APHC010598552024

IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI **[3311]**

(Special Original Jurisdiction)

Tuesday, the twenty-fifth day of August, two thousand and twenty six

Present

The Honourable Ms. Justice B. S. Bhanumathi

Writ Petition No.31166 of 2024

Between:

M/s. Federal Bank Ltd., rep. by its Authorised Officer, LCRD Hyderabad Division, Yellareddyguda, Hyderabad – 500 004.

… Petitioner

and

1. State of Andhra Pradesh, rep. by its Principal Secretary, Revenue Department (Registration & Stamps), Secretariat, Velagapudi, Amaravati, Guntur.
2. The Commissioner & Inspector General, Registration and Stamps Department, Andhra Pradesh.
3. The District Registrar, Guntur district, Guntur.
4. The Joint Sub-Registrar, Koritepadu S.R.O., Guntur district.
5. The Joint Sub-Registrar, Tadikonda S.R.O./, Guntur district.
6. Mr. K. Hanumantha Rao, S/o. Satyanarayana, R/o. Plot No.106, Siva Green Valley, Gorantla, Guntur – 522 031.
7. Mr. Shaik Ahmed, S/o. Adnan Shafi, R/o. D. No.30-17-64, Sangadigunta, Guntur – 522 003.

… Respondents

Counsel for the petitioner:

1. Vakati Venkata Gnanusha

Counsel for the respondents:

1. Bejjam Nagaraju
2. G.P. for Registration & Stamps

The Court made the following:

ORDER:

This writ petition under Article 226 of the Constitution of India is filed seeking the following relief:-

> "…to issue any appropriate writ, order or direction more preferably a writ in the nature of writ of Mandamus declaring that the inaction of the respondents Nos.3 to 5 in not registering the sale deed wherein the sale confirmation issued by the petitioner bank in favour of auction purchaser / bidders / respondents Nos. 6 & 7 which is in violation of the provisions of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment Act 44 of 2016) prohibiting the respondent Nos.3 to 5 as violative of the principles of natural justice and contravention of the provisions of Act 44 of 2016 and pass such other order or orders as are deemed fit and proper in the circumstances of the case, in the interests of justice."

2. The case of the petitioner, briefly stated, is as follows:-

a. The petitioner is a banking company duly registered under the Banking Regulation Act, 1949. During the course of its business activity, the petitioner sanctioned credit to M/s. Sri Lakshmi Cotton Traders, Narukullapadu. The borrower as well as guarantors executed all necessary documents. The loan was secured by mortgage of the immovable properties. Subsequently, the borrower became defaulter and indebted huge amount to the petitioner. The loan was classified as Non Performing Asset and the petitioner, being a secured creditor, initiated proceedings under the provisions of the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") for recovery of the amount due from the borrower, by selling the mortgaged property through e-auction in favour of the successful bidders / respondents Nos. 6 & 7 and recovered the amount to the credit of the petitioner bank account and issued sale confirmation in favour of successful bidders / auction purchasers / respondents Nos.6 & 7.

b. While the matter stood thus, the borrower filed suits in O.S. No.263 of 2022 on the file of the Court of IV Additional Senior Civil Judge, Guntur and O.S. No.45 of 2023 on the file of the Court of III Additional District Judge, Guntur and obtained orders of temporary injunction in respect of the mortgaged properties vide orders, dated 16.12.2022 and 16.03.2023 in I.A. No.497 of 2022 in O.S. No.263 of 2022 and I.A. No. 324 of 2023 in O.S. No.45 of 2023 respectively.

c. The petitioner approached the respondents Nos.3 to 5 requesting to register the sale certificates in favour of the successful bidders / auction purchasers / respondents Nos.6 & 7. They refused to register the sale certificates on the ground that the properties were under prohibited list.

d. In view of the provisions of Chapter IV A of the SARFAESI Act, brought into force by the Amendment Act No. 44 of 2016 with effect from 24.01.2020, the petitioner is entitled to sell the schedule property despite the order of attachment passed by the civil Court subsequent to the mortgage created in favour of the petitioner. Hence, this writ petition was filed.

