BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.01.2025**

CORAM:

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

W.P.(MD)No.258 of 2025
and
W.M.P(MD)Nos.208 & 209 of 2025

Piramal Capital and Housing Finance Limited,
Shop No.1738/2A, 1st Floor, Shah Complex,
Palayamkottai, Tirunelveli-627 002,
Represented by its Authorized Signatory, ... Petitioner

/Vs./

1.The Sub-Registrar,
Office of the Sub-Registrar,
Kovilpatti, Thoothukudi District.

2.K.Sugunthan
3.S.Krishnasamy
4.B.Krishna Moorthy ... Respondents

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Refusal Check Slip in Refusal Number RFL/KOVILPATTI/61/2024 dated 19.06.2024 issued by the first respondent quash the same and further direct the first respondent to register the Sale Certificate issued by the petitioner Finance Company.

For Petitioner	: Mr.P.Pethu Rajesh
For R1	: Mr.D.Sadiq Raja Additional Government Pleader
For R2 & R3	: No appearance
For R4	: Mr.S.Kadarkarai

ORDER

This writ petition has been filed challenging the refusal check slip issued by the first respondent, dated 19.06.2024 thereby, refused to register the sale certificate, which was presented for registration, on the ground that the subject property has been attached even before the sale certificate.

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

3. The petitioner is a Non-Banking Financial Company Licenced by the Reserve Bank of India, it comes under the definition of Secured Creditor as per Section 2(zd) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. While

being so, the second respondent and his wife availed loan with the petitioner to the tune of Rs.21,29,939/- by mortgaging their property to an extent of 3.405 cents comprised in S.No.140/4B, Alampatti Village, Inam Maniyachi Panchayat, Kovilpatti Panchayat Union, Kovilpatti Sub-Registrar Office, Palayamkottai Registration District. The second respondent had executed a registered mortgage deed, dated 24.11.2015 by depositing title deed of the said property vide document No.7844 of 2015, thereafter, the second respondent failed to repay the said amount and the loan account was declared as Non Performing Asset on 03.09.2017. Therefore, the petitioner proceeded as against the second respondent and finally the property was brought for E-Auction sale. In the E-Auction sale, one N.Senthilvel had purchased the said property and he was issued with sale certificate on 26.04.2024. The said sale certificate was presented for registration. However, the first respondent refused to receive the same on the ground that the subject property is already attached by the Civil Court.

4. The learned counsel for the petitioner would submit that the second respondent mortgaged the property by depositing the title deed on

24.11.2015, wherein, the Sub-Court, Kovilpatti has ordered for attachment in the subject property on various dates namely, on 19.01.2017, 31.07.2019 and 20.09.2019. Further, the petitioner was directed to raise the attachment and present the sale certificate for registration. Further, the petitioner being the secured creditor, he can deal their property under Section 26-E of the SARFAESI Act.

5. The learned counsel for the fourth respondent filed counter and on the submission made by the learned counsel for the fourth respondent revealed that, the fourth respondent created a loan in favour of the second respondent and the second respondent failed to repay the said loan amount. Therefore, the fourth respondent filed a suit and obtained an order of attachment. The first order of attachment was made as early as on 19.01.2017 in Doc.No.2/2017 and the other two attachments were made on 31.07.2019 vide document No.51/2019 and 20.09.2019 vide Document No.66/2019. Therefore, without raising the attachment, no sale certificate can be registered and the registering authority has rightly refused to register the sale agreement on the ground that the attachment orders passed by the Civil Court is pending.

6. He would further submit that as per the RBI guidelines a non-banking financial institution should be registered under the RBI. In terms of Section 45-IA of the RBI Act, 1934, no Non-banking Financial company can commence or carry on business of a non-banking financial institution without a) obtaining a certificate of registration from the Bank and without having a Net owned Funds of Rs.25 lakhs. In support of his contention, he relied on the judgment in ***PR Thangamshiri vs. Chief Manager, Punjab National Bank*** reported in ***2023(1) CTC 807***.

7. Further, the judgment relied on upon by the fourth respondent is arising out of challenging of sale notice between the borrower and the creditor. Therefore, above judgment is not related to the facts involved in the present case.

8. It is relevant to extract the provision under Section 2(zd) of the SARFAESI Act.

> *"Section 2(zd):-*
> *(i) any bank or financial institution or any*

consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (1);

(ii) debenture trustee appointed by any bank or financial institution; or

(iii) an asset reconstruction company whether action as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or

(iv) debenture trustee registered with the Board and appointed for secured debt securities; or

(v) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created by any borrower for due repayment of any financial assistance.

The said provision defines secured creditor. It never defines that the Non-banking Financial Institution is not the secured creditor. However, the petitioner is a non-banking financial company licenced by the Reserve Bank of India, therefore, it comes under the definition of 2(b) of the SARFAESI Act.

9. Therefore, the petitioner can very well proceed the SARFAESI Act. Admittedly, the second respondent borrowing the loan and executed

the mortgage deed by depositing the title deed on 24.11.2024. After registration of the mortgage deed, it is duly registered and reflected in the encumbrance certificate of the subject property. Further, an attachment order was passed only after mortgaging the deed by way of depositing the title deeds. Three attachment orders were passed namely on 19.01.2017, 31.07.2019 and 20.09.2019. The attachment orders were passed even without verifying the encumbrance certificates in respect of the subject property. The respondents 3 & 4 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.

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.*
>
> *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 debt of the respondents 10 and 11 was an unsecured debt whereas 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 Civil Court 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 obtained by the respondents 3 & 4 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 19.06.2024 cannot sustained and it is liable to be quashed. Accordingly, the order of the first respondent dated 19.06.2024 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. Consequently, connected miscellaneous petitions are also closed.

29.01.2025

Index : Yes / No
NCC : Yes / No
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TO:-

The Sub-Registrar,
Office of the Sub-Registrar,
Kovilpatti, Thoothukudi District.

G.K.ILANTHIRAIYAN, J.

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Order made in
W.P.(MD)No.258 of 2025

Dated:
29.01.2025