Sri Nithyakalyani Chit Funds (P) Ltd
No.22/A-15, Lakshmi Road,
TVS Nagar, Madurai 625 003.
- 3.D.John Britto
- 4.P.Umamaheswari
- 5.Jenitta Jebasheela

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the first respondent to delete the entry of attachment over the schedule mentioned property from the Certificate of Encumbrance of the



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property and to register the Sale Certificate dated 12.07.2024 executed by the petitioner in favour of the fifth respondent.

For Petitioner : Mr.Maheswaran
For R-1 : Mr.P.Subbaraj
Special Government Pleader

ORDER

The writ petition has been filed for issuance of Writ of Mandamus to direct the first respondent to delete the entry of attachment over the schedule mentioned property from the Encumbrance Certificate of the property and to register the Sale Certificate dated 12.07.2024 executed by the petitioner in favour of the fifth respondent.

2. By consent, the writ petition is taken up for final disposal at the admission stage itself.

3. Heard both sides. Since no adverse order is going to be passed against the private respondents, notice to them is dispensed with.



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4. It is the grievance of the petitioner that the third and fourth respondents availed loan from the petitioner/company and executed a registered Memorandum confirming Deposit of Title Deeds on 24.01.2020. Since the loan became Non -Performing Asset(NPA), proceeding has been initiated under the SARFAESI Act, 2002, against the third and fourth respondents and public auction was conducted and the sale certificate was also issued in favour of the fifth respondent, who is the highest bidder of auction. When the sale certificate was presented for registration, the Sub-Registrar refused the same for registration on the ground that there is an attachment over the subject property passed by the Deputy Registrar of Chits in ARC proceedings.

5. It is the contention of the petitioner that the order of attachment was passed in the year 2023, much after the memorandum of title deed registered in favour of the petitioner in the year 2020. Further, the petitioner being the secured creditor, the petitioner/company only holds the first charge and priority in recovery. Therefore, any attachment passed subsequent to the memorandum will not assume any consequence. Hence, he seeks direction.



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6. The petitioner also placed a copy of the memorandum of deposit of title deed. On perusal of the same, it is seen that the memorandum depositing title deeds was registered in the year 2020. When the security interest already creates in the year 2020, the order passed by the Deputy Registrar in the ARC proceedings subsequently in Chit Transaction will not have any consequence.

7. As far as the sale certificate already issued in favour of the fifth respondent pursuant to the mortgage, the first respondent can register the sale certificate, whenever it is presented.

8. As far as the removal of entry of attachment is concerned, it cannot be done because of the reason that the entry is normally made in the encumbrance, only to inform the public about the nature of transaction of the particular immovable property.

9. In such view of the matter, there shall be a direction to the first respondent to register the sale certificate. whenever it is presented, as per the Rules and Regulations prescribed under the Registration Act.



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10. With the above direction, the Writ Petition is disposed of. No costs.

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NCC : Yes/No
Index : Yes/No

Rmk

To
The Joint IV Sub Registrar
Madurai South, Madurai.



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N.SATHISH KUMAR, J.

Rmk

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