APHC010333992025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

Bench Sr.No:-26
[3575]

WRIT PETITION NO: 16895 of 2025

IKF Finance Limited ...Petitioner

Vs.

The State Of Andhra Pradesh and Others ...Respondent(s)

CORAM : HON'BLE MRS JUSTICE LISA GILL
HON'BLE MR JUSTICE NINALA JAYASURYA

DATE : 23rd April 2026

Present: Mr.Vemuru V.P.Lakshmi Narasimha Murthy, Advocate for petitioner.

Mr.J.Dilip Kumar, Government Pleader for respondent Nos.1 and 2.

Mr.Jillepalli Suhas Kiran, Advocate for Mr.Sunkara Rajendra Prasad, Advocate for respondent No.8.

Date on which order was reserved : 02.04.2026

Date on which order was pronounced : 23.04.2026

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<u>LISA GILL, J.</u>

Petitioner is aggrieved of non-registration of sale certificate dated 30th of May 2025 issued by petitioner company in favour of respondents No.9 in proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act"), on the pretext that respondent No.8 obtained an order of attachment on 28th of September 2022 in O.S.No.121 of 2022 from learned Additional District and Session Judge, Vijayawada against respondents No.3 to 6 and that property has been included in list of prohibited properties.

2. Learned counsel for petitioner submitted that respondent No.3 i.e. Andhra Pradesh State Government Employees Mutually Aided Co-operative House Building Society Limited, through its Secretary, respondent No.4 and co-borrowers respondents No.5 to 7 availed of business loan facilities in form of financial assistance to a tune of Rs.8.50 Crores from petitioner. Necessary loan documents were executed in favour of petitioner company and mortgage registered relating to land in question as is detailed in Para 5 of writ petition. Valid security interest was created in respect to property in question in favour of petitioner's company as early as on 22nd of April 2021 and 20th of November 2020.

3. On account of financial indiscipline of borrower, account was classified NPA and provisions under SARFAESI Act were invoked with demand notice being issued on 13th of March 2023, ultimately leading to issuance of sale notice dated 21st of April 2025. Subsequently respondent No.3, borrower came forward and made a private treaty with petitioner company under Memorandum of Understanding dated 27th of May 2025 for facilitating sale of mortgaged secured asset. With consent of both borrower and petitioner, mortgage property in plot 765 was sold to respondent No.9 in total compliance of procedures contemplated under the Act as well as Security Interest (Enforcement) Rules 2002. No objection whatsoever was ever raised by borrower/mortgager or anyone else.

4. Respondent No.9 deposited entire sale consideration amount as per terms and conditions of auction and sale certificate was issued in his favour on 30th of May 2025. When registration of sale certificate was sought, it was refused by respondent No.2-Sub Registrar on the premise that there is an order of attachment dated 1st of July 2022 passed by learned Additional District and Session Judge, Vijayawada in O.S.No.121 of 2022 and that subject property is in prohibited list.

5. Learned counsel for petitioner submitted that upon making inquiries it came to notice of petitioner that civil suit O.S.No.121 of 22 which appears to be a collusive suit was filed through respondent No.8 at the behest of borrower respondent No.3 in March 2022, that is much after mortgage of this property with petitioner by respondent No.3. Mortgage of property in question with petitioner is duly detailed in the said civil suit, but despite being aware of mortgage in favour of petitioner, it was not arrayed as party to civil suit. Learned counsel for petitioner submits that in given factual matrix, refusal of respondent No.2 to register the sale certificate is absolutely unjustified and is in fact illegal. As per Section 26E of SARFAESI Act, it is specifically provided that debts due to any secured creditor shall be paid in priority over all other debts. Moreover, in present case mortgage in favour of petitioner was created way before even filing of civil suit in which order of attachment was passed on 28.09.2022.

6. Reliance is placed by learned counsel for petitioner on a Division Bench judgment of this High Court in **City Union Bank Limited, Karimnagar v. Sub**

Registrar, Peddapalli[1]. It is thus prayed that this writ petition be allowed as prayed for.

