



W.P.(MD)No.27590 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.27590 of 2023
and WMP(MD) Nos.23693 & 23694 of 2023

S.Yogeswaran

... Petitioner

Vs

1. The District Registrar,
District Registrar Office,
Theni,
Theni District.

2. The Sub Registrar,
Theni Sub Registrar Officer
Theni,
Theni District.

3. A.Dhinakaran

4. Muthumari

5. S.Saravanan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Refusal Check Slip in Refusal Number. RFL/Theni/13/2023 dated 09.09.2023 on the file of the respondent no. 2 and quash the same as illegal and consequently directing the respondent nos. 1 and 2



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to efface/delete the encumbrance attachment entry of the 3rd respondent before the 2nd respondent and register the Sale Certificate, dated 08.09.2023 filed by the petitioner REPCO Home Finance Ltd in favour of the 5th respondent based on the MOD, dated 23.09.2021 executed by the borrower namely Mr.A.Murugan (Late) within a time stipulated by this Court.

For Petitioner : Mr. L.Pinayagash
For Respondents : Mr.P.Subburaj (R1,R2)
Special Government Pleader
Mr.C.Vakeeswaran (R3)
Mr.G.Shabna (R5)
R4(Left)

ORDER

This Writ Petition has been filed challenging the impugned Refusal Check Slip in Refusal Number. RFL/Theni/13/2023 dated 09.09.2023 on the file of the respondent no. 2 and consequently directing the respondent nos. 1 and 2 to efface/delete the encumbrance attachment entry of the 3rd respondent before the 2nd respondent and register the Sale Certificate, dated 08.09.2023 filed by the petitioner REPCO Home Finance Ltd in favour of the 5th respondent based on the MOD, dated 23.09.2021 executed by the borrower namely Mr.A.Murugan (Late).



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2. Heard learned counsel for the petitioner, the learned Special Government Pleader for the respondents 1 and 2 and the learned counsels appearing for the respondents 3 and 5. Perused the materials available on record.

3. The case of the petitioner is that refusal slip has been issued when the Sale Certificate issued in favour of the petitioner by the 5th respondent was presented for registration, citing that there was an order of attachment in O.S.No. 27 of 2022 in I.A.No.2 of 2022 on the file of Additional District Court, Periyakulam.

4. It is the case of the petitioner that the 4th respondent has executed a Memorandum of Deposit of title deeds in favour of the petitioner, Bank, while mortgaging the property on 23.09.2021 and created a mortgage in respect of the subject property. As he committed default in payment, the proceedings under SARFAESI Act has been initiated, which resulted on issuance of a Sale Certificate in favour of 5th respondent. When the Sale Certificate was presented for registration, the same was refused to be registered citing the reason that an order of attachment has already been issued by the Civil Court in a suit filed for recovery of money. Hence, the impugned order has been issued.



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5.At the outset, the refusal order cannot be sustained in the eye of law.

The security interest already granted in favour of the petitioner in the year 2021, ie., on 23.09.2021, even before filing of suit in the year 2022 (O.S.No.27 of 2022). Therefore, the order of attachment passed by the Civil Court is subsequent to that and as far as the security interest is concerned, which is created earlier to the suit. Therefore, the refusal slip issued by the respondents citing the order of attachment by the Civil Court cannot be sustained in the eye of law and the same has to be quashed.

6.In the result, this writ petition stands allowed. This Court hereby directed the respondents to register the Sale Certificate as per law, within a period of one week from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

17.10.2024

NCC : Yes/No
Index : Yes/No
PNM



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