



W.P(MD)No.25376 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.25376 of 2025

The Indian Bank,
Rep. by its Authorized Officer / Branch Manager,
Madurai Main Branch,
East Avani Moola Street,
Madurai.

... Petitioner

Vs.

1.The Sub-Registrar,
Chettikulam (Madurai North) Sub Registrar Office,
Madurai District.

2.M.Mohammed Mohideen Mathani

3.K.Mohammed Ashik

4.M.Mohammed Agia

... 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 1st respondent to delete the entry made over the attachment of the 2nd respondent dated 18.11.2023 in Document No.16/2023 in respect of the residential Flat in D.No. 503, 5th Floor 3rd Unit, Pryme Neo Apartments, Moondru Mavadi-Alagar Kovil Main Road, Parasuramanpatti Village, Madurai District.



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For Petitioner : Mr.R.Gowrishankar

For Respondent : Mr.S.Shanmugavel
Additional Government Pleader
for R1

: Mr.R.Vignesh
for R2

ORDER

Heard both sides.

2. The third respondent mortgaged the petition mentioned property in favour of the writ petitioner and availed loan in the year 2019. The writ petitioner thus became a secured creditor. The third respondent committed default. Therefore, action under SARFAESI Act was taken and the property was brought to sale and sold on 26.03.2024. The property was sold for a sum of Rs.60,50,000/-. The dues payable to the bank was quantified at Rs.33,88,884/-. The sale certificate was issued on 26.03.2022 in favour of the fourth respondent. In the meanwhile, the second respondent who is none other than the father-in-law of the third respondent filed O.S.No.350 of 2023 on the file of the IV Additional District Judge, Madurai for recovering a sum of Rs.30,00,000/- with interest. The suit was filed on pro-note. The petition mentioned property was attached vide order dated 27.09.2023 in I.A.No.861 of



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2023. This writ petition has been filed by the Bank / secured creditor for deleting the offending entry of attachment. The second respondent has filed W.P.(MD)No.13148 of 2024 for directing the Bank to deposit the excess amount generated during auction.

3. The learned counsel appearing for the Bank draws my attention to Section 26 E of the SARFAESI Act, 2002. It reads as follows:-

"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."

4. In the case on hand, the mortgage was created in the year 2019. Attachment was made only in 2023. Therefore, in view of Section 26 E of the Act, right of the secured creditor will prevail over the subsequent attachment. The fourth respondent who was the subsequent purchaser can very well deal with the property even if the attachment made at the instance of the second



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respondent is holding good. In any event, in order to clear any ambiguity, I hold that the attachment made at the instance of the second respondent in I.A.No.861 of 2023 in O.S.No.350 of 2023 on the file of the IV Additional District and Sessions Court, Madurai stands vacated forthwith. The first respondent is directed to register this writ order so that the same is duly reflected in the encumbrance register. The bank has no right to retain the excess amount generated during auction. The writ petitioner is directed to deposit the same to the account of O.S.No.350 of 2023 immediately and without any delay.

5. The writ petition is allowed on these terms. No costs.

11.11.2025

Index : Yes / No
Internet : Yes/ No
rmi

To

The Sub-Registrar,
Chettikulam (Madurai North) Sub Registrar Office,
Madurai District.



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G.R.SWAMINATHAN, J.

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