

HIGH COURT OF KARNATAKA**Bench: Justice M. Nagaprasanna****Date of Decision: 28th May 2024**

WRIT PETITION No. 7872 OF 2024 (GM-RES)

SRI. T. BHARATHGOWDA ... PETITIONER**VERSUS****STATE OF KARNATAKA & OTHERS ... RESPONDENT(S)****Legislation:**

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

The Registration Act, 1908

The Karnataka Registration Rules, 1965

The Income Tax Act

Subject: Writ petition seeking a mandamus directing the Sub-Registrar to register a sale certificate issued by the bank under the SARFAESI Act. The registration was denied citing pending Income Tax dues against the original property owners.

Headnotes:

Property Law – Registration of Sale Certificate – Denial based on Income Tax dues – Karnataka High Court’s direction to Sub-Registrar for mandatory registration despite pending dues – Importance of SARFAESI Act provisions emphasized – State Government directed to issue compliance circulars to Sub-Registrars – The petitioner sought mandamus directing the Sub-Registrar to register a sale certificate despite the Sub-Registrar’s refusal citing pending Income Tax dues against the property borrowers. The High Court held that SARFAESI Act provisions take precedence over other statutory dues and directed the registration. The State Government was also instructed to issue necessary circulars to Sub-Registrars to prevent unwarranted refusals. [Paras 1-15]

Legal Precedence – SARFAESI Act’s overriding effect – Supreme Court’s interpretation of secured creditors’ priority over government dues – The High Court reaffirmed the SARFAESI Act’s priority provisions and its overriding effect on other statutes like the Income Tax Act, following Supreme Court rulings. The Sub-Registrar’s refusal lacked statutory support, necessitating compliance with registration requirements under the SARFAESI Act. [Paras 8-13]

Decision – Writ Petition Allowed – Mandamus Issued – State Government directed to ensure Sub-Registrar compliance – Costs and delays in property registration addressed – The Court allowed the petition, mandating the Sub-Registrar to register the sale certificate promptly. Additionally, it directed the State Government

to issue a circular to all Sub-Registrars, aligning with the Court's observations and Supreme Court judgments to prevent future undue refusals and ensure timely registration processes. [Para 15]

Referred Cases:

PUNJAB NATIONAL BANK v. UNION OF INDIA (2022) 7 SCC 260

UTI Bank Ltd. V. CCE, 2006 SCC OnLine Mad 1182 (FB)

Dena Bank v. Bhikhabhai Prabhudas Parekh & Co., (2000) 5 SCC 694

Union of India v. SICOM Ltd., (2009) 2 SCC 121

Representing Advocates:

Sri. Swaroop S., Advocate for Petitioner

Smt. Navya Shekhar, Additional Government Advocate for Respondents 1 and 2

Sri. Vignesh Shetty, Advocate for Respondent 3

ORDER

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of *mandamus* directing the 2nd respondent/Sub-Registrar to register the sale certificate dated 30th September, 2022 issued by the 3rd respondent in favour of the petitioner.

2. Heard Sri S. Swaroop, learned counsel appearing for the petitioner, Smt. Navya Shekhar, learned Additional Government Advocate appearing for respondents 1 and 2 and Sri Vignesh Shetty, learned counsel for respondent No.3.

3. The facts adumbrated are as follows:-

One Sri Thimme Gowda, Sri T. Raghavendra Gowda and Sri T. Prasanna Raghavendra Gowda were the absolute owners of the property bearing No.19, situated at 11th Cross, Wilson Garden, Hombegowdanagara, Bengaluru measuring 6000 sq.ft. The aforesaid owners of the property had mortgaged the subject property and availed a loan from Canara Bank, the 3rd respondent. The loan gets into default, the default gets into initiation of proceedings under the Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 ('hereinafter referred to as 'the SARFAESI Act' for short) to recover the amount. Sale of the property was conducted on 19-03-2022. The petitioner participates in the auction, emerges as the successful bidder and pays the entire consideration as necessary in law. After receipt of the entire consideration, the Bank issues a sale certificate in favour of the petitioner on 30-09-2022. It is an admitted fact that as on today, the borrowers/owners of the property have not challenged the sale or initiated any proceedings against the sale of the property, as the challenge is not pending before any judicial or quasi judicial *fora*.

