BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.03.2025

PRONOUNCED ON : 24.06.2025

CORAM:

THE HONOURABLE **MRS. JUSTICE J. NISHA BANU**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P.(MD)No.1855 of 2024

M/s. Hdfc Bank Limited,
Department for Special Operations,
Having Office at 7th Floor, B-Wing,
Prince Khushal Towers,
No.96, Annasalai, Chennai - 600 002,
Represented by its Authorized Officer. ... Petitioner

Vs.

1.The Sub-Registrar,
Woraiyur Sub Registrar Office,
At Maruthandakuruchi,
Srirangam Taluk,
Tiruchirappalli - 620 102.

2.The Sub-Registrar,
Thillai Nagar Sub Registrar Office,
No.348/17, 7th Cross, Thillai Nagar,
Tiruchirappalli - 620018.

3.The Deputy Commissioner of Income Tax,
Central Circle - 1, No.44, Willams Road,
Cantonment, Tiruchirappalli - 620 001.

4.The Assistant Commissioner of Income Tax,
Central Circle - 1, No.44, Willams Road,
Cantonment, Tiruchirappalli - 620 001.

5.The Tax Recovery Officer,
Income Tax Department,
Central Circle - 1, No.44, Willams Road,
Cantonment, Tiruchirappalli - 620 001.

6.A.Meera Arun

7.M/s.ARK Educations Welfare Trust,
Having its Registered Office At No.223/1,
Thiruverumbur, Kallanai Road,
Vengur Village, Tiruchirappalli – 620013,
Represented by its Secretary,
R.Chenthurselvan. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records relating to the impugned proceedings of 2nd respondent made in RFL/Thillainagar/2/2024, dated 08.01.2024 and to quash the same and consequently, to direct the 2nd respondent to register the Sale Certificate, dated 08.01.2024, issued by the petitioner bank in favour of the 7th respondent / Auction purchaser M/s.ARK Educations Welfare Trust and consequently, to direct the 1st respondent / Sub Registrar and 3rd, 4th and 5th respondents / Income Tax Department to efface/delete the encumbrance attachment entries in vide Document Nos.45/2015 46/2015 and 47/2015 dated 03.11.2015 and Document Nos.64/2016, dated 24.07.2016, 62/2016 and 63/2016, dated 27.07.2016 and Document Nos.7/2017, 8/2017 and 9/2017, dated 23.01.2017 and Document Nos. 88/2017, 89/2017 and 90/2017, dated 18.07.2017, Document Nos.2/2018, 3/2018 and 4/2018, dated 04.01.2018 on the file of the 1st respondent / Sub Registrar, Woraiyur Sub Registrar Office, Tiruchirapalli, within a time frame.

For Petitioner	:	Mr.B.Ponnupandi for Mr.T.N.Karthikeyan
For R1 and R2	:	Mr.Veera Kathiravan Additional Advocate General assisted by Mr.P.T.Thiraviyam Government Advocate
For R3 to R5	:	Mr.N.Dilip Kumar Standing Counsel

***

ORDER

(Order of the Court was delivered by **S.SRIMATHY, J.**)

The present writ petition is filed for Writ of ***Certiorarified Mandamus***, to quash the impugned proceedings of 2nd respondent made in RFL/Thillainagar/2/2024, dated 08.01.2024 and consequently, to direct the 2nd respondent to register the Sale Certificate, dated 08.01.2024, issued by the petitioner bank in favour of the 7th respondent / Auction purchaser and consequently, to direct the 1st respondent / Sub Registrar and 3rd, 4th and 5th respondents / Income Tax Department to efface/delete the encumbrance attachment entries in the concerned documents on the file of the 1st respondent / Sub Registrar, Woraiyur Sub Registrar Office, Tiruchirapalli, within a time frame.

