

W.P.(MD)No.5488 of 2024

WEB COPY

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.5488 of 2024

Tamilnad Mercantile Bank Limited,
Thanjavur Branch,
No.50/102, Abraham Pandithar Road,
Thanjavur-613 001.

... Petitioner

Vs.

1.The Sub-Registrar,
Karunthanttangudi Registrar Office,
Thanjavur District.

2.M/s.Sakthi Papers,
Represented by its Partner,
S.Ganesan,
No.504, Sarat Suburav Lane,
East Main Street,
Thanjavur District 613 009.

3.S.Ganesan

4.G.Muthamilselvi

5.Margadarsi Chits Private Limited,
No.6, Indian Chamber Building,
3rd Floor, Esplanade (Parry's),
Chennai-600 108.

... Respondents



W.P.(MD)No.5488 of 2024

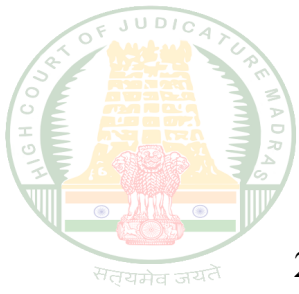
PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a **Writ of Mandamus**, to direct the 1st respondent, Sub Registrar, Karuthanttangudi, Thanjavur District, to efface/delete the encumbrance attachment entry, Doc.No.12 of 2022, registered on 27.09.2022 and to efface/delete the encumbrance attachment entry, Doc.No.15 of 2022, registered on 08.10.2022, as against the schedule mentioned property as per petitioner's representation, dated 06.12.2022.

For Petitioner	: Mr.N.Dilip Kumar
For R1	: Mr.Veera Kathiravan Additional Advocate General assisted by Mr.P.T.Thiraviyam Government Advocate
For R5	: Mr.R.Devaraj

ORDER

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

The present writ petition is filed for Writ of **Mandamus**, to direct the 1st respondent, Sub Registrar, Karuthanttangudi, Thanjavur District, to efface/delete the encumbrance attachment entry, Doc.No.12 of 2022, registered on 27.09.2022 and to efface/delete the encumbrance attachment entry, Doc.No.15 of 2022, registered on 08.10.2022, as against the schedule mentioned property as per petitioner's representation, dated 06.12.2022.



W.P.(MD)No.5488 of 2024

WEB COPY

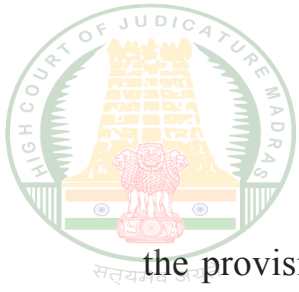
2. The brief facts are that on 22.12.2015, the 2nd respondent availed credit facility for a sum of Rs.30,00,000/- from the petitioner bank and had executed loan documents on 23.12.2015 and registered mortgage by deposit of title deeds in Doc.No.3734 of 2015 in the office of Sub-Registrar, Karunthanttangudi, regarding Item No. 1. The loan was revised on various dates from 24.05.2016 to 15.11.2021 and supplement mortgage deeds were also registered, pertaining to the subject properties for the enhanced loans. The above loan was enhanced to Rs.1,42,00,000/- and Supplemental Memorandum of Deposit of Title Deed was registered vide Doc.No.3572 of 2021 in the office of Sub-Registrar, Karunthanttangudi. The respondents 3 and 4 stood as guarantors for the credit facilities. The respondents 2, 3 and 4 committed defaults in repayment and the accounts were classified as Non-Performing Assets with effect from 29.07.2022. The petitioner bank issued the statutory demand notice, dated 20.08.2022 under Section 13 (2) and then possession notice dated 02.11.2022 under Section 13 (4) of SARFAESI Act. The petitioner bank issued auction sale notice, dated 19.12.2022, 07.02.2023, 06.03.2023, 23.05.2023, 19.06.2023 and 25.09.2023 under Section 13 (4) of SARFAESI Act. The property was not sold for want of bidders. The petitioner bank filed O.A.No.248 of 2023, before the Learned DRT-II, Chennai and the same is pending. In the meanwhile, the petitioner bank came to know about the two attachment entries registered in the



W.P.(MD)No.5488 of 2024

office of the 1st respondent, Sub Registrar vide Doc.No.12 of 2022, dated 27.09.2022 and vide Doc.No.15 of 2022, dated 08.10.2022, on the subject mortgaged properties. The above attachment entries had been effected as per order passed by an Arbitrator, in a claim petition filed by the 5th respondent. The alleged two attachment entries obtained by 5th respondent is hindering the petitioner bank from initiating further action on the schedule property since bidders are wary to bid, because of the attachment entries. The respondents 1 and 5 had acted mechanically, failed to consider the fact that the mortgage rights of the petitioner bank are available since 23.12.2015, which will prevail over the claim of the 5th respondent, which is on later year 2022. The petitioner bank had submitted a detailed representation to the 1st respondent on 06.12.2022 with a request to delete the encumbrance attachment entry Doc.No.12 of 2022, dated 27.09.2022 and vide Doc.No.15 of 2022, dated 08.10.2022, as against the schedule mentioned property, but the 1st respondent did not consider till date, the present writ petition is filed.

