



C.R.P(MD)No.47 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 22.06.2023

PRONOUNCED ON : 14.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

C.R.P(MD)No.47 of 2023
and C.M.P.(MD)No.253 of 2023

1.Perumal

2.Gokulakrishnan

... Petitioners

Vs.

Pappathi

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records and set aside the fair and decretal order dated 07.12.2021 made in E.A.No.11 of 2017 in E.P.No.21 of 2008 in O.S.No.365 of 1997 on the file of the Principal District Munsif Court, Veda sandur.

For Petitioners : Mr.A.Arumugam

for Mr.S.Gokul Raj

For Respondent : Mr.G.Gomathi Sankar



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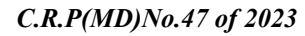
ORDER

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The petitioners are aggrieved by the impugned order dated 07.11.2021 passed by the Principal District Munsif Court, Vendasandur in E.A.No.11 of 2017 in E.P.No.21 of 2008 in O.S.No.365 of 1997.

2. By the impugned order, E.A.No.11 of 2017 was dismissed on the ground of delay. The Relevant portion of the impugned order reads as under:

15. NkYk;> vjph;kDjhuh; Vyk;
vLf;fg;gl;lpy; ,Ue;J 15 ehl;fSf;Fs; Vy njhifia
itg;gPL nra;J mjw;fhd urPJ kw;Wk; Sale
Certificate Chage itg;gPL nra;jpUf;f Ntz;Lk;
vd;w epiyapYk;> 15 ehl;fSf;Fs; Vy njhifia
nrYj;jhky; cs;sNghJ> 15 ehl;fSf;Fs; gpwF
itg;gPL nra;ag;gl;l Vy njhifia ngw;Wf; nfhs;s
ePjpkd;wj;jpw;F mjp fhu tuk;G ,y;iy vd;jjh
Fwp;g;gplg;gl;Ls;sij itj;J> tof;fhtzq;fis
ghprPyid nra;J gh;f;Fk;NghJ>
vjph;kDjhuh; jhth kDr; nrhj;Jf;fs;
26.10.2007k; Njpp Vyk; vLf;fg;gl;Ls;sJ>
mjppUe;J 15 ehl;fs; vd;gJ 07.11.2007k;
Njpp kDtpy; tha;jh toq;fg;gl;Ls;sJ.
07.11.2007k; Njppad;W vjph;kDjhuh;
Lodgement Schedule jhf;fy; nra;ag;gl;L> Sale
Certificate Charge Mf & 1>578/-ia 14
ehl;fSf;Fs; itg;gPL nra;ag;gl;Ls;sJ. Nkw;gb
07.11.2007k; Njpp vjph;kDjhuh; jhf;fy;
nra;ag;gl;l Lodgement Scheduley; issue chellan
vd 12.11.2007k; Njpp cj;juT ngw;g;gl;Ls;sJhf
njhpatUfpwJ.



20. Kbthf> jhth epiwNtw;W kD vz;.54/2004
kDtpy; 24.10.2007 k; Njjp ,e;ePjpkd;wj;jhy;
nra;ag;gl;l VyKk;> Nkw;gb VyK; Ch;lpjk;
nra;J> 02.01.2008k; Njjp gpwg;gpj;j Sale
confirmation cj;juit nry;yj;jf;jy;y vd kDjhuh;fs;
NfhhpAs;s tpsk;Gif ghpfhukK;> chpikapay;
eilKiwr;rl;lk; fl;lis 21 tpjp 86d; gb Resale f;F
cj;jutpl Ntz;Lk; vd kDjhuh;fs; NfhhpAs;s
ghpfhukK; kDjhuh;fSf;F fpilf;jj;jf;jy;y
vd ,e;ePjpkd;wk; KbT fz;L> ,k;kD js;Sgb nra;J
cj;jutplg;gLfpwj. kDtPd; jd;ikia fUj;jpy;
nfhz;L cgajug;gpdh;fSf;F nryTj; njhif
fpilf;jj;jf;jy;y vd ,e;ePjpkd;wk; KbT nra;fpwj.



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3. E.A.No.11 of 2017 was filed by the petitioners/Judgment Debtors to declare the Sale Confirmation Order dated 02.01.2008 confirming the sale of the property in a court auction held on 24.10.2007 in favour of the respondent/Decree Holder as null and void and to order for re-sale of the property auctioned.

4. The petitioners were the defendants in O.S.No.205 of 1997. O.S.No.205 of 1997 was decreed by the Court vide its judgment and decree dated 15.10.1998. Thus the petitioners as judgment debtors were liable to pay a sum of Rs.34,310/- to the respondent-decree holder (plaintiff).