4. The petitioner desirous of getting the sale certificate registered approaches the jurisdictional Sub-Registrar i.e., the SubRegistrar of JP Nagar/2nd respondent. The petitioner pays entire stamp duty as necessary under the Stamp Act and all other necessary fee through challan and sits with the Sub-Registrar to get the sale certificate registered. No written endorsement is issued, but the averment in the petition is, that certain claims of the Income Tax Department are pending against the borrowers of the property and, therefore, the sale certificate cannot be registered. The petitioner comes back and communicates a letter to clarify the queries for getting the sale certificate registered. No response comes about. The petitioner then communicates to the Bank, the Bank also communicates the Sub-Registrar to register the sale certificate. No response comes about. A representation comes to be submitted to the Sub-Registrar by the petitioner on 12-02-2024. Finding no response, the petitioner is knocking at the doors of this Court in the subject petition.
5. The learned counsel for the petitioner would vehemently contend that a proceeding under the SARFAESI Act has precedence over any other law. The right of the secured creditor overrides every right of the borrower over the property. The Sub-Registrar had no jurisdiction to deny registration of document after compliance with every necessary nuances of registration. Citing an unjustifiable reason as dues of the Income Tax Department by the borrowers can never be a ground to deny registration is his emphatic submission.

6. The learned Additional Government Advocate, on instructions, would submit that her submissions be treated as her objections to the main petition and contends that the Sub-Registrar is not in a position to register the sale certificate as the Income Tax dues of the borrowers of the property are still pending. It is her submission that they are statutory dues and unless the statutory dues are cleared by the borrowers, the property would not become free from encumbrance and if the property would not become free from encumbrance, the Sub-Registrar would not register the document.
7. The learned counsel appearing for the 3rd respondent/ Canara Bank supports the case of the petitioner.
8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are not in dispute. In a public auction conducted by the 3rd respondent, the petitioner emerges as the successful bidder of the property owned by the borrowers. This leads the Bank issuing a sale certificate in favour of the petitioner on 30-09-2022. The petitioner desirous of getting the sale certificate registered, approaches the jurisdictional Sub-Registrar and pays amounts/fees that are required for registration of a document. After all this, when the petitioner sat before the Sub-Registrar, he was given to understand that the document would not be registered. The reason was that a claim of the Income-Tax Department still hangs on the head of the borrowers of the property and, therefore, the document cannot be registered. *Whether such discretion is available to the Sub-Registrar is what is required to be noticed.* The document of registration i.e., the sale certificate had emanated from the proceedings under the SARFAESI Act. Section 26-E of the SARFAESI Act, 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.”
(Emphasis supplied)

Section 26E mandates priority to secured creditors over any other law for the time being in force after the registration of security interest. Section 35 of the Act reads as follows:

“35. The provisions of this Act to override other laws.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”
(Emphasis supplied)

Section 35 of the Act mandates that the SARFAESI Act will have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. These are the rights of secured creditor under the Act. To put in one word – the right of the secured creditor is “unstoppable” except if it is interdicted by any order of a Court of law, which is admittedly absent in the case at hand. There is no proceeding initiated by the borrowers before any judicial or quasi-judicial *fora*.

10. Registration of a document is under the Registration Act, 1908. Refusal to register a document is dealt with under Section 71 of the Registration Act. The Sub-Registrar can refuse registration of a document on grounds that are set out therein. Section 71 of the Registration Act reads as follows:

“71. Reasons for refusal to register to be recorded.—(1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words “registration refused” on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.”

(Emphasis supplied)

Invoking its power to frame Rules under the Registration Act, the Karnataka Government has promulgated 'the Karnataka Registration Rules, 1965' (hereinafter referred to as 'the Rules' for short). Chapter-XXIV of the Rules deals with refusal to register. Rule 171 therein deals with reasons for refusal to register. The reasons are enumerated therein. Rule 171 reads as follows:

"171. Reasons for refusal to register.- When registration is refused, the reasons for refusal shall be at once recorded in Book 2. They will usually come under one or more of the heads mentioned below.