7. Learned counsel for respondents specifically 1, 2 and 8 have refuted arguments as raised on behalf of petitioner while submitting that properties are in prohibited list, therefore, there is no question of registration of sale certificate. Moreover, petitioner had not presented sale deed for registration, thus, in view of amendment in Registration Act with incorporation of Section 22C therein and corresponding Rule 20 (C) being incorporated in the Rules of Registration Act, dismissal of writ petition is thus sought.

8. We heard learned counsel for parties and have carefully perused the file with their assistance.

9. Mortgage of immovable property in question by respondent No.3 and through respondents No.4 to 7 on 22.04.2021 is a matter of record. It is further an admitted fact that said property was transferred/sold to respondent No.9 in terms of provisions of the SARFAESI Act for recovery of loan amount from principal borrowers. Entire sale consideration thereof was deposited by respondent No.8 and sale certificate dated 30.05.2025 was issued. Registration of this sale certificate is being denied by respondent No.2 on the premise that there is an attachment order dated 28.09.2022 passed by learned Additional District Judge in O.S.No.121 of 2022.

10. At this juncture we take note of the fact that there is no dispute and neither any raised at the time of argument that property in question was mortgaged at an earlier point of time by respondent No.3 and others, in favour of petitioner. Said mortgage was duly registered. It is not the case of

[1] 2018 SCC OnLine Hyd 370

respondents that creation of mortgage in favour of petitioner was subsequent to order of attachment. Learned counsel for respondents were unable to deny that attachments effected subsequent to mortgage created in favour of secured creditor cannot affect rights of said secured creditor over subject property and that such attachments have no impact on sale conducted under the Act. This aspect is squarely settled in favour of petitioner by way of various pronouncements of this High Court i.e. , in **City Union Bank Limited** (Supra) and then **Manasa Hotels Private Limited vs. Union of India and others**[2] and M/s **IKF Finance and Investments Limited vs. State of Andhra Pradesh and Others**[3] **(**in W.P.Nos.24679 & 24681 of 2024).

11. Argument then raised by learned counsel for respondent No.2 was that sale certificate had not been presented for registration, therefore, after the amendment in Registration Act, with effect from 09.07.2025, this certificate of sale cannot be registered as property is in prohibited list. In our considered opinion this argument is devoid of any merit. Petitioner has specifically stated that respondent No.9 and petitioner company approached concerned Sub Registrar, respondent No.2 for registration of sale certificate dated 30th of May 2025 but it was informed by authorities that the same is not possible in view of attachment pending against property in question.

12. Reference was made to written request dated 17th of June 2025 addressed to the Sub Registrar, Ibrahimpatnam, NTR District, wherein order passed by this High Court in W.P.No.3908 of 2022 was also brought to notice of Sub Registrar directing all District Registrars and Sub Registrars to accept sale certificates issued by authorized officer under SARFAESI Act for registration without protesting about the same under pretext of attachment

[2] 2024 Supreme(Online)(AP) 19347
[3] 2025:APHC: 3767

orders passed by any Court/Registrar of Chits/any Income Tax Department etc., so as to avoid suo motu contempt proceedings by the High Court. It was again specifically stated that sale certificate may be registered, however, needful was not done.

13. In the wake of above said circumstances, plea taken by respondent No.2 that there is no valid presentation cannot be accepted. It is obvious that necessary presentation was in effect made by petitioner and respondent No.9 prior to coming into effect of amended Section 22C of the Act in the month of July 2025. In similar circumstances, Division Bench of this High Court in W.P.Nos. 13040 of 2025 and batch, negated a similar plea on behalf of respondents for refusal of registration. Relevant portion of said decision dated 4th of February 2026 reads as under :