2.The brief facts as stated in the affidavit are that the 6th respondent/borrower availed credit facility by mortgaging their properties and on

17.04.2013. The 6th respondent/borrower executed a registered mortgage deed to and in favour of the petitioner Bank on 17.04.2013 vide document No.2864 of 2013. However, the Income Tax Department / the 3rd, 4th, 5th respondents, passed the order of attachment on 03.11.2015, 24.07.2016, 27.07.2016, 23.01.2017, 18.07.2017, and 04.01.2018, for recovery of the tax dues, in respect of the properties over which mortgages were already created. The properties belonging to the borrowers were mortgaged with the petitioner bank prior to the order of attachments passed by the 3rd, 4th and 5th respondents, and hence, the said attachments are non-est/invalid. The 6th respondent/borrower failed to adhere to the repayment schedule, therefore on 29.05.2016 the loan facility extended to them was classified as "non-performing asset" within the meaning of Section 2(o) of the SARFAESI Act in accordance with directions/guidelines issued by the Reserve Bank of India. Subsequently, the petitioner bank had issued statutory notice under Section 13(2) of the Act to the borrowers and took the physical possession of the secured asset as per the Section 14 order, on the file of the Chief Judicial Magistrate Court, Trichy and then the petitioner bank put the secured asset to public auction for the recovery of petitioner bank's outstanding dues.

3.On 29.11.2023, the petitioner bank published the SARFAESI e-Auction sale notice in "The New Indian Express" and "Dinamani" for sale of the secured asset at a reserve price of Rs. 10,00,00,000/- (Rupees Ten Crores only) and fixed the date of auction on 15.12.2023 and in this regard, the petitioner bank issued the said sale notice to the borrowers by register post. On publication of the said SARFAESI e-Auction sale notice, the 7th respondent has participated in the said e-Auction held on 15.12.2023 and his bid amount of Rs. 10,05,00,000/- (Rupees Ten Crores and Five Lakhs Only) has been declared highest as bid amount by the petitioner bank, Subsequently, the 7th respondent paid the entire sale price/bid amount to the petitioner bank and accordingly the petitioner bank issued the Sale Certificate dated 08.01.2024 to in favour of the 7th respondent. However, when the Auction purchaser/7th respondent and the petitioner bank went for registration of the said sale certificate and the same was declined to be registered by the 2nd Respondent by his "Refusal Check Slip” in vide Refusal No: RFL/Thillai Nagar/2/2024, dated 08.01.2024, on the ground that the 3rd , 4th and 5th respondent's attachment orders in vide Document Nos: 45/2015, 46/2015 and 47/2015, dated 03.11.2015, and Document Nos: 64/2016 dated 24.07.2016, 62/2016 and 63/2016, dated 27.07.2016, and Document Nos: 7/2017, 8/2017 and 9/2017, dated 23.01.2017, and Document Nos: 88/2017, 89/2017 and 90/2017, dated 18.07.2017, Document Nos: 2/2018, 3/2018 and 4/2018, dated 04.01.2018, on the file of the 1st respondent/Sub Registrar, Woraiyur Sub Registrar Office, Tiruchirapalli, as against the petitioner bank's secured immovable properties.

Hence, the present writ petition is filed.

4. The petitioner submitted that recently, the said secured immovable properties of the petitioner bank were transferred from the 1st respondent Sub Registrar office to the newly launched 2nd respondent Sub Registrar office. In fact, the said Sale Certificate was properly executed and presented for registration before the 2nd respondent. It is pertinent to note that as the said Sale Certificate was not refused by the 2nd respondent as the said sale certificate was one such deed, prohibited by the Act under Section 71 for registration. But the 2nd respondent simply returned and refused the sale certificate to the petitioner bank even without assigning the pending document number, due to the aforesaid encumbrance attachment entries by the 3rd , 4th and 5th respondents. Even assuming without admitting the impugned attachment over the petitioner bank's mortgaged property, the issue is no longer Res-integra. Because an order of attachment over a particular property is not a bar for alienation, subject to the share or quantum of liability of the judgment debtor is under attachment to satisfy the decree of the Civil Court, to be passed as against him. Further, the Hon'ble Apex Court and the High Court has held in number of cases as the attachment over a particular property is no longer a bar and the registration authority shall not deny the registration as there was no power to do so. Hence, the actions of the 2nd

respondent are totally illegal, not maintainable and liable to be set-aside. So, the 2nd respondent is liable to register the said sale certificate and duty bound to return the original without any further delay. In view of the numerous judgments passed by the High Court, especially, in the writ petitions filed by the petitioner by order, dated 29.01.2021, in W.P.No. 6976 of 2020 and batch and order, dated 19.05.2021, in W.P.No.11965 of 2021 and order, dated 02.08.2023, in W.P.(MD) No. 28500 OF 2022 and W.A. No. 1512 of 2021 and batch, dated 01.09.2022.

