

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD).No.1352 of 2012
&
M.P.No.1 of 2012

1.Shobha Designer Collections
rep. By partner Jaffer Ali
No.1, New Damu Nagar
Pullakulam
Coimbatore-45

2. Jaffer Ali

3. A.R.Meharaunnissa Begum

...Petitioners

Vs.

Ambika Silks Represented
by Managing Partner
R.Venkatesh
19 III Main Nanjappa Layout
Aonkodi, Bangalore- 30

... Respondent

Civil Revision Petition filed Article 227 of the Constitution of India against the order dated 27.01.2012 and made in E.A.No.5 of 2011 in E.P.No.14 of 2008 in O.S.No.701 of 2004 on the file of Additional District Judge (Fast Track Court III), Coimbatore.

For Petitioners : Mr.S.V.Radhakrishnan

For Respondent : No Appearance

ORDER

The order dated 27.01.2012 and made in the execution petition in E.A.No.5 of 2011 in E.P.No.14 of 2008 in O.S.No.701 of 2004 on the file of the learned Additional District Judge (Fast Track Court III), Coimbatore is under challenge in this memorandum of civil revision petition. The revision petitioner herein is the judgment debtor, whereas the sole respondent is the decree holder.

2. When the revision petition is taken up for hearing today, learned counsel for the revision petitioner is present. Despite service of notice on the respondent, he has not chosen to appear either in person or through his counsel. Therefore, he is called absent.

3. Heard Mr.S.V.Radhakrishnan, learned counsel appearing for the revision petitioners. Perused the grounds of revision along with the impugned order dated 27.01.2012 and having regard to the relevant facts and circumstances of the case, the following order is being passed.

4. It is apparent from the records that the property which was attached sought to be sold in the execution proceedings in E.P.No.14 of 2008 and when the property was brought for sale after the sale proclamation, nobody was there to bid and participate in the Court auction. Therefore,

after crossing several hearings, ultimately the decree holder had filed an application in E.A.No.5 of 2011 under Order XXI Rule 66 r/w. Section 151 of the Code of Civil Procedure to reduce the upset price of Rs. 55 lakhs to Rs.45 lakhs.

5. As demonstrated by S.V.Radhakrishnan, this Court is able to understand that originally one execution application in E.A.No.8 of 2010 was allowed on 18.08.2010 reducing the upset price to Rs.55 lakhs. Subsequently the proclamation and sale was posted on 13.10.2010. The order dated 07.01.2011 passed by the executing court reveals that the upset price was already fixed at Rs.55 lakhs and since there was no bidder, it was further reduced to Rs.50 lakhs. Subsequently, the execution petition stood posted to 24.02.2011.

6. Mr.S.V.Radhakrishnan, learned counsel has invited the attention of this Court to page 32 of the typed-set of papers wherein the impugned order dated 27.01.2012 finds a place. In this order, the executing court has observed that "E.A.No.5 of 2011 is allowed. Upset price is reduced from Rs.55,00,000 to Rs.54,00,000/- and sale of proclamation by 30.03.2012 and further hearing by 02.04.2012".

7. In this connection Mr.S.V.Radhakrishnan has contended that as it is found place at Page 27 of the typed-set of papers, the executing court on

07.01.2011 had reduced the upset price from Rs.55,00,000/- to Rs.50,00,000/-. When such being the case, how the executing court could have reduced the upset price from Rs.55,00,000/- to Rs.54,00,000/- in the impugned order and therefore he has further argued that the impugned order itself seems to be non-application of mind and entirely contrary to the earlier order passed on 07.01.2011 and therefore, he has urged this Court to set aside the impugned order.

8. This Court has considered the submission made by Mr.S.V.Radhakrishnan and is of view that the impugned order dated 27.01.2012 itself seems to be erroneous and not in consonance with the earlier order passed on 07.01.2011. Therefore, only on the sole ground, the impugned order is liable to be set aside.

Accordingly, the revision petition is allowed and the impugned order dated 27.01.2012 is set aside and the application in E.P.No.5 of 2011 is remitted back to the executing court for fixing the correct upset price after giving notice to both the parties. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

10.11.2016

Index: Yes/No
Internet: Yes
gpa

To

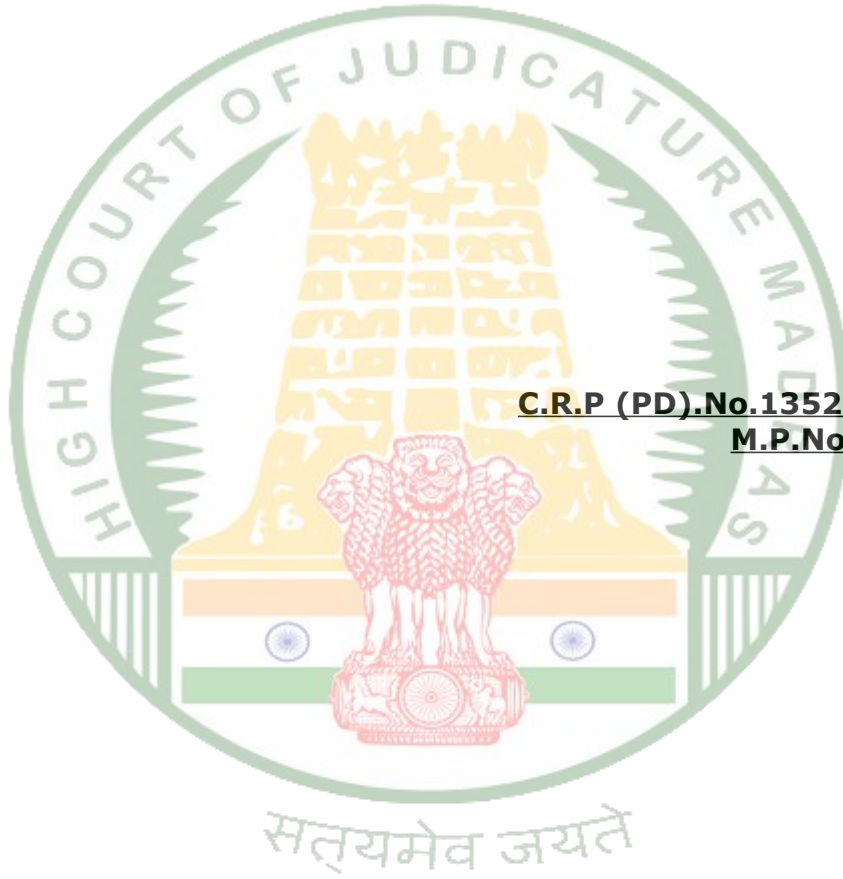
The Additional District Judge
(Fast Track Court III), Coimbatore



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T.MATHIVANAN.J.,

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