

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)Nos.1376, 1377 and 590 of 2011
and
M.P.Nos.1 and 1 of 2011**

CRP(NPD)Nos.1376 and 1377 of 2011

1.C.Govindaraj (Died) .. Petitioner
2.G.Lakshmi

(2nd Petitioner brought on record as LR of the deceased
sole petitioner viz., C.Govindaraj vide order
dated 13.02.2018 made in MP.Nos.1,1 & 1/2012
in CRP.Nos.1376, 1377 & 590/2011)

Vs.

1.B.R.Asokan

2.Thirumalai Chit Funds,
Rep. By its partner S.Kanagaraj ..Respondents

Prayer in CRP(NPD)No.1376 of 2011: Civil Revision Petition filed under Article 227 of the Constitution of India, against the docket order passed in E.A.No.3 of 2011 in E.P.No.126 of 1994 in Arb.No.83 of 1993 dated 28.03.2011 on the file of the learned Principal District Judge, Vellore.

Prayer in CRP(NPD)No.1377 of 2011: Civil Revision Petition filed under Article 227 of the Constitution of India, against the docket order

passed in E.A.No.4 of 2011 in E.A.No.3 of 2011 in E.P.No.126 of 1994 in Arb.No.83 of 1993 dated 28.03.2011 on the file of the learned Principal District Judge, Vellore.

CRP(NPD)No.590 of 2011

C.Govindaraj .. Petitioner

Vs.

1.Thirumalai Chit Funds,
Rep. by its Partner S.Kanagaraj

2..B.R.Asokan ..Respondents

Prayer in CRP(NPD)No.590 of 2011: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 05.04.2002 passed by the learned Sub-Judge, Vellore in E.P.No.126 of 1994 in ARB.No.83 of 1993, dismissing the said petition which was closed in the Boycott period and is liable to be set aside.

(All the three CRPs)

For Petitioner : Mr.R.Singaravelan, Senior counsel
for M/s.V.Parivallal

For Respondents : Mr.A.Saravanan

COMMON ORDER

C.R.P.Nos.1376 and 1377 of 2011 are filed by the defendant / Judgment debtor as against the order of delivery made in E.A.No.3 of 2011 on 28.03.2011 and the order allowing E.A.No.4 of 2011 respectively, thereby restoring E.A.No.3 of 2011 (E.A.No.188 of 2002) that came to be dismissed for default on 18.06.2008 by the Learned Subordinate Judge, Vellore.

2.C.R.P.No.590 of 2011 is filed by the defendant/Judgment debtor as against the order of closure of the execution petition in E.A.No.126 of 1994 dated 05.04.2002 by the Learned Subordinate Judge, Vellore.

3.Though separate orders are being passed in the above execution petition and execution applications, the issue involved in this Civil Revision Petitions are one and the same, arising out of E.P.No.126 of 1994. Therefore, this court hereby passes a common order in respect of the above CRPs.

4.The unsuccessful defendant Govindaraj in Arbitration Case No.83 of 1993 is the revision petitioner in all the three Civil Revision Petitions. Originally the 2nd respondent herein namely Thirumalai Chit Funds filed Arbitration Case No.83 of 1993 against the revision petitioner for recovery of chit amount due to the chit fund. In the said arbitration case, award was passed against this revision petitioner on 30.03.1994. Apart from the said Arbitration Case in case No.83 of 1993, two other Arbitration Cases No.82 and 84 also came to be filed against the revision petitioner and in which award was passed against the revision petitioner on 30.03.1994. However, it is found that all these civil revisions are filed as against the Arbitration Award made in Arbitration Case No.83 of 1993 and the corresponding executive petition in E.P.No.126 of 1994.

5.It is evident from records that as against the said Arbitration Award the revision petitioner herein has not filed any appeal proceedings challenging the Arbitration Award. Hence the Arbitration Award passed against the revision petitioner became final. Whereupon to realize the Award amount, the 2nd respondent herein filed execution petition in E.P.No.126 of 1994 before the Sub-Court, Vellore, for attachment and sale of the schedule mentioned properties of the

revision petitioner, so as to satisfy the Award. The revision petitioner however remained exparte and accordingly was set exparte in the execution proceedings and finally the property was found to be attached on 23.04.1995. Thereafter the subject property was put on court auction on 08.02.2002, wherein the 1st respondent herein purchased the property under the Court Auction Sale and in consequence the sale was confirmed on 05.04.2002 and thereby the execution petition itself was closed by the Executing Court.

