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.3291 of 2024
and
W.M.P.(MD)No.3249 of 2024

City Union Bank Limited,
Represented by its Authorised Officer,
Dindigul Branch,
No.45-C, New Agraharam, Palani Road,
Dindigul-624 001. ... Petitioner

Vs.

1.The Sub-Registrar,
Office of the Sub Registrar,
Vadamadurai, Dindigul District.

2.M/s.DSRM Steels Private Limited,
S.F.No.413/1, Karur Road,
Kulathur-Taluk,
Dindigul-624 005.

3.S.Mohanasundaram
4.M.Balamani
5.M.Manikandan

6.The State Tax Officer,
Dindigul (Village),
Dindigul.

7.S.Jaswant ... 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 related to the impugned Refusal Check Slip passed by the 1st respondent in RFL/Vadamadurai/No.307/2023, dated 20.12.2023 and to quash the same and consequently, to direct the 1st respondent, Sub-Registrar, Vada Madurai, Dindigul District, to efface/delete the attachment entry, dated 02.02.2019 and 07.02.2019, made in Document Nos.12 and 13 of 2019, and to register the sale certificate executed by the petitioner bank in favour of the 7th respondent in respect of the schedule mentioned property.

For Petitioner : Mr.N.Dilip Kumar

For R1 and R6 : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.P.T.Thiraviyam
Government Advocate

***

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 Refusal Check Slip passed by the 1st respondent in RFL/Vadamadurai/No.307/2023, dated 20.12.2023 and to direct the 1st respondent, Sub-Registrar, Vada Madurai, Dindigul District, to efface/delete the attachment entry, dated 02.02.2019 and 07.02.2019, made in Document Nos.12

and 13 of 2019, and to register the sale certificate executed by the petitioner bank in favour of the 7th respondent in respect of the schedule mentioned property.

2.The brief facts are that the 2nd respondent availed a credit facility of Rs.10 Crores/- (Rupees Ten Crores only) from the petitioner bank and had loan documents and registered mortgage by deposit of title deeds on 20.07.2007 in Document No. 2479 of 2007 on the file of the 1st respondent. All these documents have been registered on the file of the first respondent. The 2nd respondent M/s. DSRM Steels Private Limited chad availed a Term Loan of Rs.25,00,00,000/- (Rupees Twenty Five Crores only) from the petitioner Bank and had executed the Memorandum of Deposit of Title Deeds on 20.09.2011, vide Document No.4637 of 2011. The 2nd respondent further approached the petitioner bank on 26.09.2016 seeking enhancement from Rs.35,00,00,000/-(Rupees Thirty Five Crores only) to Rs. 40,00,00,00/- (Rupees Forty Crores only) and it was sanctioned and had executed the Memorandum of Deposit of Title Deed, vide Document No. 2157 of 2017, dated 01.08.2017. The respondents 3 and 5 had executed the Modification of Memorandum of Deposit of Title Deed, vide Document No. 2157 of 2017, dated 01.08.2017. The borrowers failed to repay the loans and committed default. Therefore, the loan accounts were classified as Non-Performing Assets with effect from 06.10.2016.The petitioner bank issued statutory Demand Notice under