5. The petitioners however failed to pay the amount despite the suit being decreed on 15.10.1998. The respondent therefore filed E.P.No. 54 of 2004 before the Sub Court, Dindigul for attachment and sale of property of the petitioners.

6. E.P.No.54 of 2004 was allowed and the property of the petitioners were thus auctioned on 24.10.2007. The respondent herself purchased the property under Order XXI Rule 72(2) pursuant to order in



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E.A.No.124 of 2007. Later E.P.No.21 of 2008 was also filed by the respondent under Order XXI Rule 95 of C.P.C. before the District Munsif Court, Vendasandur to take delivery of the auctioned property. E.P.No.21 of 2008 filed under Order XXI Rule of C.P.C. is pending as on date.

7. It is the case of the petitioners that the respondent was required to pay the balance sale consideration within 15 days of the auction sale of the property on 24.10.2007 after setting-off the decree amount under Order 21 Rule 85 of C.P.C.

8. It is submitted that instead of depositing the balance sale consideration after setting-off decree amount under Order 21 Rule 1 of C.P.C. in time, the respondent filed Lodgement Schedule in Form 57 as is contemplated under Rule 154 of Civil Rules of Practice before the Court only on 07.11.2007 and thus delayed in depositing the amount into Court.

9. It is submitted that the balance sale consideration ought to have been deposited within 15 days of court auction held on 24.10.2007 i.e on



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or before 08.11.2007. However, the lodgment schedule was filed only on 07.11.2007 and Lodgment order was issued to the respondent as an auction purchaser only on 12.11.2007 i.e after the expiry of 19th day of the sale.

10. It is therefore submitted that confirmation of the Sale on 02.01.2008 in favour of the respondent was not in accordance with law. It is submitted that the petitioner therefore filed E.A.No.11 of 2017 on 18.01.2017 before the Principal District Munsif Court, Vendasandur under Section 47 of C.P.C. read with Section 151 of C.P.C. to question the confirmation of sale vide order dated 02.01.2008.

11. It is further submitted that instead of allowing E.A.No.11 of 2017, filed by the petitioners, the Court erred in dismissing E.A.No.11 of 2017 on 07.12.2021 and thereby ignored the late deposit of the balance sale consideration by the respondent after setting-off the decree amount.

12. The specific case of the petitioners is that Order 21 Rule 1 of C.P.C. prescribes different methods for discharging the liability which



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includes deposit of the auction amount into the Court in an execution proceeding. It is submitted that, instead of opting for one of the procedure prescribed under Order 21 Rule 1 of C.P.C., the respondent/Decree Holder (plaintiff) resorted to a lengthy procedure by filing Lodgment Schedule under Rule 154 of Civil Rules of Practice and thereby gained time.

13. It is further submitted that on failure to pay the balance sale consideration as per proviso to Order 21 Rule 85 C.P.C. after adjusting of decree amount towards sale consideration within 15 days from the date of auction on 24.10.2007, the Auction in favour of the petitioner was to be set aside and a fresh auction should have been ordered in accordance with Order 21 Rule 86 of C.P.C.

14. It is submitted that the respondent by her conduct forfeited all the claims over the property and the Court should have ordered a re-auction of the property.

15. It is submitted that, instead, the Court has condoned the lapses on the part of the respondent by accepting belated payment of the amount



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on 12.11.2007. It is further submitted that there are no records to show that the respondent had adequate money to pay the balance sale consideration after setting-off the decree amount of Rs.34,310/- and the E.P amount of Rs.47,491/- on or before the last day i.e. on 08.11.2007. It is submitted that the respondent deliberately filed Lodgment shedule on 07.11.2007 and obtained the challan for payment only on 12.11.2007 to pay the balance sale consideration after setting off the EP amount of Rs.47,491/-.

16. The learned counsel for the petitioners further adds that the auction was acutally held on 24.10.2007 and only the Order was signed on 26.10.2007. Therefore, the limiation to pay the balance sale consideration would have expired on 08.11.2007. Hence, it is submitted that the impugned order is liable to be interferred with.

17. Per contra, the learned counsel for the respondent would submit that the obstruction petition filed under Section 47 of C.P.C. was itself without jurisdiction as law on the subject is well settled.

18. In this connection, reference is made to the following



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decisions:

1. ***K.M.Balasubramaian Vs C.Loganathan***
2017 (1) Madwn (Civil) 372
2. ***A.P.V.Rajendran Vs S.A.Sundararajan***
and others 1980 AIR (Madras) 123
3. ***M/s.Bee Gee Corporation Private Limited***
Vs Punjab Financial Corporation and
others 2019 (13) SCC 592.