6. Furthermore the records disclose that after confirmation of the said sale, the 1st respondent herein who is the court auction purchaser filed E.A.No.188 of 2002 before the Sub-Court Vellore for delivery of possession. The said E.A. was dismissed for default on 18.06.2008. Thereupon to restore the E.A.No.188 of 2002 (E.A.No.3 of 2011), the Court auction purchaser/1st respondent herein filed E.A.No.143 of 2008 (E.A.No. 4 of 2011) before the Sub-court, Vellore on 10.07.2008. For want of Jurisdiction, the above said execution application in E.A.No.188 of 2002 and E.A.No.143 of 2008 were transferred from the file of Sub-Court, Vellore to the file of the Principal District Court, Vellore and renumbered and taken on file as E.A.No.3 of 2011 and E.A.No.4 of 2011. Both the execution

applications were tried together, whereas separate order was passed by the learned Principal District Judge, Vellore.

7.The said execution applications were resisted by the revision petitioner on the ground that E.A.No.4 of 2011 (earlier E.A.No.143 of 2008) is barred by limitation. The main objection raised by the revision petitioner to dismiss the said execution application is that he has filed a suit in O.S. No.1075 of 2004 before the District Munsif Court, Vellore to set aside the auction sale conducted vide E.P.No.126 of 1994 in favor of the 1st respondent herein. One another contention of revision petitioner is that since the 2nd respondent's firm ceased to exist, the above petitions are not maintainable. The revision petitioner also filed yet another suit in O.S.No.196 of 2002 before the Sub-Court, Vellore for a declaration to declare the Court Auction Sale held in E.P.No.126 of 1994 is void.

8.The Learned Principal Judge, Vellore on a careful consideration of the contentions put forth by either parties and upon hearing the respective counsels, was pleased to allow E.A.No.3 of 2011 and E.A.No.4 of 2011 by separate order dated 28.03.2011, whereby the Learned Judge restored E.A.No.3 of 2011 and ordered delivery of the

property purchased under Court Auction Sale by the 1st respondent herein. Aggrieved the said order, the revision petitions are filed in C.R.P.Nos.1376 and 1377 of 2011.

9.I heard Mr.R.Singaravelan, learned Senior Counsel for Mr.V.Parivallal, learned counsel appearing for the petitioner and Mr.A.Saravanan, learned counsel appearing for the respondents in all the three Civil Revision Petitions.

10.The learned Senior Counsel for the revision petitioner has vehemently contended that the Learned District Judge without hearing the lower Court Advocate appearing for the revision petitioner was pleased to allow the petition in E.A.No.4 of 2011 and further no speaking order touching on the facts of the case was passed in E.A.Nos. 3 and 4 of 2011. Furthermore, the Learned Senior Counsel contended that the Learned District Judge without considering the civil suit filed by the revision petitioner in O.S.No.575 of 2001 to set aside the sale, has erroneously ordered in the Respondent's application for delivery of property. Another contention put forth by the Senior Counsel is that the 1st respondent's Execution Application in E.A.No.4 of 2011 is not maintainable of law and the same is barred by

limitation. The Court auction sale is obtained in collusion and by committing fraud.

11. In support of his contention, the Learned Senior Counsel has relied upon the following Judgments:

In **2004 (II) MLJ 497** in the case is **Rajendra Kumar –Vs- K.N.V.Natarajan and others**, it is held that “When a sale in execution is inoperative and void, an application by a judgment- debtor to have it declared void and for appropriate reliefs is governed by Art.181 and not Art.166.”

In **2003 (III) CTC 506** in the case is **United India Insurance Company India Ltd –Vs- Rajendra Singh** and others, it is held that “No court or Tribunal can be regarded as powerless to recall its own order if it is convinced that order was wangled through fraud or misrepresentation of such dimension as would affect very basis of claim.”

In **1994 (I) SCC** in this case is **S.P.Chengalvarayana Naidu (Dead) By Lrs –Vs- Jagannath (Dead) by Lrs and others**, it is held that “He can be summarily thrown out at any stage of the litigation. A Judgment or decree obtained by playing fraud on the court is a nullity and non-est in the eye of law. Such a judgment/

decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenging in any court even in collateral proceedings.

In **2007 (III) L.W.20 in this case is Sai Enterprises -Vs- Bhimreddy Laxaiah & another**, it is held that "Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold.

In **2009 (II) L.W.376 in this case is K.J. Prakash Kumar and others -Vs- V.Rasheeda Yasin and another**, it is said that "The Court has to ensure that the Judgment Debtor is duly served with notice in each and every stage of the proceedings, so as to afford him opportunity to make a say before the Court as to the value of the property in order to avoid irremedial injury.