Section 13(2) of the SARFAESI Act, dated 19.10.2017, demanding re-payment of loan amount for Rs.48,71,93,783/- (Rupees Forty Eight Crores Seventy One Lakhs Ninety Three Thousand and Seven Hundred and Eighty Three only). The petitioner bank issued a Possession Notice under Section 13 (4) of the SARFAESI ACT, 2002 and Rule 8 of Security Interest (Enforcement) Rules, 2002 to the borrower and guarantors on 03.01.2018. The petitioner bank had also served the possession notice by affixing the same in the secured asset premise on 03.01.2018. The bank published the possession notice in two newspapers namely, 'DAILY THANTHI' and 'INDIAN EXPRESS' on 03.01.2018, as required under the SARFAESI Act. The borrowers did not respond to the said notices and failed to repay the outstanding loan amount as required. The bank therefore proceeded to issue the SALE notice under Section 13 (4) of SARFAESI Act, dated 06.07.2023,to bring the secured assets for auction sale for the subject property. For want of bidders, auction sale did not materialize for the schedule mentioned property and subsequent sale notices also did not go through. The final auction sale notice was issued on 08.09.2023, scheduling the public auction sale on 27.09.2023 for recovery of Rs.1,10,50,37,203/- (Rupees One Hundred and Ten Crore Fifty Lakh Thirty Seven Thousand Two Hundred and Three only) due as on 07.09.2023. The 7th respondent was the successful bidder and purchased the subject property for a sum of Rs.2,65,00,000/- in the said public auction sale and a sale confirmation letter was issued to the successful bidder on 27.09.2023. The petitioner bank issued a sale certificate, dated 11.12.2023, favouring the 7th respondent on payment of the entire sale consideration. The petitioner bank applied for registration of the Sale Certificate before the 1st respondent/Sub Registrar. The 1st respondent had issued the impugned order, dated 20.12.2023, refusing to register the sale certificate stating that there is an attachment entry in favour of the 6th respondent in reference to the order of the State Tax officer, Dindigul, in respect of the schedule mentioned property. Two attachments had been affected under the 6th respondent who is the Tax Department for recovery of arrear amount and had also sent a copy of the order to the 1st respondent Sub Registrar for making an endorsement. The 1st respondent did not follow the Circular, dated 10.07.2021, issued by IG Registration, that registration of sale certificate could not be denied, even when there exists any attachment entry as per Civil Court order. The 1st respondent had also acted mechanically. They failed to consider the fact that the mortgage rights of the petitioner bank is available since 2007, 2011 and 2017 will prevail over the claim of the 6th respondent, which is in reference to a recovery proceeding instituted in 2019. The registration of the attachment dehors the existence of the mortgage rights available in favour of the Bank is illegal.

3.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.

4.Heard Mr.N.Dilip Kumar, learned Counsel appearing for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General appearing for respondents 1 and 6 and perused the records.

5. In the present case the mortgage was executed on 20.07.2007. Then additional loans were granted for the period from 20.09.2011 to 01.08.2017, for which supplement mortgage deeds were executed and registered. 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."

6. 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."

7. Admittedly both the provisions are statutory provisions, however, the section 26E of SARFAESI Act is Central Act and the section 22-B of Registration Act is State amendment which was amended vide (Tamil Nadu Second Amendment) Act, 2021.

8. It is pertinent to note that the bank had taken steps to sell the property. The 7th respondent was the successful bidder and purchased the subject property for a sum of Rs.2,65,00,000/- in the said public auction sale and a sale confirmation letter was issued to the successful bidder on 27.09.2023. The Sub Registrar had exercised his power under section 22-B and refused to register the sale executed by the bank. However, the contention of the bank is that due to encumbrance, the bank is not able to register the sale executed by the bank. The bidder is demanding that the property ought to be free of encumbrance. Therefore, the bank is seeking to delete the entry so that the same is not reflecting in the encumbrance certificate. Now the question is whether the Sub Registrar has power to delete the entry on application.

9.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."*

10. 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."

11. 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."

12. 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 9^{th} respondent in W.P.(MD)No.6976 of 2020 / 8^{th} 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."

13. The Learned Additional Advocate General appearing for the respondents 1 and 6 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."

14. 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 2007 and the Commercial Tax Officer attachment is in the year 2019. Hence the mortgage is prior to the Commercial Tax attachment. But the 2019 Commercial Tax attachment was registered, which is affecting the rights of the bank.

15. 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 6 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 Coordinated 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.

16. 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.

17. 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.

18. 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).

19. With the above said observations, the writ petition is allowed as stated supra. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] **[S.S.Y., J.]**
24.06.2025
(2/3)

Index : Yes / No

Tmg

To

1.The Sub-Registrar,
Office of the Sub Registrar,
Vadamadurai, Dindigul District.

2.The State Tax Officer,
Dindigul (Village),
Dindigul.

J.NISHA BANU, J.

and

S.SRIMATHY, J.

Tmg

W.P.(MD)No.3291 of 2024

24.06.2025

(2/3)