3. In spite of service of notice, the respondents Nos. 6 & 7 did not appear.

4. The respondent No.4 / Sub-Registrar, Koritepadu filed a counter affidavit stating that the schedule property is a vacant site admeasuring 402 square yards bearing Plot No.385, D. No.173 of Gorantla village of Guntur district and the said property was entered into the list as was prohibited from registration. In view of the injunction order of I Additional Senior Civil Judge, Guntur in I.A. No.497 of 2022 in O.S. No.263 of 2022, the respondent has no power to register the document in respect of the subject property and hence, the writ petition is liable to be dismissed.

5. The respondent No.5 / Sub-Registrar, Tadikonda, filed counter affidavit, wherein at paragraph No.6, it was stated as follows:-

> "6. …On 04.10.2024, the petitioner Bank addressed a letter to this respondent requesting to remove the said properties from the prohibited properties list. In this regard, it is submitted that the Sub-Registrar is not the competent authority to remove the properties from the prohibited properties list. As per the instructions of the Commissioner and Inspector General of Registration and Stamps Department vide Circular Memo No. G4 / 6003 / 2017, dated 31.07.2017, have instructed all the Registering Officers in respect of the Court injunction orders / Attachments received by the Registering Officers, such orders have to be uploaded by the concerned Registering Officers in the electronic prohibitory register of Sub Registrar Office and after getting orders for release of Attachment / injunction etc, from the Court, the concerned Sub-Registrar has to submit the same to the District Registrar concerned

> electronically and get specific permission from the District Registrar for deletion. As a Sub-Registrar, this respondent is bound by the provisions of the Stamp Act and Registration Act and the instructions issued by the higher authorities from time to time. Except addressing the above said letter, the petitioner Bank has not presented any Sale Certificate before this respondent for registration. Admittedly, the sale certificate, dated 23.09.2024, has taken place after passing of the interim injunction order by the Court. As such, the relief claimed by the petitioner cannot be entertained by the registering authority and this respondent is barred from registering the property as S.O. 219 (b). The petitioner has to approach the III Additional District Judge Court, Guntur, for modification of the injunction order, dated 16.03.2023."

6. The petitioner filed a rejoinder affidavit with the following averments:

The petitioner approached the offices of the respondents before approaching this Court. The provisions of the SARFAESI Act categorically give preference to secured creditors as was held in several cases. Thus, the concerned authorities may be directed to delete the mortgaged properties from prohibitory list and to register the mortgaged properties in favour of the auction purchasers without reference to the interim injunction orders.

7. The learned counsel for the petitioner submitted that the legal proposition that a mortgage to a bank has priority over the other liability

has been well settled and referred to the decision of this Court in **The Federal Bank Ltd. Vs. The State of Andhra Pradesh**[1].

8. This Court, in **State Bank of India, Chittoor Main Branch, Chittoor Vs. State of Andhra Pradesh, represented by Principal Secretary, Revenue Department, Stamps & Registration department**[2], held as follows:-.

> "8. The Hon'ble Division Bench while examining the argument of the learned Government Pleader for Revenue with reference to Section 22-A of the Registration Act and Standing Order 219 issued by the Revenue Department pertaining to the registration expressed its considered view "that it only pertains to a civil dispute between the private parties and does not include an institutional sale under a statute. Though Section 64 comes into play only after the alienation of the property under attachment amongst the private persons, the said legal position does not create an embargo upon the Registrar to proceed with the registration of sale certificates under the SARFAESI Act as the bank is not a party to the suit and the sale is not being effected by a party to the attachment order.
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> 9. The Hon'ble Division Bench while referring to Rule 10 of Order 38 of Civil Procedure Code which provides that "Attachment before Judgment shall not affect the

[1] W.P. No. 16599 of 2025, dated 08.07.2025

[2] W. P. No. 18439 of 2019, dated 11.11.2020

rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree" opined that in view of the said provision, the attachment before judgment shall not affect the rights, existing prior to the attachment, of person not parties to the suit. Ultimately, the Hon'ble Division Bench held thus:

"The preponderance of judicial opinion leads to the irresistible conclusion that the sale of the mortgaged property in favour of the auction purchaser and the sale certificate under the SARFAESI Act in such circumstances is free of all encumbrances. The attachments effected subsequent to the mortgage created in favour of the bank do not affect the rights of the secured creditor over the subject property. Such attachments have no impact on the sale conducted under the Act and the same ceases to have any effect or fall to the ground the moment the same is confirmed in favour of the secured creditor Bank and auction purchaser. Otherwise, those attachments would remain as a permanent taboo prejudicially affecting the marketability and title to the property even though they ceased to have any legal efficacy and thereby it becomes necessary to register the sale certificate."