In **1997 (I)L.W. 374 in this case is Athianna Gounder and another -Vs- Kumaraswamy (now deceased) and R.Natarajan and others**, it is held that "Duty of Executing court under R.66(a) to verify whether entire property has to be sold or a sale of a portion will be sufficient to meet the decree amount.

12.Per contra, the leaned counsel for the 1st respondent herein, the Court auction purchaser contented that all the submissions by the Learned Senior Counsel made herein can be raised and considered only in the course of execution proceedings, but not at this stage in the present civil revision petitions. There is no fraud committed in the auction sale. Further, the Learned Counsel for the 1st respondent contended that the pendency of civil suit filed by the revision petitioner is with a view to prolong the issue and the same cannot withstand the order of delivery of the property to the court auction purchaser, the 1st respondent herein. Admittedly in the above referred suit in O.S.No.575 of 2001 there is no stay order or any order restraining the court below from ordering delivery of property. Further the civil suit filed by the revision petitioner, to set aside the sale is a classic instance of a vexatious suit. The 1st respondent herein has filed application in E.A.No.143 of 2008 (E.A.No.4 of 2011) is well within time to restore the E.A.No.188 of 2002 (E.A.No.3 of 2011) which was dismissed for default on 18.06.2008 and application to restore the same was filed on 10.07.2008.

13.This Court has put its anxious consideration to the arguments

advanced on either side, at the first instance it is obvious for this Court to notice the behavior and attitude of the revision petitioner, he remained ex-parte all through the Arbitration proceedings and in the execution proceedings. Pursuance to the ex-parte Arbitration Award, the 2nd respondent herein has filed E.P.No.126 of 1994, so as to realize the Award amount. The revision petitioner was called absent and remained ex-parte in the execution petition too. The conduct of the petitioner herein is a sheer reflection of the petitioner's intention to delay further proceedings. The 1st respondent herein being a court auction purchaser having purchased the property under court auction sale on 08.02.2008, is not in a position to enjoy the property for more than 14 years, because of the vexatious litigation filed by the revision petitioner, besides with other prolonged formalities.

14.The learned Principal District Judge has rightly held that because of the civil suit filed by the revision petitioner, the 1st respondent herein is being prevented from enjoying the fruits of his purchase of the schedule mentioned property. In so far as the question of limitation is concerned, from the forgoing discussion, the 1st respondent herein has filed E.A.No.143 of 2008 to restore the E.A.No.188 of 2002 is well within the period of limitation and this point

is answered against the revision petitioner.

15. In so far as the other contention of the revision petitioner is concerned regarding the framework in the Court auction sale and the alleged collusion between the decree holder and the court auction purchaser, the revision petitioner is entitled to canvass such issues before the execution court in the execution proceedings, whereas not before this Court. Therefore, the above said Judgments relied upon by the revision petitioner is not applicable to the facts and circumstances of the case. The present revision petition is dealing with the issue of order of delivery and the restoration application.

16. At this juncture it is relevant to take into account the legal remedies available under law, to set aside a sale in pursuance of an execution of Decree. It is needless to say that in so far as to set aside the sale of an immovable property, very well an application under order XXI Rule 89 and 92(2) can be made, provided that the conditional deposit is to be made and such application is filed within the prescribed period of limitation. In this aspect, our Hon'ble Apex Court vide its reported Judgment in **AIR 1990 page 933**, have dealt with the scope of limitation for making an application under Order 21,

R-89 and 92 (2) wherein it was held as follows:

“The time for making deposit in terms of rule 89 of order 21 is 30 days and Article 127 of the Limitation Act, 1963 prescribing the period for making an application under R-89 as no relevance to the prescribed time for making the deposit”.

17. In one another Judgment of this Court in **C.R.P(NPD)(MD) No: 2115 of 2008 dated 9.4.2009 in the case of the Secretary, TNSTC – Vs- Chellathankam and 2 others**, after having an elaborate discussion of the above provisions in paragraphs 30, 31 and 31 it is held as follows:

“30. It is to be noted that as per Article 127 of the Limitation Act, the period of limitation is sixty days to set aside the sale in execution of a decree including any such application by a judgment-debtor and the sixty days has been substantiated by Act 104 /1976, S.98 for thirty.

31. Section 137 of the Limitation Act, can come into the operative play for filing any other application for which, no period of Limitation has been provided elsewhere in this

division and the period of limitation is three years which begins to run, when the right to apply accrues.