- (i) ***Section 19.- that the document is written in a language which the Registering Officer does not understand and which is not commonly used in the district, and that if is unaccompanied by a true translation or a true copy;***
- (ii) ***Section 20.- that it contains unattested interlineations, blanks, erasures, or alterations which in the opinion of the Registering Officer require to be attested;***
- (iii) ***Section 21(1) to (3) and Section 22.- that the description of the property is insufficient to identify it or does not contain the information required by Rule 15;***
- (iv) ***Section 21(4).- that the document is unaccompanied by a copy or copies of any map or plan which it contains;***
- (v) ***Rule 50.- that the date of execution is not stated in the document or that the correct date is not ascertainable or altered so as to make it unascertainable;***
- (vi) ***Section 23, 24, 25, 26, 72 ,75 and 77.- that it is presented after the prescribed time;***
- (vii) ***Section 32, 33, 40 and 43.- that it is presented by a person who has no right to present it;***
- (viii) ***Section 34.- that the executing parties or their representatives, assigns, or agents have failed to appear within the prescribed time;***
- (ix) ***Section 34 and 43.- that the Registering Officer is not satisfied as to the identity of a person appearing before him who alleges that he has executed the document or when an executant is not, identified to the satisfaction of the Registering Officer.***
- (x) ***Section 34 and 40.- that the Registering Officer is not satisfied as to the right of a person appearing as representative, assignee or agent, so to appear;***

- (xi) **Section 35.-** that execution is denied by any person purporting to be an executing party or by his agent;

Note,- When a Registering Officer is satisfied that an executant is purposely keeping out of the way with a view to evade registration of document or has gone to a distant place and is not likely to return to admit execution within the prescribed time, registration may be refused, the non appearance being treated as tantamount to denial of execution.

- (xii) **Section 35.-** that the person purporting to have executed the document is a minor, an idiot or a lunatic;

Note.- When the executant of a document who is examined under a Commission under Section 38 of the Act is reported by the Commissioner to be a minor, an idiot or a lunatic, registration may be refused and it is not necessary that the Registering Officer should personally examine the executant to satisfy himself as to the existence of the disqualification.

- (xiii) **Section 35.-** that execution is denied by the representative or assign of a deceased person by whom the document purports to have been executed.

Note.- When some of the representatives of a deceased executant admit and the others deny execution, the registration of the document shall be refused in toto, the persons interested being left to apply to the Registrar for an enquiry into the fact of execution.

- (xiv) **Sections 35 and 41.-** that the alleged death of a person by whom the document purports to have been executed has not been proved;

- (xv) **Section 41.-** that the Registering Officer is not satisfied as to the fact of execution in the case of a Will or of an authority to adopt presented after the death of the testator or donor;

- (xvi) **Section 25, 34 and 80.-** that the prescribed fee or fine or fee under nay other Act to be levied before admitting a document to registration has not been paid.”

The reasons indicated in Rule 171 are self-explanatory. While it is an admitted fact that none of those reasons found in the statute *i.e.*, Rule 171 are even present in the case at hand. The refusal to register a document as observed is dealt with under Section 71 of the Registration Act and Rule 171 of the Rules, a perusal of which will nowhere creates any impediment for the 2nd respondent/Sub Registrar to register the said document. All the nuances necessary for registration have been complied with by the petitioner. The reason for denial of registration by respondent No.2 – Sub-Registrar is that

the dues of the Income-Tax Department pending against the borrowers. In the considered view of this Court, in the light of Section 35 quoted *supra* of the SARFAESI Act, 2002 the said reason though not in writing could not have been projected by the Sub Registrar to deny registration. The issue whether other statutory dues pending against the borrowers would entail non-registration of a document, need not detain this Court for long, or delve deep into the matter.

11. The Apex Court in the case of **PUNJAB NATIONAL BANK v. UNION OF INDIA** has held as follows:-

“42. Secondly, coming to the issue of priority of secured creditor's debt over that of the Excise Department, the High Court in the impugned judgment has held [Punjab National Bank v. Union of India, 2008 SCC OnLine All 1576] that “In this view of the matter, the question of first charge or second charge over the properties would not arise”. In this context, we are of the opinion that the High Court has misinterpreted the issue to state that the question of first charge or second charge over the properties, would not arise.

43. A Full Bench of the Madras High Court in UTI Bank Ltd. v. CCE [UTI Bank Ltd. v. CCE, 2006 SCC OnLine Mad 1182 (FB)], while dealing with a similar issue, has held that : (SCC OnLine Mad paras 25-26)

“25. In the case on hand, the petitioner Bank which took possession of the property under Section 13 of the SARFAESI Act, being a special enactment, undoubtedly is a secured creditor. We have already referred to the provisions of the Central Excise Act and the Customs Act. They envisage procedures to be followed and how the amounts due to the Departments are to be recovered. There is no specific provision either in the Central Excise Act or the Customs Act, claiming “first charge” as provided in other enactments, which we have pointed out in earlier paragraphs.

