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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE P.DHANABAL

W.A.No.1303 of 2023
and C.M.P.No.12938 of 2023

The Sub Registrar
Office of Sub Registrar
Pollachi, No.104, Taluk Office Campus
Coimbatore Road
Pollachi - 642001 ... Appellant

Vs.

1.The Federal Bank Ltd.
Rep. by its Senior Manager
LCRD, Coimbatore Division
No.21, Variety Hall Road
Coimbatore 641 001

2.Office of the Principal Commissioner
of GST & Central Excise, Head Quarters
Preventive Unit, 6/7, A.T.D. Street
Race Course Road
Coimbatore 641 018

3.Jayaprakash ... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 08.02.2023 made in W.P.No.2758 of 2023 and allow the above Writ Appeal.

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For Appellant : Mr.B.Vijay
Additional Government Pleader

For Respondents : Mr.S.Pradeepan - R1

Mr.Rajendran Raghavan
Senior Panel Counsel - R2

No Appearance - R3

JUDGMENT

(Judgment of the Court was made by S.S.SUNDAR,J.)

This appeal is directed against the order of the learned single Judge dated 08.02.2023 in W.P.No.2758 of 2023. The brief facts leading to the above appeal are as below:

- The writ petitioner is a bank and it advanced a loan against a property which was mortgaged by deposit of title deeds in their favour on 19.10.2017. The mortgage deed was also registered. Since the mortgagor failed to repay the outstanding loan amount, the account was classified as N.P.A. Thereafter, auction was conducted and the property was sold in a public auction and a sale certificate was issued on 09.09.2022. When the sale certificate was presented for registration, the Sub Registrar, the appellant herein passed the order impugned in the writ petition, rejecting the request for registration on

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the ground that the property was provisionally attached U/s.83 of G.S.T. Act on 18.12.2021. The writ petition was filed challenging the order dated 17.10.2022 passed by the Sub Registrar, refusing to register the document, on the ground that the mortgagee has a priority U/s.26(E) of SARFAESI Act, 2002 and therefore the order of attachment cannot be enforced against the Bank. The bank, the writ petitioner contended before the learned single judge that the order is illegal and contrary to Section 26(E) of SARFEASI Act, 2002. This writ petition was allowed by quashing the impugned order and by directing the Sub Registrar to register the sale certificate. However, while allowing the writ petition, learned single Judge also held that first proviso to Rule 55-A, introduced by State amendment is ultravires.

2.Learned Additional Government Pleader appearing for the Sub Registrar, appellant raised an objection, that if a property is attached, subsequent sale deed cannot be registered. He added that the learned single Judge ought to have impleaded the Principal Secretary, Commercial Taxes and Registration Department representing the Government of Tamil Nadu and ordered notice before holding that Rule 55 A ultravires of the

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Registration Act and Transfer of Property Act, which came into force on 05.09.2022. It is contended that the learned Judge, without an issue being raised, on his own declared that Rule 55 A of the Registration Rules is unconstitutional. Aggrieved by the findings rendered by the learned single Judge in the impugned order about the validity of the first proviso to Rule 55 A of the Registration Rules and declaring it as invalid and ultravires, the appellant is before this Court through this appeal. The appellant is aggrieved only to the particular portion of the impugned order declaring the first proviso to Rule 55 A of the Registration Rules as invalid and ultra vires. The learned Additional Government Pleader relied upon the catena of judgments on the proposition that in the absence of any specific challenge to the constitutionality of any statute, the Court ought not have undertaken the exercise of going into the question whether the provision is unconstitutional. It is further contended by the learned Additional Government Pleader that the writ petition cannot be disposed of on a point which was not raised by the parties in their pleadings. ***In Dhanraj V. Vikram Singh & Ors. [2023 Live Law (SC) 456]***, the Hon'ble Supreme Court has held as follows:

> *" We are of the view that in absence of any specific challenge to the validity of the statutory provisions, the High Court*

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ought not to have undertaken the exercise of going into the question of repugnancy. We fail to understand the propriety of the observation that the law departments of the State and the Union should have a dialogue to remove the discrepancy. Moreover, the High Court has not proceeded to strike down the relevant provisions which were held to be repugnant to PESA. It only directs that till the discrepancy is removed by the legislature, certain provisions of the 1961 Act and the rules framed thereunder shall be ignored. Such approach by the writ Court is not at all called for. Without holding that the statutory provisions are not constitutionally valid, the High Court could not have issued a direction not to implement the statutory provisions."

3. In the light of a few judgements relied upon by the Additional Government Pleader, this Court is of the view that it is not appropriate for the Court to deal with the constitutional validity of the statutory provisions, unless it has been properly raised. There is no prayer challenging the vires and the Government is not made a party to the writ. Without hearing the Government, it is not appropriate to render statutory provision unconstitutional. Hence that portion of order of writ Court declaring the proviso to Rule 55 A as ultravires cannot be sustained. However, in the present case, it is admitted before this Court that pursuant to the order of the

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learned single Judge, the document is registered. The learned Additional Government Pleader also on instructions submitted that the department is not aggrieved by the impugned order passed by the learned single Judge directing the document to be registered, but they are only aggrieved by the portion of the order where the learned single Judge has held "*that the first proviso to Rule 55-A of the Registration Rules is invalid and ultravires*".

4.Therefore, the writ petition directing to register the sale certificate is not interfered with. Recording that, the writ appeal is partly allowed only to the extent of setting aside that portions of the order declaring "*the first proviso to Rule 55-A of the Tamilnadu Registration Rules as invalid and ultravires"*. We have not gone into the constitutionality of the statutory provision. Hence order shall not be interpreted to mean that this Bench has upheld the vires of proviso to Rule 55 A of the rules. No costs. Consequently, the connected miscellaneous petition is closed.

(S.S.S.R, J.) (P.D.B, J.)
08.01.2025

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Index : Yes / No
Neutral Citation

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