

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1770 and 3368 of 2012
& M.P.No.1 of 2012

M/S.Ferro Alloys Corporation Ltd.
Represented by its Regional Manager
No.1 Errabalu Chetty street
Chennai-600 001.

.. Petitioner in
C.R.P.No.1770 of 2012

The Managing Director
Chief Office at
M/S.Sabthagiri Biji Fruit
Processing Pvt. Ltd.
6/7, 7th street
Gopalapuram.

.. Petitioner in
C.R.P.No.3368 of 2012

Vs.

1.Saptagiri Fiji Fruit Processing Pvt. Ltd.
6/7, 7th street, Gopalapuram
Chennai-600 086.

.. 1st Respondent in
C.R.P.No.1770 of 2012

1. Deputy Manager
M/S.Ferro Alloys Corporation Ltd.
No.1 Errabalu Chetty street
Chennai-600 001.

.. 1st Respondent in
C.R.P.No.3368 of 2012

2. M.V.Sanjeevan

.. 2nd Respondent
in both CRPs.

PRAYER: Civil Revision Petitions filed under Section 115 of C.P.C., against the order dated 09.03.2012 made in R.E.A.No.22 of 2011 in R.E.P.No.6 of 2008 in O.S.No.67 of 1986 on the file of the Subordinate Court, Harur.

In C.R.P.No.1770 of 2012:

For Petitioner : Ms.P.T.Asha
for M/S.Sarvabhauman Associates

For R1 : Mr.K.Doraisami
Senior Counsel for
Mr.Muthumani Doraisami

For R2 : Mr.V.Raghavachari

In C.R.P.No.3368 of 2012:

For Petitioner : Mr.K.Doraisami
Senior Counsel for
Mr.Muthumani Doraisami

For R1 : Ms.P.T.Asha
for M/S.Sarvabhauman Associates

For R2 : Mr.V.Raghavachari

COMMON ORDER

The Civil Revision Petitions are filed against the order dated 09.03.2012 made in R.E.A.No.22 of 2011 in R.E.P.No.6 of 2008 in O.S.No.67 of 1986 on the file of the Subordinate Court, Harur.

2. Both the petitioner/decreed holder in C.R.P.No.1770 of 2012 and petitioner/third party in C.R.P.No.3368 of 2012 are challenging the very same order dated 09.03.2012 made in R.E.A.No.22 of 2011.

3. Heard both sides and perused the materials on record.

4. The first respondent in C.R.P.No.3368 of 2012, who is the petitioner in C.R.P.No.1770 of 2012, is the decreed holder and he filed R.E.P.No.6 of 2008 on the file of the Subordinate Court, Harur, Dharmapuri District. The petitioner in C.R.P.No.3368 of 2012, who is the first respondent in C.R.P.No.1770 of 2012, is third party to R.E.P.No.6 of 2008. The petitioner filed R.E.A.No.22 of 2011 under Sections 47(3) and 151 C.P.C. claiming absolute title over the suit property and challenged the Court auction conducted in R.E.P.No.6 of 2008 filed by the first respondent in C.R.P.No.1770 of 2012.

5. According to the petitioner, sale was conducted without following the procedure and there are many irregularities in conducting the sale. The petitioner is absolute owner of property in question having purchased the same in another earlier Court auction sale.

6. The first respondent who is the decreed holder filed counter

affidavit and denied various averments made in the R.E.A. and submitted that auction was conducted as per the procedure and there is no irregularity in the public auction conducted. The second respondent/auction purchaser requested not to confirm the sale and requested to refund the bid amount deposited by him.

7. In view of the contention of the learned counsel for the second respondent withdrawing the offer made by him, the learned Judge dismissed the claim petition filed by the petitioner with liberty to the first respondent/deGREE holder to proceed with R.E.P. for fresh sale and liberty to the second respondent to withdraw the sale amount deposited into the Court less bondage amount.

