

W.P.(MD)No.16727 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.03.2025

PRONOUNCED ON : 08.04.2025

CORAM:

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

W.P.(MD)No.16727 of 2024

M/s. Cholamandalam Investment and
Finance Company Limited,
2/3, GV Tower,
Melakkal Main Road,
Madurai,
Represented by its authorised Officer,
P.Velmurugan

... Petitioner

Vs.

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

2. The Sub-Registrar (Joint-I),
Registration Department,
Karaikudi,
Sivagangai District.

3. N. Gomathi

4. Naganathan

5. Senthilvel

6. R. Uma Maheswari

7. Ajith Kumar

... Respondents



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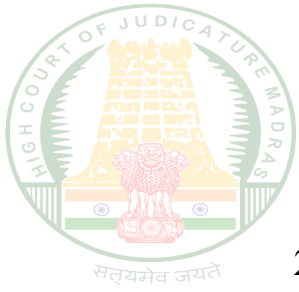
PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a **Writ of Mandamus**, to direct the 1st and 2nd respondents to efface/delete the impugned attachment entry in the encumbrance certificate relating to the property in old Survey No.628/2, New S.No.628/2A2 plot No.29 measuring to an extent of 1097 square feet out of 2194 square feet Kottaiyur Village, Karaikudi Taluk, Sivagangai District, registered as Document No.3 of 2023, dated 16.03.2024, on the file of the 2nd respondent within reasonable time period fixed by this Court by considering the petitioner's representation, dated 05.07.2024.

For Petitioner : Mr.V.Sukumar
For R1 and R2 : Mr.P.T.Thiraviyam
Government Advocate

ORDER

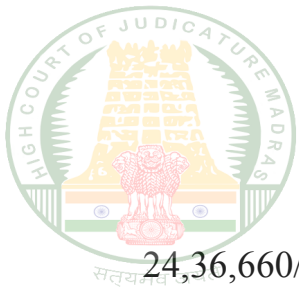
(Order of the Court was delivered by **S.SRIMATHY, J.**)

The present writ petition is filed for Writ of **Mandamus**, to direct the 1st and 2nd respondents to efface/delete the impugned attachment entry in the encumbrance certificate relating to the property described hereunder which was registered as Document No.3 of 2023, dated 16.03.2024, on the file of the 2nd respondent within reasonable time period fixed by this Court by considering the petitioner's representation, dated 05.07.2024.



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2. The brief facts as stated in the affidavit are that the property in dispute is situated in Old Survey No.628/2, New S.No.628/2A2 in Plot No.29 measuring to an extent of 1097 square feet out of 2194 square feet at Kottaiyur Village, Karaikudi Taluk, Sivagangai District. The respondents 3 to 5 availed home loan facility to the tune of Rs. 23,40,000/- from the petitioner institution. The 3rd respondent created the valid equitable mortgages for the above said loan facility and executed Memorandum of Deposit of Title deeds which was registered in Document No.1329 of 2019, dated 25.06.2019 before the 2nd respondent in favour of the writ petitioner financial institution, thereby the property is the 'secured assets' under Section 2 (zc) of the SARFAESI Act. The respondents 3 to 5 defaulted in repayment and the account was classified as Non-Performing Asset (NPA) on 11.03.2023. The petitioner institution issued a demand notice dated 22.03.2023 under Section 13(2) of the SARFAESI Act to repay Rs.24,61,478/-(Rupees Twenty Four Lakh Sixty One thousand Four Hundred Seventy Eight only) as on 22.03.2023. Thereafter issued a possession notice, dated 02.06.2023, under Section 13(4) to the respondents and had taken symbolic possession of the secured asset/subject property. But the respondents 3 to 5 failed to discharge their liability. Thereafter, E- Auction Sale Notice, dated 21.09.2023 was issued. The 7th respondent participated in the said E-Auction Sale conducted on 11.10.2023 and became the successful bidder for a sum of Rs.



