BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.03.2025

PRONOUNCED ON : 08.04.2025

CORAM:

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

W.P.(MD)No.13566 of 2024

M/s. City Union Bank Limited,
Represented by its Chief Manager,
D.Ramasubramanian,
Nagercoil Branch,
1/1, SLB South Road,
Nagercoil, Kanyakumari District. ... Petitioner

Vs.

1.The District Registrar,
Registration Department,
Kanyakumari District.

2.The Sub-Registrar,
Registration Department,
Eraniel, Kanyakumari District.

3.M/s. Procreet,
Represented by Sole Proprietor,
Fredsher Alin,
AS No.15/293A, Old NH Road,
Parvathipuram, Nagercoil,
Kanyakumari District - 629 003.

4.Fredsher Alin AS
5.X.Alfred

6.M/s.Shriram Finance Limited,
(Formerly Known as Shriram Transport Finance Company Limited),
Represented by its Authorized Officer,
No.17/85, 108, 2nd Floor,
VMK Complex, Main Road,
Near Old Bus Stand,
Thuckalay-629 175.

7.P.Eugin Prakash ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Mandamus***, to direct the respondents 1 and 2 to efface/delete the impugned attachment entry in the encumbrance certificate relating to the property in Re-Survey No.50/4A measuring to an extent of 8.300 cent Aloor B Village, Kalkulam Taluk, Kanyakumari District, registered as Document No.8 of 2021, dated 17.03.2021 and Document No.29 of 2024, dated 24.04.2024, on the file of the 2nd respondent within reasonable time period fixed by this Court by considering the petitioner's representation, dated 14.06.2024.

For Petitioner : Mr.V.Sukumar
For R1 and R2 : Mr.N.Ramesh
Government Advocate
For R5 to R7 : No appearance

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ORDER

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

The present writ petition is filed for Writ of ***Mandamus***, to direct the respondents 1 and 2 to efface/delete the impugned attachment entry in the encumbrance certificate relating to the property in Re-Survey No.50/4A measuring to an extent of 8.300 cent Aloor B Village, Kalkulam Taluk, Kanyakumari District, registered as Document No.8 of 2021, dated 17.03.2021 and Document No.29 of 2024, dated 24.04.2024, on the file of the 2nd respondent within reasonable time period fixed by this Court by considering the petitioner's representation, dated 14.06.2024.

2. The brief facts are that the respondent 3 to 5 had availed the below detailed loan facilities from the petitioner bank:

Nature of Loan facility	Amount Sanctioned in Rs.	Date when availed	Account Numbers
Secured OD Without DP	40,00,000/-	20.08.2016	512120020009526
CUB OSL Term EMI-Br	2,72,00,000/-	31.12.2019	501812080059763
Emergency Credit Line	60,00,000/-	31.10.2020	501812080075927
Total	Rs. 3,72,00,000/-		

