BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2025

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P (MD).No.28098 of 2024

Encore Asset Reconstruction Company Private Limited,
Registered Office,
Caddie Commercial Tower,
Regus Business Centre, 5th Floor,
Aero City (Dial),
New Delhi-110 037,
Rep. by its Authorized Officer. .... Petitioner

Vs

1.The Sub Registrar,
Peraiyur Sub Register Office,
Subramanyaswamy Kovil Street,
Peraiyur, Madurai District.

2.The Assistant Commissioner (CT)
The Commercial Tax Department,
No.15/91, Soniar Street,
Jawahar Nagar,
Thirumangalam, Madurai District.

3.Ms/.Family Impex,
Through Proprietor Mrs.D.Sangeetha
No.2, Sarawathi Nagar,
1st Main Road, Puthagaram,
Kolathur, Chennai-600 099. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent's relating to the impugned order passed in RFL/பேரையூர்/4/2024 dated 06.11.2024 and quash the same as illegal and consequentially direct the first respondent to register the Sale Certificate dated 09.10.2024 issued by the petitioner under SARFAESI Act within the period that may be stipulated by this Court and direct the first respondent to remove the encumbrance entry of second respondent.

For Petitioner	: Mr.R.Senthilkumar
For R1	: Mr.Veera Kathiravan Additional Advocate General Asst. by Mr.D.Sadiq Raja Additional Government Pleader
For R2	: Mr.R.Suresh Kumar Additional Government Pleader

O R D E R

This writ petition has been filed challenging the refusal check slip issued by the first respondant, dated 06.11.2024 thereby refused to register the sale certificate dated 09.10.2024 on the ground that there is already an order of attachment in respect of the subject property.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The petitioner is an Asset Reconstruction Company coming within definition of section 2(b) of Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT). As per the resolution, dated 26.05.2020, made by the Board of Directors of this Petitioner Company, the petitioner is authorized to exercise all powers and functions contemplated under SARFAESI Act. While being so, one M/s. Sri Appala Raman Appala Depo and M/s. Akshay Internets Services Pvt. Ltd had availed loan facilities from the City Union Bank Ltd. In order to secure the repayment of the loan amount with interest, M/s Appala Raman depo had executed the Memorendum of deposit of title deeds, dated 04-03-2020 in document No.8184/2020 in favor of the bank in respect of the property comprised in S.No.8/24 under patta No.1635 to an extent of 86 cents situated at Vannivelampatti village, Peraiyur Taluk, Madurai District. Thereafter, borrowers failed to repay the loan amount and committed default, therefore, their loan account was declared as Non-Performing Asset (NPA) as per the guidelines issued by Reserve Bank of India and recovery proceedings were initiated under SARFAESI Act. Thereafter, the said property was taken physical possession on 02.09.2021 and brought the property for auction sale. Therefore, the petitioner continuned proceedings under SARFAESI Act. Accordingly e-auction sale was conducted on 25.09.2024 and the property was sold out in favour of the third respondent. The third respondent issued sale certificate and the same was presented for registration. However, the first respondent refused to register the same on the ground that subject property was already attached by the Assistant Commissioner of Commercial Tax Department, Thirumangalam, Madurai District.

4. The learned counsel for the petitioner would submit that Section 26E of the SARFAESI Act deals with Priority to secured creditors. Section 31B deals with Recovery of Debts and Bankruptcy Act, 1993 also provides Priority to secured creditor. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest in created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority. Further it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 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. It is further submitted that in the light of the Circular No.21343/C1/2021 dated 10.07.2021 which has been issued by the Inspector General of Registration, that if any sale certificates presented for registration by the bank in the capacity of secured

creditors, thereon not to give refusal check slip for the reason of attachment order issued by the Court. The refusal of the first respondent in not register the sale certificate is wrong. The order of attachment is after the deposit of title deeds.

5. The learned Additional Advocate General appearing for the first respondent would submit that when there is an order of attachment passed by the Court, the first respondent cannot register the sale certificate issued by the petitioner. There is a clear bar under Section 22-B of the Registration Act, 1908. Therefore, the request made by the petitioner was rightly rejected by the first respondent and directed to raise the attachment before the Court of law to register the sale certificate. He further submitted that the Inspector General of Registration had issued a circular dated 10.07.2021, much prior to the insertion of Section 22-B of the Registration Act.

6. The learned counsel for the petitioner has relied on the judgment of the Full Bench of this Court in ***The Assistant Commissioner 9CT) v. the Indian Overseas Bank*** reported in ***2016(6) CTC 769***. In this Case, the Full Bench of this Court passed an order that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security

interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority.