5.In the above said cases, this Court had categorically held, after considering several decisions and citing the provision under Section 31-B of The Recovery of Debts due to Banks and Financial Institutions Act, 1993, that Sub Registrar cannot refuse to register the sale certificate on the ground that there is an attachment order passed by the Civil Court. In the said cases, it has been held that the rights of secured creditors in terms of Sections 31-B & 26E of the Act will override all other debts. The relevant portion of the Acts are extracted hereunder:

"Priority to secured creditors:

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.*

Section 26E of the Act:

26E. 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."

Thus, the 2nd respondent did not consider the legal propositions settled down by this Court. Hence the 2nd respondent's act is unsustainable and the petitioner is challenging same in the present writ petition.

6.The 1st respondent has filed written submissions stating that the core issue in is that the registration of sale certificate has been refused on the ground of previous attachment made by the statutory bodies. The petitioner had submitted that the law laid down by the Hon'ble Supreme Court and also keeping in mind the provisions of Section 26E of the SARFAESI Act, the debts due to a secured creditor shall be paid in priority over other debts/ taxes payable to the State Government. Further, it is also submitted that Section 35 of the SARFAESI Act, 2002 inter alia, provides that the provisions of the SARFAESI Act, shall have overriding effect on all other laws. Section 22-B of the Registration Act, 1908, which was inserted by T.N. Act 41 of 2022 with effect from 16-08-2022 states that the registering authority has to refuse the document relating transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal. Section 26E and Section 35 of the SARFAESI Act gives the secured creditors the first charge over other debts and it was not disputed but section 22 B(3) of the Registration Act, 1908 deals only about refusal to register certain documents attached by the statutory authoirty. Section 22 B (3) of the Registration Act, 1908 is not contrary to Section 26E and Section 35 of the SARFAESI Act. The registering authorities are bound to follow Section 22 B (3) of the Registration Act, 1908, hence the registering authorities are right in refusing to register the documents produced by the petitioner.

6.Heard Mr.B.Ponnupandi, learned Counsel appearing for the petitioner, Mr.Veera Kathiravan, learned Additional Advocate General appearing for respondents 1 and 2 and Mr.N.Dilip Kumar, learned Standing Counsel appearing for respondents 3 to 5 and perused the records.

7. In the present case the mortgage was executed on 17.04.2013. The contention of the bank is that under section 26E the bank's debt has priority over other debts. The bank has first charge over the mortgaged property, hence the order passed by the arbitrator is against the aforesaid provision of Section 26E. The said provision is extracted hereunder:

> *"26E. 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.*
>
> *Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."*

8. The contention of the Registration Department is that under section 22-B the Sub Registrar has power to refuse to register the document if there is any attachment permanently or provisionally by a competent authority under any Central Act or State Act or any Court or Tribunal. The said provision is extracted

hereunder:

> *"Section 22-B. Refusal to register forged documents and other documents prohibited by law. Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:-*
> *(1) forged document;*
> *(2) document relating to transaction, which is prohibited by any Central Act or State Act for the time being in, force;*
> ***(3) document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;***
> *(4) any other document as the State Government may, by notification, specify."*

9.The learned Counsel appearing for the petitioner relied on the order passed by this Court in W.P.(MD)No.23338 of 2023, dated 05.12.2023 in the case of ***M/s.Boss Enterprises Vs. The Sub Registrar and 2 Others,*** wherein it is held as under:

> *"5.Though this argument is very attractive, a careful reading of Rule 143 shows that a certificate of encumbrance should contain complete list of all encumbrances 'affecting the property in question'. Once the right of the secured creditor is placed higher than that of the 2nd respondent, who claims arrears of tax revenue and when the 3rd*

respondent, while bringing the property for SARFAESI sale, if there is an excess, should also settle other statutory creditors by following the procedures contemplated under Rule 9 of SARFAESI Rules, then the question of arrears of revenue affecting the title of the property does not arise. Consequently, once the property is sold under SARFAESI, prior encumbrances, which are lesser in priority than that of the Bank, will have to be removed.

6.On the sale of the property in SARFAESI, title transfers from debtor in favour of the auction purchaser. Therefore, if there are any arrears of the tax revenue, the authorities cannot proceed against only this property. It is always open to proceed against the debtor in case they come across against any other properties of the debtor or otherwise and recover the dues.

7.In the light of the above, this Writ Petition is allowed and the 1st respondent is directed to remove the encumbrance, reflecting the attachment made by the 2nd respondent. No costs."