19. The learned counsel for the respondent further submits that only option that was available to the judgment debtor was to file an application under Order 21 Rules 89 and 90 of C.P.C to set aside the sale. He further submitted that the respondent cannot be found fault for not depositing the amount earlier as the lodgement order was issued only on 12.11.2007 and in compliance with the same, the amount was paid on the same day. That apart, it is submitted that the petitioner did not come forward to pay the decree amount even after filing application under Section 47 of C.P.C. Hence prays for dismissal of the impugned order.

20. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

21. The Civil Rules of Practice has been framed under Section 122



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of C.P.C. As per Section 122 of C.P.C., the High Court may from time to time after making prior publication, make Rules regulating its own procedure and the procedure of the Civil Courts subordinate to it subject to its superintendence. The High Court may also by such rules, annul, alter or add to all or any of the Rules in the First Schedule.

22. Therefore, the argument of the learned counsel for the petitioner that the Civil Rules of Practice are subordinate to the Provisions of C.P.C are not relevant and cannot be countenanced in view of the express delegation of the powers to the High Court under Section 122 of C.P.C.

23. In any event, there is no conflict between the Civil Rules of Practice framed by this High Court under Section 122 of C.P.C. Civil Rules of Practice merely complements C.P.C. to implement the procedure under the C.P.C.

24. The only point that requires to be decided in this case is whether failure on part of the respondent to deposit the balance sale consideration after setting-off the decree amount within 15 days from the



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date of Court auction on 26.10.2007 or 24.10.2007 as fatal or not as was claimed by the petitioner.

25. There are different methods to set aside a sale concluded in a Court auction in an execution proceeding. In an execution proceedings, an auction sale in favour of an auction purchaser can be set aside under the following circumstances:-

- i. Where the auction purchaser cum decree-holder has bid for or bought the property in the Court auction in an execution proceeding without permission of the Court as is contemplated under Order 21 Rule 72(1) of C.P.C ; or
- ii. Where the auction purchaser cum decree holder has not paid the balance sale consideration after setting off the decree amount into the Court before the Court closes on the fifteenth day from the sale of the property as is contemplated under Order 21 Rule 85 of C.P.C. ; or
- iii. Where any person claiming an interest in the property sold in a Court auction, or acting for or in the interest of such person applies to the court to have the sale set aside on his depositing in Court for payment to the purchaser, a sum equal to five per cent of the purchase-money, and for payment, to the decree-holder, the amount specified in the proclamation of sale as is contemplated under Order 21 Rule 89 of C.P.C within sixty days from the date of sale; or



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- iv. where the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale applies to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale under Order 21 Rule 90 of C.P.C.; or
- v. where the Auction purchaser applies to the Court on the ground that the judgment-debtor had no saleable interest in the property auctioned under Order 21 Rule 91 of C.P.C.

26. However, these applications have to be filed within the limitation prescribed under Article 127 of the Limitation Act, 1963. Article 127 of the Limitation Act, 1963 reads as under:-

Article	Description of suit	Period of limitation	Time from which period begins to run
65	To set aside a sale in execution of a decree, including any such application by a judgmentdebtor	Sixty days	The date of the sale

27. If no application was made under Rule 89, 90 or 91 of Order



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21 of C.P.C within the limitation or where such application filed is disallowed, the Court has to make an order confirming the auction sale, and thereupon the sale shall become absolute and the auction purchaser becomes the absolute owner of the property in terms of Section 65 of C.P.C. read with Order 21 Rule 92 of C.P.C.

28. In this case, the Court auction held on 26.10.2007 as per the Impugned Order, although the petitioner would contend that the Court auction was held on 24.10.2007 was confirmed vide order dated 02.02.2008.

29. The petitioner has not questioned the auction sale held on 24.10.2007 or 26.10.2007 within a period of limitation under Article 127 of the Limitation Act, 1963. The petitioner has also not deposited the amount under Order 21 Rule 89 of C.P.C.

30. The option that was available to the petitioner against the alleged irregularities committed by the Execution Court ought to have been questioned under Order 21 Rule 90 of C.P.C. within a period of 60 days from the date of sale in terms of Article 127 of the Limitation Act,



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31. However, E.A.No.11 of 2017 was filed under Section 47 of C.P.C r/w Section 151 of C.P.C. on 18.01.2017 which is long after confirmation of sale on 02.01.2008. Even if Section 47 of the C.P.C. was invocable, the limitation under Section 137 of the Limitation Act, 1963 will apply, in which case, the application ought to have been filed within 3 years from the date when the right to apply accrues. Thus, the application was time barred.