7. It is relevant to extract the Section 26E of the SARFEASI Act:-

> "Section 26E: Priority to secured creditors:- Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest in created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority."

8. Thus, it clear that the secured creditor have priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority. The memorandum of deposit of title deed was executed on 04.03.2020, whereas, the order of attachment was passed by the second respondent on 08.07.2024. It is subsequent to the registration of memorandum of deposit of title deeds. The attachment orders were passed even without verifying the encumbrance certificates in respect of the subject property. The second respondent ought to

have verified the encumbrance certificate before attaching the subject property. All the above said proceedings were initiated behind the knowledge of the petitioner's Finance Company. The rights of the petitioner was also protected as per Section 26-E of the SARFAESI Act. Hence, the subsequent charges if any created will not bind the petitioner's finance company. Section 22-B cannot be invoked in respect of an involuntary transfer namely the sale under SARFAESI Act.

9. It is relevant to extract Section 31-B of the SARFAESI Act:-

"Section 31-B Priority to secured creditors:- Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, 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, 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."

10. This issue has been dealt with by the Hon'ble Division Bench of this Court in ***W.A.No. 3037 of 2023, by order dated 03.07.2024 (Indian Bank Vs. The Sub-Registrar and another)***. The Hon'ble Division Bench of this Court referred the Judgment of the Division Bench of this Court in ***W.P(MD)No.674 of 2023 in the case of M/s.Cholamandalam Investment and Finance Company Limited Vs. the District Registrar and others***, in which, the Hon'ble Division Bench concluded that the refusal of registration of a sale certificate on the ground of an attachment order is in force, is not justified. The relevant paragraph of the Judgment is extracted hereunder:

> *'11. Section 64 of C.P.C. bars private transfer. The transfer in the present case is an involuntary transfer. It is the secured-creditor, who has exercised its right under the Special Act viz., the Act 2002.*
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> *12. Section 26-E of the Act, 2002 starts with a non obstante clause. Section 26-E of the Act, 2002 provides that notwithstanding anything contained in any other law for the time being in force, after the registration of the 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.*
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> *13. Section 26-E of the Act, 2002 expressly and unambiguously provides for a priority right to a secured creditor over all other claims.*

14. The debt of the fourth respondent was an unsecured debt. The mortgage of the property in favour of the present petitioner or the judgment-debtor under the award was prior to the attachment of the property.

15. The rights of the secured-creditor have a priority charge. The Apex Court, in the case of Kotak Mahindra Bank Limited vs. Girnar Corrugators Private Limited and others, reported in (2023) 3 SCC 210, has held that the legislature has expressly and unambiguously provided for a legal framework exclusively on the issue of 'priority' of payment of debt by including Section 26-E in the Act, 2002. In the said case, it was held that the recovery under the Act, 2002 with respect to the secured asset would prevail over the recovery of the award amount under the Micro, Small and Medium Enterprises Development Act, 2006.

11.Thus, it is clear that Section 26-E of the SARFAESI Act, 2002 expressly and unambiguously provides for a priority right to a secured creditor over all other claims. The mortgage of the subject property by depositing title deeds in favour of the petitioner was prior to the attachment of the subject property. Therefore, the first respondent ought not to have refused to register the sale certificate issued under the SARFAESI proceedings.

12. Therefore, the second respondent without even verifying the encumbrance of the subject property, attached the said property. Therefore, the

petitioner gets priority over all other charges and any order of attachment passed by the Civil Court, subsequently, will never bind the petitioner to which the mortgage has already been created by the debtor. Therefore, the order of attachment cannot be put against the petitioner and it will not bind the first respondent for refusal of registration of sale certificate.

13. In view of the above, the impugned order passed by the first respondent dated 06.11.2024 cannot sustained and it is liable to be quashed. Accordingly, the order of the first respondent dated 06.11.2024 is quashed.

14. In the result, the writ petition is allowed and the petitioner is directed to represent the sale certificate for registration before the first respondent and on receipt of the same, the first respondent shall register the same and release the document forthwith, if it is otherwise in order. No costs.

Internet : Yes
Index : Yes/No
Speaking/Non Speaking order
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27.01.2025

To

1.The Sub Registrar,
Peraiyur Sub Register Office,
Subramanyaswamy Kovil Street,
Peraiyur, Madurai District.

2.The Assistant Commissioner (CT)
The Commercial Tax Department,
No.15/91, Soniar Street,
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Thirumangalam, Madurai District.

G.K.ILANTHIRAIYAN, J.

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