10.The learned Counsel appearing for the petitioner relied on the order passed by this Court in W.P.(MD)No.14573 of 2021, dated 28.11.2023 in the case of ***M/s.City Union Bank Limited Vs. Tax Recovery Officer-2 and 3 others*** wherein it is held as under:

"16. The Hon'ble First Bench of High Court of Madras in W.P.No. 19742 of 2022 batch vide order date 27.09.2023 had held that the secured creditor has priority charge over the claim of the Revenue. The Hon'ble Division Bench had followed the judgment of the Hon'ble

Full Bench rendered of this Court in the case of Assistant Commissioner (CT) Anna Salai-III Assessment Circle Vs. Indian Overseas Bank and another reported in AIR 2017 Mad 67 (FB). The Hon'ble Full Bench of Bombay High Court in the case of Jalgaon Janta Sahakari Bank Ltd. and another Vs. Joint Commissioner of Sales and another reported in 2022 Online SCC Bom 1767 has held the secured creditor would have the priority if the same is registered. Based on the above said judgment, 1st respondent is bound to issue no objection certificate and also the 1st respondent is bound to lift the attachment.

17. Therefore, for the reasons stated supra the impugned order of attachment, dated 04.01.2018, is quashed and consequently, the 1st respondent is directed to lift the attachment. The 2nd respondent is directed to strike the name of the 1st respondent from the Encumbrance Certificate with respect to the property measuring about 33.43 cents vacant land at Chinthamani Village Salai limit T.S.No.21-part, New Ward B, Block 19, Trichy-2. The said exercise shall be completed within a period of six weeks from the date of issue of the copy of the order.

18. With the above said observations and directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

11. The learned Counsel appearing for the petitioner also relied on the order passed by this Court in W.P.No.15451 of 2024, dated 19.10.2024, in the case of ***M/s.Tamilnadu Mercantile Bank Limited Vs. The Sub Registrar and Another*** reported in ***2024-2-Writ L.R. 654*** wherein it is held as under:

"19.In this case, admittedly the property has been duly

conveyed in favour of the auction purchaser for valid sale consideration and in view of Section 26E, the attachment in favour of the 2nd respondent cannot continue to subsist, especially when nothing is remaining for the 2nd respondent to claim in and over the subject property.

20.With regard to registration of the Sale Certificate, we see no justification on the part of the 1st respondent, Sub Registrar to refuse registration of the Sale Certificate. In fact, even in cases where an attachment order is subsisting, the Sub Registrar cannot refuse registration, as even according to the learned Additional Advocate General, the attachment would run with the property and therefore, the Sub-Registrar cannot refuse registration on the ground that there is an earlier attachment which is subsisting over the subject property. Therefore, insofar as this part of the prayer in the writ petition, there can be no second opinion that the petitioner is entitled to registration of the Sale Certificate in favour of the auction purchaser Mrs. Kala Ramu.

21.With regard to deletion of the entry, namely, the attachment in favour of the 2nd respondent, we do not find any provisions in the Registration Act which permit the registering authorities to delete an entry which is already finding place in the Encumbrance Register/Certificate. However, in terms of the customary practice and well settled procedure, the Registrar is duty bound to cause a contra entry stating that the said attachment in favour of the 2nd respondent stands raised in view of the exercise of the priority right by the Petitioner Bank by bringing the property for sale in public auction and consequently, conveying the said property in favour of the auction purchaser, Mrs.Kala Ramu. Insofar as this limb of the prayer, we therefore direct the 1st respondent to make an entry in the Encumbrance

Records to reflect in the Encumbrance Certificate, notifying that the attachment in favour of the 2nd respondent in entry, Document No.04 of 2022 dated 05.01.2022, stands cancelled in view of the auction sale conducted by the Petitioner Bank in favour of Mrs.Kala Ramu on 31.08.2023 and consequent registration of the sale certificate which is also being ordered in this writ petition.

22.In fine, the writ petition is disposed of in the manner following:

(i) The 1st respondent shall register the Sale Certificate dated 04.10.2023, issued by the petitioner Bank, within a period of two weeks from the date of receipt of a copy of this order.

(ii) The 1st respondent shall cause an entry in the Encumbrance Certificate cancelling the attachment order in favour of the 2nd respondent in Document No.04 of 2022 dated 05.01.2022, simultaneous to the registration of the Sale Certificate in favour of the auction purchaser as directed in Clause (i) herein above.

(iii) There shall be no order as to costs."