8. According to the learned counsel for the petitioner/deGREE holder in C.R.P.No.1770 of 2012, the learned Judge erred in setting aside the auction sale, while he dismissed R.E.A.No.22 of 2011 filed by the third party/first respondent in C.R.P.No.1770 of 2012 and petitioner in C.R.P.No.3368 of 2012. The learned Judge failed to see that the second respondent has no right to repudiate the sale after having paid entire sale price. None of the condition prescribed in Order 21 rule 92 of C.P.C. has been made out.

9. As far as C.R.P.No.3368 of 2012 is concerned, the learned Judge has not decided R.E.A.No.22 of 2011 as to whether the petitioner is a successful auction purchaser in earlier Court auction. The learned Judge has failed to exercise his power properly and committed irregularity in dismissing the application filed by the petitioner without considering the same on merits.

10. In the result, C.R.P.No.3368 of 2012 is allowed, impugned order dated 09.03.2012 made in R.E.A.No.22 of 2011 is set aside and the matter is remanded back to the Subordinate Court, Harur, Dharmapuri District, with a direction to the learned Judge to dispose R.E.P. filed by the petitioner/deGREE holder on merits and pass orders in accordance with law.

11. In view of the order passed in C.R.P.No.3368 of 2012 remitting the matter to the learned Judge to consider R.E.P. on merits and pass orders in accordance with law, no order is required to be passed in C.R.P.No.1770 of 2012. Accordingly, C.R.P.No.1770 of 2012 stands dismissed. It is open to the petitioner/deGREE holder in C.R.P.No.1770 of 2012 to raise all his objections before the

learned Judge at the time of hearing R.E.P. No costs. Consequently,
connected Miscellaneous Petition is closed.

18.09.2017

Index :Yes/No

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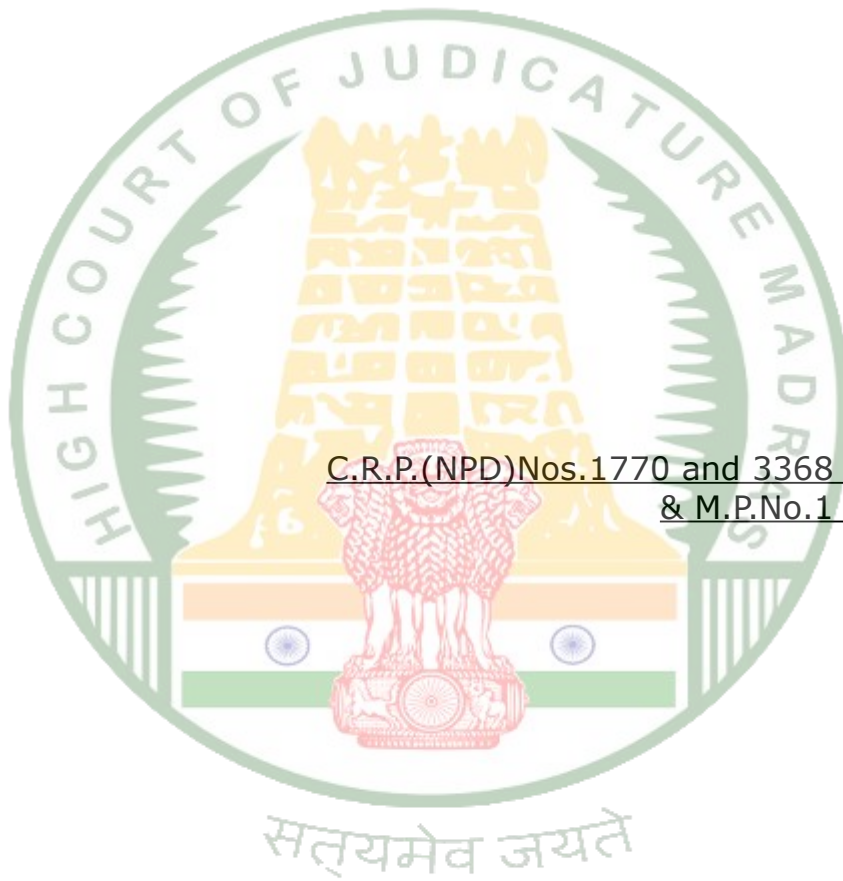
The Subordinate Judge, Harur.



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V.M.VELUMANI,J.

Kj



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