26. In the light of the above discussion, we conclude,

- (i) Generally, the dues to Government i.e. tax, duties, etc. (Crown's debts) get priority over ordinary debts.
- (ii) Only when there is a specific provision in the statute claiming “first charge” over the property, the Crown's debt is entitled to have priority over the claim of others.
- (iii) Since there is no specific provision claiming “first charge” in the Central Excise Act and the Customs Act, the claim of the Central Excise Department cannot have precedence over the

claim of secured creditor viz. the petitioner Bank.

- (iv) ***In the absence of such specific provision in the Central Excise Act as well as in Customs Act, we hold that the claim of secured creditor will prevail over Crown's debts.'***

In view of our above conclusion, the petitioner UTI Bank, being a secured creditor is entitled to have preference over the claim of the Deputy Commissioner of Central Excise, first respondent herein."

(emphasis in original and supplied)

44. *This Court, while dismissing Civil Appeal No. 3627 of 2007 filed against the judgment [UTI Bank Ltd. v. CCE, 2006 SCC OnLine Mad 1182 (FB)] of the Full Bench, vide order dated 12-2-2009 [CCE v. UTI Bank Ltd., 2009 SCC OnLine SC 1950] held as under: (UTI Bank case [CCE v. UTI Bank Ltd., 2009 SCC OnLine SC 1950], SCC OnLine SC para*

1)

"1. Having gone through the provisions of the Securitisation Act, 2002, in the light of the judgment of the Division Bench of this Court in Union of India v. SICOM Ltd. [Union of India v. SICOM Ltd., (2009) 2 SCC 121], we find that under the provisions of the said 2002 Act, the appellants did not have any statutory first charge over the property secured by the respondent Bank. In the circumstances, the civil appeal is dismissed with no order as to costs"

(emphasis supplied)

45. *Hence the reasoning given by the High Court stands strong and has been affirmed by this Court.*

46. *This Court in Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. [Dena Bank v. Bhikhabhai Prabhudas Parekh & Co., (2000) 5 SCC 694], wherein the question raised was whether the recovery of sales tax dues (amounting to crown debt) shall have precedence over the right of the bank to proceed against the property of the borrowers mortgaged in favour of the bank, observed as under : (SCC p. 703, para 10)*

"10. However, the Crown's preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right of recovery of its debts over a mortgagee or pledgee of goods or a secured creditor."

(emphasis supplied)

47. *Further, in Central Bank of India v. Siriguppa Sugars & Chemicals Ltd. [Central Bank of India v. Siriguppa Sugars & Chemicals Ltd., (2007) 8 SCC 353 : (2007) 2 SCC (L&S) 919], while*

adjudicating a similar matter, this Court has held as under : (SCC pp. 360-61, para 17)

*“17. Thus, going by the principles governing the matter propounded by this Court there cannot be any doubt that the rights of the appellant Bank over the pawned sugar had precedence over the claims of the Cane Commissioner and that of the workmen. The High Court was, therefore, in error in passing an interim order to pay parts of the proceeds to the Cane Commissioner and to the Labour Commissioner for disbursal to the cane growers and to the employees. There is no dispute that the sugar was pledged with the appellant Bank for securing a loan of the first respondent and the loan had not been repaid. The goods were forcibly taken possession of at the instance of the revenue recovery authority from the custody of the pawnee, the appellant Bank. **In view of the fact that the goods were validly pawned to the appellant Bank, the rights of the appellant Bank as pawnee cannot be affected by the orders of the Cane Commissioner or the demands made by him or the demands made on behalf of the workmen. Both the Cane Commissioner and the workmen in the absence of a liquidation, stand only as unsecured creditors and their rights cannot prevail over the rights of the pawnee of the goods.**”*

(emphasis supplied)

48. *The Bombay High Court in Krishna Lifestyle Technologies Ltd. v. Union of India [Krishna Lifestyle Technologies Ltd. v. Union of India, 2008 SCC OnLine Bom 137] , wherein the issue for consideration was “whether tax dues recoverable under the provisions of the Central Excise Act, 1944 have priority of claim over the claim of secured creditors under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002” held that : (SCC OnLine Bom paras 19-20)*

“19. Considering the language of Section 35 and the decided case law, in our opinion it would be of no effect, as the provisions of the SARFAESI Act override the provisions of the Central Sales Tax Act and as such the priority given to a secured creditor would override Crown dues or the State dues.