3. The 1st respondent has filed written submissions stating that the core issue 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



W.P.(MD)No.5488 of 2024

WEB COPY

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. But 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 authority. 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, Mr.Veera Kathiravan, learned Additional Advocate General appearing

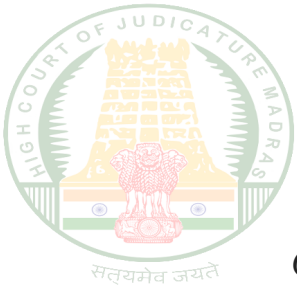


for the 1st respondent and Mr.R.Devaraj, learned Counsel appearing for the 5th respondent and perused the records.

5. In the present case the mortgage was executed on 23.12.2015. Then additional loan until Rs.1,42,00,000/- was granted for the period from 24.05.2016 to 15.11.2021, 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.”



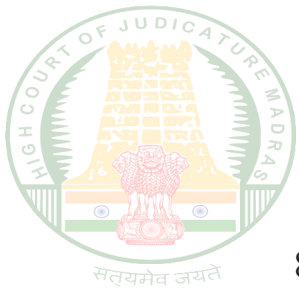
WEB COPY

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.



WEB COPY

8. It is pertinent to note that the bank had taken steps to sell the property, but for want of buyers the sale could not be concluded. Hence as on date the Sub Registrar had not exercised his power under section 22-B and refused to register the sale executed by the bank (or the sale that would be executed by the bank). However, the contention of the bank is that due to encumbrance, the bank is not able to sell the property inspite of six sale notices. The buyers are 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 Counsels appearing for the petitioner 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.



WEB COPY

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



W.P.(MD)No.5488 of 2024

WEB COPY

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."

10. The learned Counsel 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:



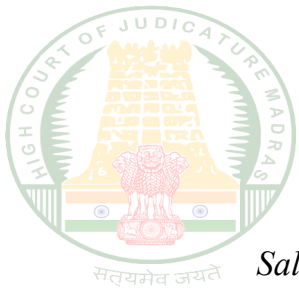
WEB COPY

“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



W.P.(MD)No.5488 of 2024

WEB COPY

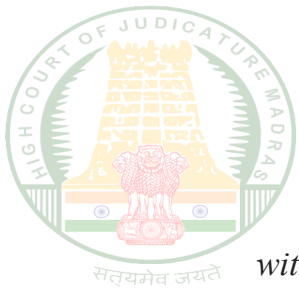
Sale certificate within a period of 15 days from the date of receipt of copy of the order.

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

11. Further, 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

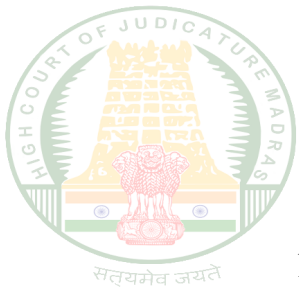


WEB COPY

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.”



W.P.(MD)No.5488 of 2024

WEB COPY

12. The Learned Additional Advocate General 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.”

13. 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 2015 and the arbitration award is in the year 2022. Hence the mortgage is prior to the arbitration award. But the 2022 arbitration award was registered, which is



W.P.(MD)No.5488 of 2024

affecting the rights of the bank.

WEB COPY

14. 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 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 permit 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 directed to make contra entry.

15. But 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. But in the present case sale itself could not be conducted for want of buyers. The buyers are refusing to buy the property and seeking to raise the encumbrance. In such circumstances, when the bank has exercised the right of



W.P.(MD)No.5488 of 2024

priority, then the sub registrar is bound to make contra entry so that the bank would be in a position to sell the property. Thereafter, as and when the sale is concluded then the earlier encumbrance can be deleted.

16. 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.

17. 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,



WEB COPY



W.P.(MD)No.5488 of 2024

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).

18. 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
(3/3)

Index : Yes / No

Tmg

To

The Sub-Registrar,
Karunthanttangudi Registrar Office,
Thanjavur District.



WEB COPY



W.P.(MD)No.5488 of 2024

J.NISHA BANU, J.

and

S.SRIMATHY, J.

Tmg

W.P.(MD)No.5488 of 2024

24.06.2025

(3/3)