

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1849 of 2012

Dr.M.Y.Abdul Razack

.. Petitioner

Vs.

1. B.M.Selvakumar
2. B.M.Karuppa gounder
3. B.S.Chellappa gounder
4. B.R.Muthusamy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 26.09.2011 made in E.A.No.2 of 2011 in E.P.No.70 of 2010 in O.S.No.29 of 2003 on the file of the Court of the Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur.

For Petitioner : M/s.Meenakshi
for Mr.P.Anbarasan
For R1 : M/s.M.Easan
For R2 : Died
For R3 & R4 : Mr.S.Kingston Jerold

ORDER

This Civil Revision Petition is filed against the fair and decretal

order dated 26.09.2011 made in E.A.No.2 of 2011 in E.P.No.70 of 2010 in O.S.No.29 of 2003 on the file of the Court of the Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur.

2. The petitioner is the judgment debtor and respondents are the decree holders. The respondents filed the suit in O.S.No.29 of 2003, on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur, against the petitioner for specific performance of the agreement of sale dated 03.02.2000. By the judgment and decree dated 05.09.2007, the said suit was decreed. The respondents filed E.P.No.70 of 2010 to execute the decree of specific performance. The petitioner filed an application in E.A.No.2 of 2011, under Order 21 Rule 26 and Section 151 C.P.C for stay of the execution proceedings in the E.P.No.70 of 2010 and for delivery of possession till the disposal of I.P.No.9 of 2001. According to the petitioner, he has filed I.P.No.9 of 2001 on the file of Subordinate Court, Gobichettipalayam. In view of the pendency of the I.P, the present E.P is to be stayed till the disposal of the insolvency proceedings in I.P.No.9 of 2001.

3. The respondents filed counter affidavit and submitted that the agreement of sale is dated 03.02.2000 and suit has been filed in the year 2003. The petitioner did not bring it to the notice of the Court with regard to the pendency of the insolvency proceedings during trial of suit which was filed after filing of I.P.No.9 of 2001. The petitioner did not file any petition for stay of the trial. If petitioner is declared insolvent, official receiver can receive only the balance sale consideration of a sum of Rs.50,000/- and he is not entitled to take possession of the suit property.

4. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, held that Section 59 of Insolvency Act is not applicable. The petitioner has not moved the Insolvency Court for stay of the E.P, which shows the malafide intention of the petitioner and dismissed the E.A.No.2 of 2011.

5. Against the said order dated 26.09.2011 made in E.A.No.2 of 2011 in E.P.No.70 of 2010 in O.S.No.29 of 2003, the present civil revision petition is filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner and respondents 1, 3 and 4 and perused the materials available on record.

7. The petitioner is judgment debtor. When the respondents/decreed holders filed E.P for execution of the decree of specific performance, the petitioner has filed E.A.No.2 of 2011 for stay of the E.P till the disposal of the insolvency proceedings. According to the petitioner, he has filed I.P.No.9 of 2001 and till the disposal of the I.P, the E.P has to be stayed.

8. From the materials on record, it is seen that the respondents have entered into an agreement of sale with the petitioner on 03.02.2000. The respondents filed O.S.No.29 of 2003 for specific performance of agreement of sale dated 03.02.2000. The petitioner appeared in the suit, but did not file any application for stay of the trial till the disposal of the I.P. Similarly, the petitioner has not moved the Insolvency Court for stay of the suit. The petitioner has not produced any material to show that when the I.P was filed and he has not produced the copy of the petition in

I.P.No.9 of 2001. The petitioner has also not stated about the stage of the insolvency proceedings. The learned Judge, considering all these facts and the fact that the suit was decreed granting decree of specific performance in favour of the respondents, held that the petitioner is entitled to only balance sale consideration of a sum of Rs.50,000/-. The learned Judge also held that the intention of the petitioner is only malafide. The learned Judge, considering all the above facts, dismissed the application for stay. There is no irregularity or illegality warranting interference with the order of the learned trial Judge dated 26.09.2011.

9. In the result, the Civil Revision Petition is dismissed. No costs. Since the E.P is of the year 2010, the learned Additional District and Sessions Judge is directed to dispose of the E.P as expeditiously as possible in any event, not later than three months from the date of receipt of a copy of this order.

WEB COPY

17.08.2017

Index: Yes/No
gsa

V.M.VELUMANI, J.

gsa

To

The Additional District and Sessions Judge,
Fast Track Court No.IV,
Coimbatore, Tiruppur.



C.R.P.(NPD)No.1849 of 2012

WEB COPY

17.08.2017