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24,36,660/- (Rupees Twenty Four Lakh Thirty Six Thousand Six Hundred Sixty

only), then the petitioner issued sale certificate, dated 11.12.2023 to 7th respondent, then registered the above said sale certificate vide Document No.148 of 2024, dated 23.01.2024, on the file of the 2nd respondent. While registering the sale certificate, it came to the knowledge of the 7th respondent that there is an attachment entry in favour of the 6th respondent and the same is reflecting in the Encumbrance Certificate. Hence the petitioner institution verified the Encumbrance Certificate and found that there is an attachment endorsement in the encumbrance certificate which is registered as Document No.3 of 2023, dated 16.03.2023. The petitioner institution also understands that the said endorsement in the encumbrance certificate is created at the instance of the 6th respondent. Before doing so, the petitioner institution was not issued with any communication or notice or opportunity of hearing. In fact, by suppressing the creation of the memorandum of deposit of title deeds, the said attachment was obtained by the 6th respondent. The petitioner institution is no way connected to the said attachment. In fact, with an intention to defeat the interest of the petitioner institution, by colluding with the 6th respondent, the respondents 3 to 5 caused to file I.A.No.1 of 2020 in O.S.No.80 of 2020 and have obtained attachment order in favour of the 6th respondent. The said impugned attachment entries are per se illegal, unlawful and arbitrary and are not supported by any statutory provisions. The 7th respondent has



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made a representation, dated 15.05.2024, requesting the petitioner institution to clear the above said attachment entry before registering the sale certificate in his favour. The act of the creating the impugned attachment over the subject property is against the SARFAESI Act. The 6th respondent failed to consider the categorical decisions of this Court and the SARFAESI Act. Hence, the present writ petition is filed seeking to remove the above said attachment entry in the encumbrance certificate. The petitioner institution has also made a detailed representation, dated 05.07.2024, before the respondents 1 and 2 and the same is pending.

3. The learned Counsel appearing for the petitioner 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.

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



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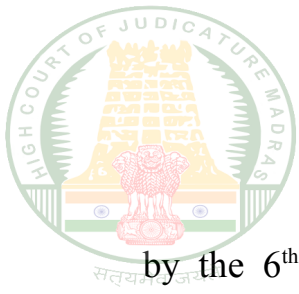
2017. According to learned counsel, in view of the decree passed by the Civil Court, the third respondent is entitled to recover the amount from the property attached by the Civil Court.

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.

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. The memorandum of deposit of title deeds was executed and registered on 25.06.2019 in favour of the petitioner financial company. When the same is registered then it becomes secured credit. It is seen that the suit was filed



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by the 6th respondent in O.S.No.80 of 2020 and an order of attachment was obtained in I.A.No.1 of 2020 in O.S.No.80 of 2020 and the attachment order was registered on 16.03.2023. When admittedly the memorandum of deposit of titled deed dated 25.06.2019 is prior to the attachment order of Civil Court dated 16.03.2023, then the petitioner is having first charge over the property.

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



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a priority charge over all other creditors, including decree of the Court”.

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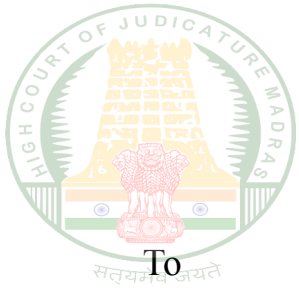
6. Therefore, following the aforesaid cases this Court is of the considered opinion that the petitioner institution is having priority charge over the charge of the 6th respondent. Hence the respondents 1 and 2 are directed to delete the impugned attachment entry within a period of four weeks from the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

7. The 6th respondent is at liberty to submit an application to the petitioner institution to pay 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. With the above said observations, the writ petition is allowed. No costs.

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

Index : Yes / No

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To

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- 2.The Sub-Registrar (Joint-I),
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