32. This Court in **A.P.V. Rajendran v. S.A.Sundararajan and Others**, AIR 1980 Mad. 123, has held that if an auction Sale is sought be set aside on the ground of material irregularity under Order 21, Rule 90 then Section 47 cannot come into play at all.

33. This view was also followed in **K.M.Balasubramaian Vs C.Loganathan** 2017 (1) Madwn (Civil) 372. The Court there held that Judgment-debtor ought to have filed an Application within a period of 60 days from the date of Sale, as per Article 127. Since the Sale in that case was conducted on 27.09.2007 and Applications under Order 21 Rule 90



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was filed only on 18.04.2009 the application under Section 47 was held not maintainable.

34. The Supreme Court in **Dhirendra Nath v. Sudhir Chandra Ghosh**, AIR 1964 SC 1300 held that the non-compliance with the provisions of Sec. 35 of the Bengal Money Lenders Act was a defect or an irregularity in publishing or conducting the sale so as to attract O.21, Rule 90 C. P. C. Since the judgment debtor there failed to attend at the drawing up of the sale proclamation and did not object to the said defect even after the receipt of the notice it was held that the judgment debtor could not maintain an application to set aside the sale.

35. In *M/s.Bee Gee Corporation Private Limited Vs Punjab Financial Corporation and others*, 2019 (13) SCC 592 the court held that decree holder who is also the auction purchaser is exempted from depositing 25% of the bid amount at the time of auction and remaining 75% later under Order 21 Rule 84 and 85 of C.P.C and is entitled to the provisions of set-off under proviso to Order 21 Rule 85 of C.P.C.

36. In **Chilamkurti Bala Subrahmanyam Vs. Samanthapudi**



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Vijaya Lakshmi and another, (2017) 6 SCC 770 it was held that, to set aside a Court auction sale on the ground of material irregularity or fraud in publishing or conducting the sale, the judgment debtor had to go further and establish to the satisfaction of the court that the material irregularity or fraud resulted in substantial injury to the judgment debtor.

37. Having failed to exercise such option under Rule 90 of Order 21 of C.P.C. in time, E.A.No.11 of 2017 filed under Section 47 of C.P.C., on 18.01.2017 almost 10 years after the date of auction on 26.10.2007 was clearly barred by law. As mentioned above, the petitioner cannot seek for a remedy, which is barred under law by filing an application under Section 47 of C.P.C.

38. That apart, a sale which has been concluded in favour of the respondent on 26.10.2007 conferred absolute title in terms of Order 21 Rule 92 of C.P.C. r/w Section 65 of C.P.C. It cannot be set aside long after the expiry of limitation under Article 127 of the Limitation Act, 1963.

39. That apart, even if an application under Order 21 Rule 90 of C.P.C. was filed in time to set aside the sale, sale could be set aside only on the ground of irregularity or fraud in publishing sale notice or in conducting



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the auction sale and only it was proved before the Court the petitioners sustained substantial injury by reason of such irregularity or fraud. In this case, admittedly the petitioner has neither filed such application nor proved any injury much less substantial injury.

40. That apart on facts also it is clear that the application for lodgment of schedule under Rule 154 of C.P.C. was filed within 15 days from the date of sale. The amount was deposited only after an order for lodgment was made by the Court on 12.11.2007. Delay in issuance of lodgment order is not fatal.

41. In this connection, it is apt to quote the *latin maxim Actus Curiae Neminem Gravabit*. It implies that nobody should be allowed to suffer for the fault of the Court. The above *latin maxim* is founded on the principle of equity and justice and helps the Court in the administration of justice where ever there is a lapse on the part of Court as held in ***Inderchand Jain vs. Motilal***, 2009 (14) SCC 663. Therefore, even if there was a delay on the part of Court while issuing the lodgment order, the respondent cannot be held guilty. Therefore, it cannot be stated that the respondent was guilty of any lapses or laches to infer any irregularities. Question of interfering with the sale at this distant point of time cannot be countenanced.



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42. Further, even after the suit was decreed on 15.10.1998 and after the property was brought to auction on 24.10.2007 or 26.10.2007 the petitioners did not come forward to pay the decree amount.

43. This Civil Revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.07.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

The Principal District Munsif Court,
Vedasandur.



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C.SARAVANAN, J.

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Pre-delivery Order in
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