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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-03-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**WP No. 4350 of 2025
and WMP No. 4869 of 2025**

1. Union Bank Of India
Stressed Asset Management Branch- Chennai
No 38 & 39, Whites Road,
Royapettah, Chennai 600 014

Petitioner(s)

Vs

1. The Sub Registrar
Office Of The Sub Registrar
2/97A, Mayilam Pondi Road, Vanur,
Villupuram 605 109

2.The Commercial Taxes Department
Tindivanam

3.Mr.Bharathi Raju

4.Jithendra Patel

Respondent(s)



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PRAYER Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for records of the 1st Respondent in communication in Na.Ka. No 608/2024 dated 29.11.2024 and quash he same and consequently direct the 1st Respondent to remove the attachment, encumbrance and Document Remarks made vide Document No.10/2016 dated 26.4.2016 and register the Sale Certificate dated 27.09.2024 issued by the petitioner to the 3rd respondent herein.

For Petitioner(s): Ms.M.Akshayaa

For Respondent(s): Mr.B.Vijay
Additional Government Pleader
for R1 and R2

ORDER

This writ petition has been filed challenging the impugned communication dated 29.11.2024 of the 1st respondent and for a consequential direction to the 1st respondent to register the Sale Certificate dated 27.09.2024 issued by the petitioner in favour of the 3rd respondent without putting against the petitioner the endorsement made towards the attachment of the property by the Sales Tax Department.



2. Heard Ms.M.Akshayaa, learned counsel appearing on behalf of the petitioner and Mr.B.Vijay, learned Additional Government Pleader appearing on behalf of respondents 1 and 2.

3. The case of the petitioner is that the petitioner Bank had advanced certain credit facilities in favour of Sri Trirumurugan Agencies. Towards the said loan, a mortgage by deposit of title deeds was created in favour of bank. The borrower failed to service the loan and hence, was classified as a non-performing assets. Proceedings were initiated under the SARFAESI Act and the property which was mortgaged was brought for auction sale. The 3rd respondent was the highest bidder and the Sale Certificate dated 27.09.2024 was issued in his favour. When this Sale Certificate was presented for registration before the 1st respondent, the 1st respondent refused to register the Sale Certificate by issuing the impugned communication dated 29.11.2024 by stating that there are some tax arrears payable to the Commercial Sales Tax Department and an attachment order has been passed in this regard on 25.10.2019 and therefore, till this attachment is in force, the Sale Certificate cannot be entertained and it

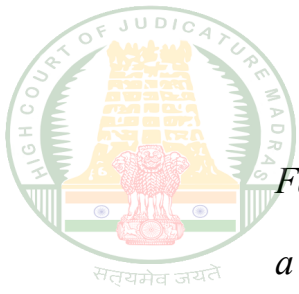


cannot be registered. Aggrieved by the same, the present writ petition has been filed before this Court.

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4. In the considered view of this Court, the issue involved in the present writ petition is squarely covered by the judgment of the Apex Court in ***Kotak Mahindra Bank Ltd., v. Girnar Corrugators Private Limited and Others*** reported in **2023 3 SCC 210**. The relevant portions are extracted hereunder:

29. In sharp contrast to this, Section 26-E of the Sarfaesi Act which has been inserted vide Amendment in 2016, it provides that notwithstanding anything inconsistent therewith 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 revenue taxes and cesses and other rates payable to the Central Government or the State Government or local authority. However, the priority to secured creditors in payment of debt as per Section 26-E of the Sarfaesi Act shall be subject to the provisions of IBC. Therefore, such dues vis-à-vis dues under the MSMED Act, as per the decree or order passed by the

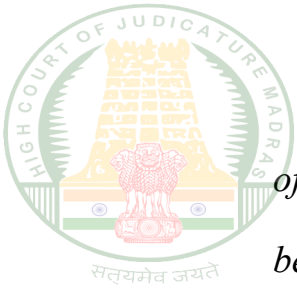


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Facilitation Council, debts due to the secured creditor shall have a priority in view of Section 26-E of the Sarfaesi Act which is later enactment in point of time than the MSMED Act.

30. At this stage, it is required to be noted that Section 26-E of the Sarfaesi Act which is inserted in 2016 is also having a non obstante clause. Even as per the submission on behalf of Respondent 1, two enactments have competing non obstante provision and nothing repugnant, then the non obstante clause of the subsequent statute would prevail over the earlier enactments. As per the settled position of law, if the legislature confers the later enactment with a non obstante clause, it means the legislature wanted the subsequent/later enactment to prevail. Thus, a "priority" conferred/provided under Section 26-E of the Sarfaesi Act would prevail over the recovery mechanism of the MSMED Act. The aforesaid is to be considered along with the fact that under the provisions of the MSMED Act, more particularly Sections 15 to 23, no "priority" is provided with respect to the dues under the MSMED Act, like Section 26-E of the Sarfaesi Act.