The property in R.S.No.50/4A measuring to an extent of 8.300 cents in Aloor B Village, Kalkulam Taluk, Kanyakumari District belongs to respondents 3 to 5 and they created the valid equitable mortgages for the above said loan facilities and executed Memorandum of Deposit of Title Deeds in Document No. 2892 of 2016, dated 26.07.2016, Document No.5542 of 2019, dated 31.12.2019 and Document No. 4048 of 2020, dated 31.10.2020 which are registered before the 2nd respondent in favour of the petitioner bank, thereafter it became “secured assets” under Section 2 (zc) of the SARPAESI Act. The respondents 3 to 5 defaulted in repayment, hence the accounts were classified as Non-performing Asset (NPA) on 21.10.2022, then the petitioner bank issued a demand notice on 21.02.2023 under Section 13(2) for Rs. 4,07,55,140/- (Rupees Four Crore Seven Lakh Fifty Five Thousand One Hundred and Forty only) as on 07.02.2023. Thereafter, possession notice, dated 30.05.2023 under Section 13(4) was issued for a sum of Rs. 4,22,44,551/- (Rupees Four Crore Twenty Two Lakhs Forty Four Thousand Five Hundred and Fifty One only) as on 16.05.2023 along with further interest, costs and charges, etc. and took symbolic possession of the property. The petitioner bank has issued a Tender cum Auction Sale Notice, dated 30.03.2024, the 7th respondent became the successful bidder in the Re-Tender cum Auction conducted on 17.04.2024 and purchased the property for a sum of Rs. 1,10,05,000/- (Rupees One Crore Ten Lakhs and Five Thousand only). The petitioner bank issued a sale confirmation, dated 17.04.2024 and sale certificate on 21.05.2024. While registering the sale certificate it came to the knowledge there are attachment entries in favour of the 6th respondent namely M/s. Shriram Finance Limited and the same are reflecting in the encumbrance certificate. The petitioner bank verified the encumbrance certificate and found entries of registered Document No. 8 of 2021, dated 17.03.2021 and Document No. 29 of 2024, dated 21.04.2024. Before such entry the petitioner bank was not issued with any communication or notice or opportunity of hearing. The contention of the petitioner bank is that with an intention to defeat the interest of the bank the 6th respondent had filed Arbitration Case No.4 of 2021 and Arbitration Case No.12 of 2024 and obtained attachment orders in favour of the 6th respondent in I.A.No.1 of 2021 and I.A.No.1 of 2024 respectively. The said impugned attachment entries are per se illegal, unlawful and arbitrary and are not supported by any statutory provisions. The 7th respondent submitted a representation, dated 03.06.2024, requesting the bank to clear the above said attachment entries before registering the sale certificate in his favour. Hence the petitioner bank submitted detailed representation, dated 14.06.2024, before the respondents 1 and 2 / authorities to remove the said attachment entries in the encumbrance certificate, wherein it is stated the act of the creating the impugned attachments over the subject property are against the SARFAESI Act. The 6th respondent failed to consider the categorical decisions of this Court and the SARFABASI Act. The said representation is also pending with the said respondents. Hence, the present writ petition is filed seeking to remove the above said attachment entries in the encumbrance certificate.

3. The learned Counsel appearing for the petitioner relied on the order passed by this Court in W.P.(MD)No.14573 of 2021 ***(City Union Bank Limited Vs. Tax Recovery Officer-2, Income Tax and Others)***, dated 28.11.2023, reported

in ***MANU/TN/6711/2023*** and ***[2024] 463 ITR 291(Mad)*** wherein it is held as under:

> *"14. The two judgments cited supra had held in categorical terms that the Income Tax Act has not provided any 1st charge of its debts. But there is 1st charge over the bank's debt under SARFAESI Act. Moreover, the amendment of Section 26E is applicable to pending lis. Therefore, this Court is of the considered opinion that even though it is a statutory duty to attach property by the Income Tax Department, as and when the bank claims and exercise its 1st charge over the property, the Income Tax Department is liable to issue no objection certificate and also lift the attachment. In the present case this Court has already held that the mortgage by bank is prior to the attachment of the Revenue. In such circumstances by following the aforesaid judgments this Court is of the considered opinion that the impugned orders are liable to be quashed.*
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> *15. In the subsequent judgment rendered by Hon'ble Supreme Court in the case of M/s. Connectwell Industries Private Limited, Vs. Union of India MANU/SC/0296/2020in Civil Appeal No. 1919 of 2010 vide judgment dated 06.03.2020, the Hon'ble Supreme Court has held that when the charge over the property was created much prior than the notice issued by Income Tax Department then the bank has first charge than the department. As and when the charge over the property was created much prior to the notice under rule 2 Second Schedule, the bank is entitled to seek no objection certificate. Hence, the Hon'ble Supreme Court directed the Income Tax Department to issue no objection certificate and also restrained the Income Tax Department from enforcing the attachment order.*

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 MANU/TN/3743/2016 : 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 MANU/MH/3011/2022 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."

The learned Counsel appearing for the petitioner also relied on the order passed by the Division Bench of this Court in W.P.No.1434 of 2024, dated 18.04.2024

(M/s.City Union Bank Vs. Sub Registrar, Vazhapady and 2 others) wherein the Court has allowed the writ petition and has held as under:

> "*2. The petitioner has sold the property mortgaged to it by an auction conducted under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to the second respondent. The encumbrance of attachment by the Civil Court at the behest of the third respondent exists.*
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> *3. According to learned counsel for the third respondent, the third respondent has filed a suit in O.S.No.251 of 2014 and an order of attachment is also passed in respect of subject property, in E.P.No.113 of 2017. According to learned counsel, in view of the decree passed by the Civil Court, the third respondent is entitled to recover the amount from the property attached by the Civil Court.*
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> *4. The issue is no longer res integra and has been settled by a catena of judgments, wherein it has been held that in view of Section 26E of the Act of 2002, the secured creditor has a priority charge over all other creditors, including decree of the Court. Reference can be had to the case of Assistant Commissioner (CT) Anna Salai-III Assessment Circle vs Indian Overseas Bank and Another [AIR 2017 Mad 67 (FB)]. The Full Bench of the Bombay High Court in the case of Jalgaon Janta Sahakari Bank Ltd. and another vs Joint Commissioner of Sales Tax and another [2022 Online SCC Bom 1767] held that the secured creditor would have the priority charge, as contemplated under Section 26E of the SARFAESI Act, 2002.*
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> *5. In view of the law laid down by the Courts as above, the order of attachment cannot come in the way of the proceedings initiated*

under the Act of 2002. It is submitted that sale certificate is already registered.

6. In light of the above, entry of encumbrance will have no relevance and the order of attachment would not be an encumbrance upon the property. The writ petition is accordingly allowed. There shall be no order as to costs."

4. It is seen the memorandum of deposit of title deeds was executed and registered on 20.08.2016, 31.12.2019 and 31.10.2020 in favour of the petitioner bank. When the same is registered then it becomes secured credit. It is seen that the Arbitration Case No.4 of 2021 and Arbitration Case No.12 of 2024 was filed by the 6th respondent and an order of attachment was obtained in I.A.No.1 of 2021 and I.A.No.1 of 2024 respectively and the attachment order was registered in Document No. 8 of 2021, dated 17.03.2021 and Document No. 29 of 2024, dated 21.04.2024. When admittedly the memorandum of deposit of titled deeds was registered by the petitioner bank on dated 26.07.2016, 31.12.2019 and 31.10.2020, which is prior to the attachment of Arbitration case dated 17.03.2021 and 21.04.2024, then the petitioner bank is having first charge over the property.

5. Further under Section 26E of Sarfaesi Act, the financial institution is having priority charge over other creditors, including decree of the

Court/Tribunal. The issue was considered in Assistant Commissioner (CT) Anna Salai-III Assessment Circle Vs. Indian Overseas Bank and another (AIR 2017 Mad 67 FB) and was held that the financial institutions are having priority over other charges. The Full Bench of Bombay High Cort has held in Jalgoan Janta Sahakari Bank Ltd and another Vs. Joint Commissioner of Sales Tax and another (2022 Online SCC Bom 1767), wherein it is held that the secured creditor would have the priority charges as contemplated under section 26E of Sarfaesi Act, 2002. As rightly pointed out by the Learned Counsel appearing for the petitioner the First Bench of this Court vide order dated 18.04.2024 passed in W.P.No.1434 of 2024 filed by M/s.City Union Bank Vs. Sub Registrar, Vazhapady and 2 others has held that "the issue is no longer res integra and has been settled by a catena of judgments, wherein it has been held that in view of Section 26E of the Act of 2002, the secured creditor has a priority charge over all other creditors, including decree of the Court".

6. Therefore, following the aforesaid cases, this Court is of the considered opinion that the petitioner institution is having priority charge over the charge of the 6th respondent. Hence, the respondents 1 and 2 are directed to delete the impugned attachment entry within a period of four weeks from the date of receipt of the copy of this order.

7. The 6th respondent is at liberty to submit an application to the petitioner bank to pay the balance amount available after adjusting their debt. On receipt of such application, the petitioner institution is directed to consider the same after issuing notice and after obtaining reply from the respondents 3 to 5.

8.With the above said observations, the writ petition is allowed. No costs.

9.When the order is pronounced, it was brought to the notice of this Court that the property has been sold. Therefore, the same shall be reflected in the encumbrance certificate.

[J.N.B., J.] [S.S.Y., J.]
08.04.2025

Index : Yes / No

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To

1.The District Registrar,
Registration Department,
Kanyakumari District.

2.The Sub-Registrar,
Registration Department,
Eraniel, Kanyakumari District.

J.NISHA BANU, J.

and

S.SRIMATHY, J.

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W.P.(MD)No.13566 of 2024

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