10. A similar view was expressed by another Division Bench in its order dated 19.12.2018 in Writ Petition No.44014 of 2018."

9. Further, a Division Bench of this Court in **South Indian Bank Limited Vs. The State of Andhra Pradesh and others**[3], held at paragraph Nos.14 to 18 as follows:-

> "14) In view of the default in payment of the loan amount, the petitioner bank invoked the provisions of the SARFAESI Act, and as contended by the learned Senior Counsel, after registration of the security, the debts due to the secured creditor (petitioner bank) shall be paid on priority over all other debts in terms of Section 26E of the SARFAESI Act, which reads as follows: —
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> "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.
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> 15) By virtue of the rights created in favour of the petitioner-bank through the deposit of title deeds, it is entitled to realize the secured debts by bringing the subject matter properties for sale. Following the procedure contemplated under law, the petitioner-bank invoked the provisions of the SARFAESI Act and got auctioned the properties in question for realization of the loan amount.

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3 W.P. Nos. 9214, 3181 and 13728 of 2024, dated 15.10.2024

16) In **City Union Bank Ltd., Vs. Sub-Registrar, Peddapalli** [2018 SCC OnLine Hyd 370] case referred to above a Division Bench of the erstwhile High Court of Andhra Pradesh examined an identical issue as to whether the Sale Certificates issued by the bank in favour of the auction purchasers can be refused for registration by the Registrar under the Registration Act on the pretext of an order of attachment passed by the Civil Court. While referring to the provisions of the Civil Procedure Code, the Transfer of Property Act and the Registration Act, as also the decisions of the Hon'ble Supreme Court of India, the Division Bench *inter alia* held as follows: —

"…the equitable mortgage which was duly created and registered in favour of the secured creditor is much prior to the order of attachment before judgment and the sale certificate issued under the provisions of the SARFAESI Act stands altogether on a different footing under law and the order of attachment before judgment will not have any bearing on the SARFAESI proceedings."

17) The Division Bench had also referred to decision of the Kerala High Court in **South Indian Bank Ltd., Vs. The Sub-Registrar** [W.P. No.3875 of 2017, dated 24.11.2016], wherein it was held that the secured creditor is entitled to proceed with the registration and the Registration authority cannot stall the process of registration under the guise of an order of attachment passed by the Civil Court. The Division Bench in

categorical terms held that the attachment effected subsequent to the mortgage created in favour of the bank do not affect the rights of the secured creditor over the subject property. Such attachments have no impact on the sale conducted under the Act and the same ceases to have any effect or fall to the ground the moment the same is confirmed in favour of the secured creditor Bank and auction purchaser".

18) In a subsequent decision, another Division Bench in Bank of India case referred to above following the judgment in **City Union Bank Ltd.,** case and referring to the provisions of SARFAESI Act i.e., Section 26E, Section 34 etc., issued directions to the Registrar to register the Sale Certificate, inter alia, observing that the attachment orders came to be passed long after the property was mortgaged to the secured creditor. In the light of the said legal position, the contentions advanced by the learned Senior Counsel merits acceptance. "

10. There is no controversy over the application of the above settled principles as on today. Thus, the writ petitioner could establish the case in its favour with regard to the relief sought.

11. In the result, the Writ Petition is allowed and the respondents Nos.3 to 5 are directed to register the sale certificates in respect of the subject properties.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

B. S. BHANUMATHI, J

Dt. 25.08.2026
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Whether the order is :

Speaking Yes/No / Reasoned Yes/No
Reportable Yes/No / Non-Reportable Yes/No