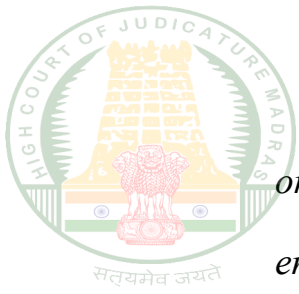
31. As observed hereinabove, Sections 15 to 23 of the MSMED Act are providing a special mechanism for adjudication



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of the disputes and to adjudicate and resolve the disputes between the supplier and buyer -micro or small enterprise. At the cost of repetition, it is observed that the MSMED Act does not provide any priority over the debt dues of the secured creditor akin to Section 26-E of the Sarfaesi Act. At the most, the decree/order/award passed by the Facilitation Council shall be executed as such and the micro or small enterprise in whose favour the award or decree has been passed by the Facilitation Council shall be entitled to execute the same like other debts/creditors. Therefore, considering the provisions of Sections 15 to 23 read with Section 24 of the MSMED Act and the provisions of the SARFAESI Act, as such, there is no repugnancy between the two enactments viz. the SARFAESI Act and the MSMED Act. As such, there is no conflict between the two schemes i.e. the MSMED Act and the SARFAESI Act as far as the specific subject of "priority" is concerned.

32. At this stage, the object and purpose of the enactment of the SARFAESI Act is required to be considered. The SARFAESI Act has been enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interest created on property rights, and for matters connected therewith



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or incidental thereto. Therefore, the SARFAESI Act has been enacted providing specific mechanism/provision for the financial assets and security interest. It is a special legislation for enforcement of security interest which is created in favour of the secured creditor - financial institution. Therefore, in absence of any specific provision for priority of the dues under the MSMED Act, if the submission on behalf of Respondent 1 for the dues under the MSMED Act would prevail over the SARFAESI Act, then in that case, not only the object and purpose of special enactment/the SARFAESI Act would be frustrated, even the later enactment by way of insertion of Section 26-E of the Sarfaesi Act would be frustrated. If the submission on behalf of Respondent 1 is accepted, then in that case, Section 26-E of the Sarfaesi Act would become nugatory and would become otiose and/or redundant. Any other contrary view would be defeating the provision of Section 26-E of the Sarfaesi Act and also the object and purpose of the SARFAESI Act.

5. The above judgment was followed by the Division Bench of this Court in **Tamil Nadu Mercantile Bank Ltd., Rep. by the Manager vs. Sub Registrar and Another** reported in **2024 SCC Online Mad 5692**. Even in that case, there



came to be passed. While dealing with the same, the Division Bench after relying upon the above judgment and also the other judgments held as follows:

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16. As regards sale in "as is where is" condition, we have no quarrel over the ratio laid down by the Hon'ble Supreme Court as well as the Hon'ble Division Bench. The sale in "as is where is" clause is only to give immunity to the secured creditor who may not be aware of any other encumbrance clandestinely entered into or made by the borrower in question. Therefore, in the present case, merely because the auction sale was held in "as is where is" condition, it would not clothe any special right in the 2nd respondent for continuance of the attachment for the following reasons:-

(i) In terms of section 26E, the secured creditor, namely the Petitioner Bank in the present case, has a priority and this claim is preferred to the claim of any other person including the sovereign.

(ii) In exercise of the priority charge, the property has been brought to sale in public auction and the auction purchaser has also paid the entire sale consideration and necessary sale certificate has been issued in favour of the auction



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purchaser. Thus, the right, title and interest in respect of the subject property has lawfully vested with the auction purchaser.

(iii) Considering the fact that there is an attachment over the property in favour of the 2nd respondent and the same is subservient to the priority charge holder, namely the Petitioner Bank, the 2nd respondent now cannot claim that the attachment in favour of the 2nd respondent would continue to subsist and prevail and it would run with the property and bind the auction purchaser also, when nothing remains or survives for the said attachment to continue.

6. In the light of the above judgements, the order of attachment passed towards the dues payable to the Commercial Sales Tax Department will not have any bearing since the secured creditor has been given a priority of charge and the attachment made by the Commercial Sales Tax Department is subservient to the priority charge created in favour of the petitioner.

7. In the light of the above discussion, the impugned communication dated 29.11.2024 passed by the 1st respondent is hereby quashed and there shall be a direction to the 1st respondent to register the Sale Certificate, if it is otherwise in



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8. In the result, this writ petition stands allowed with the above directions.

No Costs. Consequently, connected miscellaneous petition is closed.

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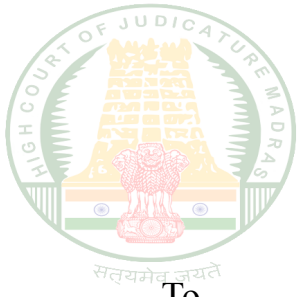
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Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To
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Office Of The Sub Registrar

2/97A, Mayilam Pondi Road, Vanur,

Villupuram 605 109

2.The Commercial Taxes Department

Tindivanam



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N.ANAND VENKATESH J.

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