32. In view of the fact that in the Limitation Act, there is a specific provision namely, Article 127 of the Limitation Act, to set aside the sale in execution of a decree including any such application by judgment- debtor for which the period of limitation is sixty days from the date of sale, this court is of the view that in the present case on hand, Article 127 of the Limitation Act squarely applies and not Article 137 of the Limitation Act and further, in as much as, E.A.No:422 of 2002 has been filed on 5.9.2002 before the lower court long after the confirmation of sale on 18.2.2002, E.A.No:422 of 2002 is not maintainable in law".

18. In view of the above said legal proposition of law, the remedy available to the revision petitioner under Order 21, Rule 89 and 92(2) has not been availed by the revision petitioner before execution court in time as contemplated under the above said provision also. Therefore the revision petitioner has no right or whatsoever to question the court

auction sale which was held in the year 2002 itself.

19.This Court has perused the impugned order of the Court below. A perusal of the impugned order discloses that the learned Principal District Judge has passed a detailed order while deciding E.A.No.3 and 4 of 2011 and therefore the contention of the revision petitioner that the Learned Judge has passed a non-speaking order in the above application is not acceptable.

20.With regard to C.R.P.No.590 of 2011, this Court wonders as to how the registry has numbered the C.R.P., that the revision petitioner is challenging an order dated 05.04.2002 before this Court in the year 2011 i.e., after a lapse of more than 9 years. Hence this court feels that the revision petition in C.R.P.No.590 of 2011 is not maintainable either in law or facts. As against the conformation of sale, sale certificate was being issued to the 1st respondent herein and he has also filed application for delivery of property. The revision petitioner regardless to file necessary application before the execution court, has straight away come before this Court and has challenged the order dated 05.04.2002 in E.P.No.126 of 1994, closing the delivery proceeding. The revision petitioner was set exparte in the execution

petition even as on 30.03.1995 itself. Further from the records, it is noteworthy that the revision petitioner has not chosen to file any application to set aside the ex-parte order passed in the E.P.No.126 of 1994. Therefore the revision petitioner has no right or whatsoever to file C.R.P.No.590 of 2011 and the same hence deserves to be dismissed.

21.As discussed above, the revision petitioner in one way or another has prolonged the proceedings by filing unnecessary cases and thereby prevented the 1st respondent herein/auction purchaser from taking possession of the property purchased by him under court auction sale. Hence, this court finds that the order passed in E.A.No. 4 of 2011 and E.A.No.3 of 2011 by the Learned Principal District Judge, Vellore is just and correct and the same is not warranted interfere by this Court.

22.In the result:

(a) all these Civil Revision Petitions are dismissed and the order passed by the learned Principal District Judge in E.A.No.4 of 2011 and E.A.No.3 of 2011 in E.P.No.126 of 1994 in Arbitration Case No.83 of 1993 dated 28.03.2011

is confirmed;

(b) the learned Principal District Judge, Vellore is hereby directed to proceed with delivery of the petition mentioned property to the 1st respondent herein; and

(c) the said exercise shall be done within a period of one month from the date of receipt of a copy of this order, without giving adjournment to either parties;

(d) after completing the procedure, the learned Judge is directed to file report before this Court within 15 days thereafter. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2017

Speaking order/Non-speaking order
Index:Yes

vs

To

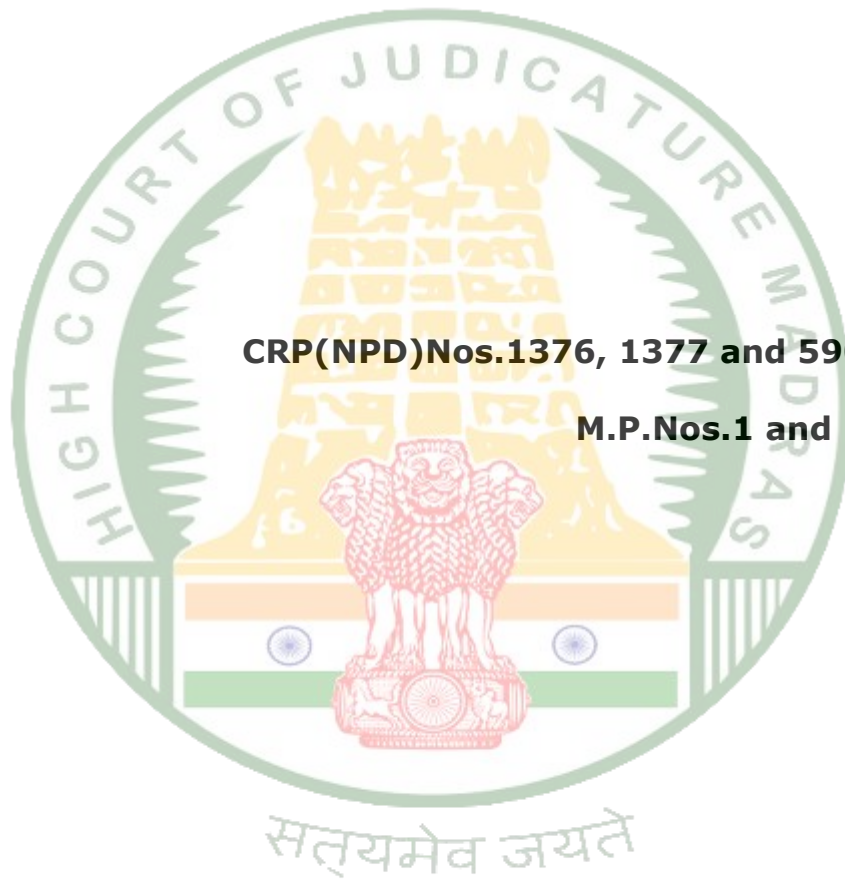
1.The Principal District Judge, Vellore.