> "11. The sale certificates in all the three writ petitions are presented before the amendment to Section 22C of the Act came into effect in the month of July, 2025. So, these written communications addressed by the Sub-Registrar and Joint Sub-Registrar to the petitioners respectively bears ample testimony of the fact that a request was made by way of representation by the petitioners for registration of the sale certificates presented by them. The contents of the written communications clearly indicate that the registration was not effected on the ground that the said properties are included in the prohibitory list of properties because of the order of attachment before judgment was passed by the civil Court. Therefore, the plea taken by the respondents in the counter that the sale certificates are not presented for registration is not correct and it is absolutely false. As noticed supra, these written communications produced by the writ petitioners clearly belies the said contention. So, we have absolutely no hesitation to hold that the petitioners have presented the sale certificates for registration.
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> 12. Now, the crucial question that crops up for determination is whether the Sub-Registrar and the Joint Sub-Registrar are justified in declining to register the sale certificates on the ground that the order of attachment before judgment subsists that was passed by the civil Court or not. It is to be noticed that by the date on which the sale certificates are presented for registration, the amendment to the Registration Act by way of incorporating Section 22C was not in

force. It came into effect only on 09.07.2025. The amendment has no retrospective effect. So, it operates only prospectively. So, at best, the Sub-Registrar or Joint Sub-Registrar can refuse to register the sale certificates on the ground that an order of attachment before judgment was passed by the civil Court by virtue of the said amended provision only to the sale certificates that are presented subsequent to the amendment. It is settled law that the law which was prevailing as on the date of presentation of the sale certificates will prevail and apply to the said sale certificates. As on the date of presenting the sale certificates, there is no provision in the Registration Act which enables the Sub-Registrar or Joint Sub-Registrar to refuse registration on the ground of subsistence of an order of attachment passed before judgment by a civil Court. As per the law that is prevailing at that time, the mortgage which is prior in point of time will prevail over the subsequent order of attachment before judgment passed by the civil Court. The legal position in this regard is not *res integra* and the same has been well settled by way of rendering plethora of judicial pronouncements on the point.

13. The Erstwhile High Court of Andhra Pradesh had an occasion to deal with the legal position in this regard in the case of **City Union Bank Limited v. Sub-Registrar, Peddapalli, Karimnagar District and others**. In the said case, when the Sub-Registrar refused to register the sale certificate in favour of the auction purchasers on the ground that an order of attachment before judgment is subsisting which was passed by the civil Court and when the same is questioned, the High Court after considering the law on the aspect, held that a secured creditor is entitled to succeed and directed the Sub-Registrar to register the sale certificates in accordance with the Registration Act. The Court held that as the mortgage in favour of the bank is prior in point of time and as the order of attachment before judgment was passed subsequently, the mortgage in favour of the bank prevails and the Sub-Registrar cannot refuse to register the sale certificates. Again, when the same question came up for consideration before a Coordinate Bench of this Court in W.P.No.18008 of 2024 in the case of **Karur Vysya Bank Limited v. The State of Andhra Pradesh and others** and also in W.P.No.44014 of 2018 in the case of **Andhra Bank, Munagala Branch, rep by its Authorised Officer v. The Commissioner and Inspector General of Registration and Stamps, Hyderabad and others**, the Courts have held that when the order of attachment is subsequent in point of time to the mortgage, the claim of the respondent cannot take precedence over the mortgage in favour of the bank and only the respondent can seek for payment of any surplus money, after adjustment of all the dues by the bank.”

14. Keeping in view facts and circumstances as above, action of respondent No.2 in not registering sale certificate in question is clearly unjustified. However we do not find any merit in the argument raised by learned counsel for petitioner that in case of any future sale certificate being presented, the same be also registered. Such a blanket order cannot be granted as facts and circumstances of each matter need to be examined in a given fact situation.

15. Keeping in view facts and circumstances as above it is directed that sale certificate dated 30.05.2025 be registered in accordance with provisions of Registration Act, on deposit of necessary stamp duty / registration expenses. Writ Petition is allowed in the aforesaid terms with no order as to costs. Pending miscellaneous application(s) are disposed of, accordingly.

(LISA GILL)
JUDGE

(NINALA JAYASURYA)
JUDGE

Date: 23.04.2026
KA

Uploaded on:

HON'BLE MRS JUSTICE LISA GILL

HON'BLE MR JUSTICE NINALA JAYASURYA

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