12. The learned Counsel appearing for the petitioner further relied on the order passed in W.P.No.2758 of 2023, dated 08.02.2023, in the case of ***Federal Bank Limited Vs. Sub Registrar and Others*** reported in ***2023 SCC OnLine Mad 878,*** wherein it is held as under:

"30. In the case at hand, provisional attachment was passed by the G.S.T. authorities. The registration of the Sale Certificate was rejected for this reason. It is relevant to note that the petitioner was a prior mortgagee in the year 2017, whereas the provisional attachment

was passed by the G.S.T. authorities on 18.12.2021. This order has already lapsed by operation of law. In this regard, it is useful to extract Sec. 83 of The Central Goods and Service Tax Act, 2017 which reads as follows:

"83. Provisional attachment to protect revenue in certain cases: (i) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed. (ii) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under subsection (1)."

31. In view of the above, as this Court has held that the first proviso to Rule 55-A has been found to be invalid and ultra vires, the respondent cannot refuse to register the document placing reliance on the aforesaid proviso.

32. Sec. 83(2) of G.S.T. Rule makes it clear that every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1). Therefore, provisional attachment made by the second respondent vide order dated 18.12.2021 has ceased to have effect, after expiry of a period of one year. There is no material to show any final order of attachment, or any subsequent order passed by the second respondent pursuant to the aforesaid order. Therefore, this Court is of the view that the impugned order dated 17.10.2022 is liable to be quashed.

33. In view of the foregoing reasons, the respondent cannot refuse to register the Sale Certificate as sought for by the petitioner. Consequently, the impugned order in Na.Ka.No.538/2022 dated 17.10.2022 is quashed. The first respondent is directed to register the Sale certificate within a period of 15 days from the date of receipt of copy of the order.

34. With the above directions, the writ petition is allowed. No costs."

13. Further, the learned Counsel appearing for the petitioner relied on the order passed in W.P.(MD)Nos.6976 of 2020 and 1101 of 2021 in the case of ***Tamilnad Mercantile Bank Limited Vs. The Joint I Sub Registrar and Others*** reported in ***2021-1-Writ L.R. 462,*** wherein it is held as under:

"10. In the case on hand also, the registered mortgage was admittedly prior. The 9th respondent in W.P.(MD)No.6976 of 2020 / 8th respondent in W.P.(MD)No.1101 of 2021 sought for an attachment in an arbitration proceeding, in which, the petitioners Bank was obviously not a party, as the transaction has got nothing to do with it. The said order was also subsequent to the mortgage created in favour of the petitioner. Now, a third party right has also been created through the sale certificate issued in favour of the auction purchasers, viz., respondents 7 & 8 in W.P.(MD)No.6976 of 2020 and the 7th respondent in W.P.(MD)No.1101 of 2021. If the 1st respondent raise a contention that in view of the recording of the attachment order by it already, the subsequent sale deed cannot be registered, then the very act of recording the said interim order of attachment passed by the Tribunal itself ought

not to have been done, as there was a subsisting mortgage on that date.

11. The learned Counsel appearing for the 9th respondent in W.P.(MD)No. 6976 of 2020 / 8th respondent in W.P.(MD)No.1101 of 2021 submitted that there is a procedure violation. We are not concerned with the said issue. The question for consideration is as to whether the earlier mortgage would prevail as against the subsequent interim attachment. The question of procedural violation can only be raised by the borrower, who did not do so. Therefore, the said contention has got no relevance to the case on hand.

12. The submission made on the maintainability of the writ petitions is also rejected. We are not on the merits of the order passed by the Arbitration Tribunal, which is by way of an interim measure. The question is with regard to the upholding of one's own existing right, which is prior to the loan given by the 9th respondent in W.P.(MD)No. 6976 of 2020 / 8th respondent in W.P.(MD)No.1101 of 2021, in favour of the borrowers. Certainly, a mortgage deed creates right over the properties mentioned thereunder in favour of the mortgagee.