2.The Subordinate Judge, Vellore.

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M.V.MURALIDARAN, J.

VS



**CRP(NPD)Nos.1376, 1377 and 590 of 2011
and
M.P.Nos.1 and 1 of 2011**

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**CRP(NPD)Nos.1376, 1377 and 590 of 2011
and
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M.V.MURALIDARAN,J.

After pronouncing the order, the learned senior counsel Mr.R.Singaravelan, appearing for the petitioner in all the civil revision petitions represented that apart from this proceedings, the petitioners already initiated separate proceedings by filing a suit in O.S.No.574 of 2009 and application under Section 47 of C.P.C. are pending and he requested this Court that the above two proceedings may go on without prejudice of the order of dismissal.

2.Considering his request, I am inclined to pass the following order:

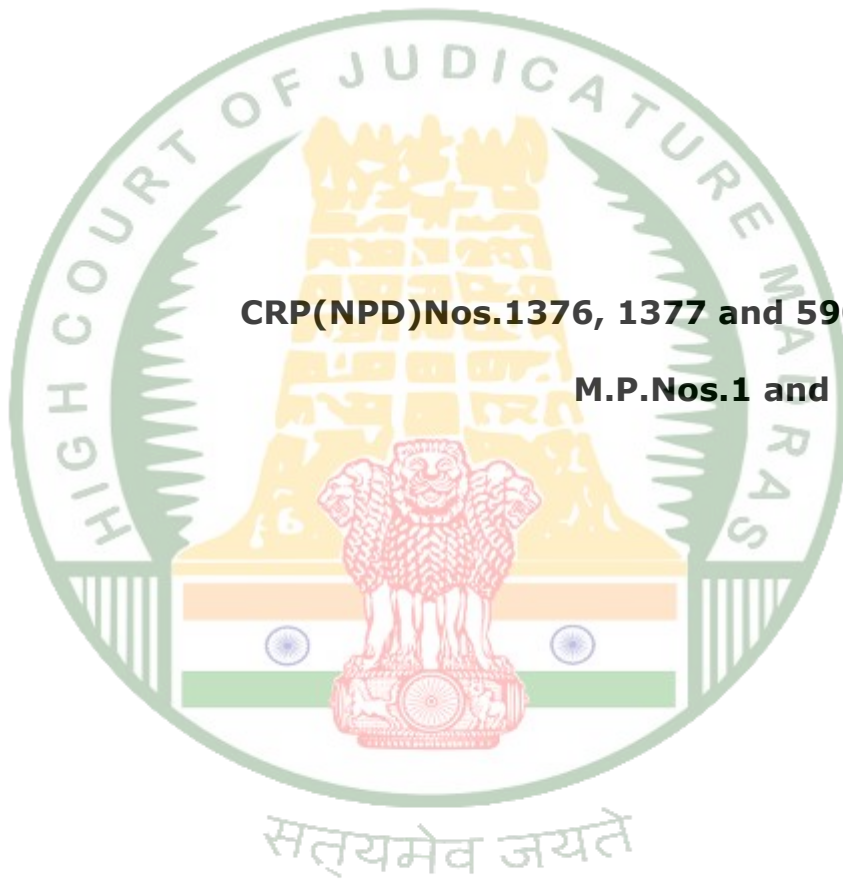
The dismissal of these three civil revision petitions will not be prejudiced in any way to the pending proceedings in O.S.No.574 of 2009 and application filed under Section 47 of C.P.C. and the Courts concern is hereby directed to deal the matter independently.

28.03.2017

vs

M.V.MURALIDARAN, J.

VS



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