20. Insofar as the SARFAESI Act is concerned a Full Bench of the Madras High Court in UTI Bank Ltd. v. CCE [UTI Bank Ltd. v. CCE, 2006 SCC OnLine Mad 1182 (FB)] has examined the issue in depth. The Court was pleased to hold that tax dues under the Customs Act and Central Excise Act, do not have priority of claim over the dues of a secured creditor as there is no specific provision either in the Central Excise Act or the Customs Act giving those dues first charge, and that the claims of the secured creditors will prevail over the claims of the State. Considering the law declared [Ed. : The reference appears to be to Dena Bank v. Bhikhabhai Prabhudas Parekh & Co., (2000) 5 SCC 694] by the Supreme Court in the matter of priority of State debts as already discussed and the provision of Section 35 of the SARFAESI Act we are in respectful agreement with the view taken by the Madras High Court [UTI Bank Ltd. v. CCE, 2006 SCC

OnLine Mad 1182 (FB)] .”
(emphasis supplied)

49. An SLP (No. 12462/2008) against the above judgment of the Bombay High Court stands dismissed by this Court on 17-7-2009 [Union of India v. Krishna Life Style Technologies Ltd., 2009 SCC OnLine SC 1952] by relying upon the judgment in Union of India v. SICOM Ltd. [Union of India v. SICOM Ltd., (2009) 2 SCC 121] , wherein the question involved was **“Whether realisation of the duty under the Central Excise Act will have priority over the secured debts in terms of the State Financial Corporation Act, 1951”** and **this Court held as under : (SICOM case [Union of India v. SICOM Ltd., (2009) 2 SCC 121] , SCC p. 126, para 9)**

“9. Generally, the rights of the crown to recover the debt would prevail over the right of a subject. Crown debt means the ‘debts due to the State or the King; debts which a prerogative entitles the Crown to claim priority for before all other creditors’. [See Advanced Law Lexicon by P. Ramanatha Aiyar (3rd Edn.) p. 1147]. Such creditors, however, must be held to mean unsecured creditors. Principle of Crown debt as such pertains to the common law principle. A common law which is a law within the meaning of Article 13 of the Constitution is saved in terms of Article 372 thereof. Those principles of common law, thus, which were existing at the time of coming into force of the Constitution of India are saved by reason of the aforementioned provision. A debt which is secured or which by reason of the provisions of a statute becomes the first charge over the property having regard to the plain meaning of Article 372 of the Constitution of India must be held to prevail over the Crown debt which is an unsecured one.”
(emphasis supplied)

50. **In view of the above, we are of the firm opinion that the arguments of the learned counsel for the appellant, on Issue 2, hold merit. Evidently, prior to insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, there was no provision in the 1944 Act inter alia, providing for first charge on the property of the assessee or any person under the 1944 Act. Therefore, in the event like in the present case, where the land, building, plant, machinery, etc. have been mortgaged/hypothecated to a secured creditor, having regard to the provisions contained in Sections 2(1)(zc) to (zf) of the SARFAESI Act, 2002, read with provisions contained in Section 13 of the SARFAESI Act, 2002, the Secured Creditor will have a first charge on the secured assets. Moreover, Section 35 of the SARFAESI Act, 2002 inter alia, provides that the provisions of the SARFAESI Act, shall have overriding effect on all other laws. It is further pertinent to note that even the provisions contained in Section 11-E of the Central Excise Act, 1944 are subject to the provisions contained in the SARFAESI Act, 2002.**

51. Thus, as has been authoritatively established by the aforementioned cases in general, and Union of

India v. SICOM Ltd. [Union of India v. SICOM Ltd., (2009) 2 SCC 121] in particular, the provisions contained in the SARFAESI Act, 2002, even after insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, will have an overriding effect on the provisions of the 1944 Act.

52. Moreover, the submission that the validity of the confiscation order cannot be called into question merely on account of the appellant being a secured creditor is misplaced and irrelevant to the issue at hand. The contention that a confiscation order cannot be quashed merely because a security interest is created in respect of the very same property is not worthy of acceptance. However, what is required to be appreciated is that, in the present case, the confiscation order is not being quashed merely because a security interest is created in respect of the very same property. On the contrary, the confiscation orders, in the present case, deserve to be quashed because the confiscation orders themselves lack any statutory backing, as they were rooted in a provision that stood omitted on the day of the passing of the orders. Hence, it is this inherent defect in the confiscation orders that paves way for its quashing and not merely the fact that a security interest is created in respect of the very same property that the confiscation orders dealt with.