13. Therefore, looking from any perspective, we are of the view that the petitioner Bank cannot be denied the relief as sought for. In such view of the matter, both the writ petitions stand allowed. The first respondent in both the writ petitions are directed to register the sale certificates issued by the petitioner Bank in favour of the respondents 7 & 8 in W.P.(MD)No.6976 of 2020 and the 7th respondent in W.P.(MD)No.1101 of 2021. Consequently, the encumbrance / attachment entry made on the file of the first respondent with respect to the properties, which are subject matter of the two mortgage deeds and the subject matter of these writ petitions, are directed to be deleted by the first respondent. The aforesaid exercise shall be carried out within a *period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."*

14. The Learned Additional Advocate General appearing for the respondents 1 and 2 had relied on the order rendered in W.P.(MD)No.4553 of 2024 dated 18.03.2024, of course it is Single Judge order. In the said order, it has been held as under:

"In this case, admittedly, an attachment had been made by the Income Tax Department, Civil Courts as well as the special Courts constituted under the TNPID Act. Unless the petitioner or the buyer succeeds in raising the attachment, the registering authority cannot be called upon to register the sale certificate. If I accept the petitioner's counsel's argument, I will be issuing a writ of mandamus contrary to law. It is well settled that no writ Court can issue mandamus contrary to law. Section 22-B(3) of the Registration Act cannot be lost sight of. Therefore, this writ petition is disposed of by sustaining the impugned communication issued by the first respondent and granting liberty to the petitioner and R9 to re-present the sale certificate after the attachments are raised. Once the impediments contemplated under Section 22-B(3) of the Registration Act, 1908 are removed, there cannot be any defect. The question of limitation also will not arise after the attachments are raised or vacated in the manner known to law. The petition mentioned sale certificate can be re-presented for registration and the first respondent will be obliged to register the same."

15. After hearing the rival submissions, this Court had given its anxious consideration. In the present case, the mortgage of the bank is in the year 2013 and the income tax attachment is in the year 2015, 2016, 2017 and 2018. Hence the mortgage is prior to the income tax attachment. But the income tax attachment was registered, which is affecting the rights of the bank.

16. The crucial question is that whether the Registration Authority has power to delete the arbitration award entry based on the bank's representation. As rightly contended by the Additional Advocate General appearing for respondents 1 and 2 such power is not granted to the Sub Registrar. In the judgment referred in W.P.(MD)No.4553 of 2024, it has been held that any Mandamus would not lie against statutory provisions. It is seen that the same issue was dealt with by another Coordinate Bench in W.P.No.15451 of 2024 wherein the Court held that there is no provision in the Registration Act which permits the authorities to delete an entry. Further, held that as customary practice the Registrar is bound to cause contra entry stating that the earlier entry stands raised in view of the exercise of the priority right by the Petitioner Bank. Even in the present case, the Sub Registrar ought to be directed to make contra entry and accordingly, is directed to make contra entry.

17. In the judgment referred supra, the sale was already concluded and the auction purchaser is available, hence the Court directed to make the entry of auction sale also. In the present case also, the sale is concluded and the the 7th respondent is the auction purchaser. Since the sale is concluded, the earlier encumbrance can be deleted.

18. But the issue discussed above seems to be recurring. And each time the banks ought to approach the Courts to delete the attachment. Hence, instead of deleting the earlier attachment, based on the request of the bank, the Sub Registrar could record that bank is having priority and first charge on the mortgage property as per 26E and make a contra entry. And also record after sale by the banks, after adjusting the loan of the bank, if any balance amount is available then the amount would go to the earlier attachment. This would balance the rights of all the parties.

19. Therefore, this Court issuing the following directions:

i] If there is any attachment entered which is after the banks mortgage, then the banks are directed to submit an application to make contra entry based on Section 26E of Sarfaesi Act.

ii] On such application the Sub Registrar shall make a contra entry with remarks that the bank is having priority over other debts and first charge on the mortgage property as per section 26E of Sarfaesi Act and also record after sale by the banks, after adjusting the loan of the bank, if any balance amount is available then the amount would go to the earlier attachment.

iii] After making such entry the Sub Registrar shall intimate the same to the parties in the earlier attachment.

iv] In the present case, the Sub Registrar is directed to follow the direction stated in clause (ii).

20. With the above said observations, the writ petition is allowed as stated supra. No costs.

[J.N.B., J.] **[S.S.Y., J.]**
24.06.2025
(1/3)

Index : Yes / No

Tmg

To

1.The Sub-Registrar,
Woraiyur Sub Registrar Office,
At Maruthandakuruchi,
Srirangam Taluk,
Tiruchirappalli - 620 102.

2.The Sub-Registrar,
Thillai Nagar Sub Registrar Office,
No.348/17, 7th Cross, Thillai Nagar,
Tiruchirappalli - 620018.

J.NISHA BANU, J.

and

S.SRIMATHY, J.

Tmg

W.P.(MD)No.1855 of 2024

24.06.2025

(1/3)