53. Further, the contention that in the present case, the confiscation proceedings were initiated almost 8-9 years prior to the charge being created in respect of the very same properties in favour of the bank is also inconsequential. The fact that the charge has been created after some time period has lapsed post the initiation of the confiscation proceedings, will not provide legitimacy to a confiscation order that is not rooted in any valid and existing statutory provision.

54. To conclude, the Commissioner of Customs and Central Excise could not have invoked the powers under Rule 173-Q(2) of the Central Excise Rules, 1944 on 26-3-2007 and 29-3-2007 for confiscation of land, buildings, etc. when on such date, the said Rule 173Q(2) was not in the statute books, having been omitted by a Notification dated 12-5-2000. Secondly, the dues of the secured creditor i.e. the appellant Bank, will have priority over the dues of the Central Excise Department, as even after insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, the provisions contained in the SARFAESI Act, 2002 will have an overriding effect on the provisions of the Central Excise Act, 1944.” (Emphasis supplied)

The Apex Court considers identical circumstance. The dues in the case before the Apex Court were that of the Department of Central Excise. The Apex Court holds that debt owed to the Crown or the State cannot take away

the right of a secured creditor in the light of Section 26E and Section 35 of the Act *supra*.

12. The Apex Court considering the entire spectrum of law holds that dues of the secured creditor, the Bank or any other financial institution will have priority over the dues of the Central Excise Department under the Central Excise Act. The Apex Court holds the provisions of the SARFAESI Act, 2002 will have overriding effect on the provisions of the Central Excise Act. If the Central Excise Act found in the judgment of the Apex Court is paraphrased with that of the Income-Tax Department/dues under the Income Tax Act, the reasons so rendered by the Apex Court would become applicable to the facts of the case at hand as well. The Sub Registrar, though not in writing, orally refused to register the document on the score that dues of the Income-Tax Department are pending against the borrowers, is a reason which is unavailable to the Sub-Registrar, even if it were to be in writing.

13. The Sub-Registrar can act only within the four corners of the Registration Act and the Registration Rules framed by the State. If none of the circumstances under Rule 171 of the Rules are found, the Sub-Registrar has no jurisdiction to refuse registration of a document; the document in the case at hand is the sale certificate.

14. Scores and scores of cases are filed before this Court where the Sub-Registrars refuse to register the documents – the documents could be sale certificates or documents creating charge over the property. The Sub-Registrars, on grounds that are not available to them, refuse to register the documents, sometimes on the score that the software in the Registration Department or the Sub-Registrar's office is not made to be in tune with the necessities of registration of documents of the Banks and therefore, it is not

registered and in certain cases, it is the statutory dues by the borrower or the holder of the document, which are not cleared and therefore, would not be registered. All these are reasons beyond the statute. Unless the Sub-Registrar notices any violation as obtaining under Rule 171 of the Rules, the Sub-Registrar does not have jurisdiction to refuse registration of a document. Therefore, it is necessary for the State Government to issue necessary circular in terms of Rule 171 of the Rules and the law laid down by the Apex Court in the judgment *supra*, so that every person who goes for registration of documents should not be denied registration except in accordance with the observations *supra* as acts of Sub-Registrars are driving every person who is denied registration to the doors of this Court unnecessarily and if the Sub-Registrar would not register a document, if it is found to be in tune with law, the delay in registration would be attributable only to those Sub-Registrars, who will be saddled with exemplary costs when such cases are brought before this Court seeking a direction for registration of a document.

15. For the aforesaid reasons, the following:

ORDER

- (i) The writ petition is allowed.
- (ii) *Mandamus* issues to the 2nd respondent/Sub Registrar to register the document brought before him by the petitioner forthwith; the moment copy of this order is brought to his notice, without brooking any delay.
- (iii) The State Government is directed to issue a Circular to all the Sub-Registrars in the State in tune with this order so that persons, who are wanting to get their documents registered, need not every time knock at the doors of this Court.
- (iv) The Circular to be so issued shall bear reference to the Rules and the judgment of the Apex Court quoted in this order.

- (v) Compliance with issuance of Circular be reported to this Court within eight weeks from the date of receipt of a copy of this order.

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