



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD)No.455 of 2017
and
C.M.P(MD)No.2228 of 2017

Mr.C.T.Subrmainyan

... Petitioner

vs.

M/s.Abirami Hire Purchase Finance (P) Limited,
Through it's Managing Director,
Mr.VR.Ramasamy,
S/o.Late.K.R.M.Veerappan
Abirami Illam,
D/o.No.151/186-2, 4th cross street,
1st main road, Gomathipuram,
Madurai.

... Respondent

Petition filed under Article 227 of the Constitution of India, to direct the District Court, Sivagangai for numbering the unnumbered E.A in E.P.No.117 of 2017 in O.S.No.4 of 2011 on the file of Honourable District Court, Sivagangai and to allow the above Civil Revision Petition.

For Petitioner : Mr.M.Vijayarathinam

ORDER

The revision petitioner is the judgment debtor, who is facing execution proceedings pursuant to the decree passed against him for recovery of Rs.16,43,744/-.

2.The contention of the revision petitioner is that without following the procedure contemplated under Order 21 Rule 64 CPC, the Execution Court is proceeding with the sale of the immovable property attached and therefore, an application was filed under Order 26, for appointing an Advocate Commissioner to measure the property and to fix the value of the property.

3.The Trial Court has returned the said application with an endorsement, ''How this petition is entertainable at this stage in EP proceedings. To be stated''.

<https://hcservices.ecourts.gov.in/hcservices/>

4.Aggrrieved by such return, this revision petition is filed



alleging that without following the procedure laid down under Order 21 Rule 64 CPC, the Execution Court is proceeding with the sale of the property, which is ten-fold more than the decree amount.

5. Though this Court finds no reason to interfere in the revision petition filed against the return endorsement made by the Trial Court, it could see some merit in the point canvassed by the learned counsel for the petitioner that when two items of property been attached pursuant to the decree, the decree holder has emphasised to put the first item of the property into auction, which is worth even according to the decree-holder Rs.16 Crores. Whereas, the second item of property is worth only Rs.60 Lakhs. When the decree amount is only Rs.16,43,744/- under Order 21 Rule 64 CPC, the Court has to proceed against the property which is nearer to the decree amount so as to satisfy the decree. It is not the option of the decree-holder to proceed against the higher value property, when a lower value property is available and already been attached. The learned counsel for the petitioner submits that in this regard, already a counter has been filed and no order so far passed.

6. In the abovesaid circumstances, this Court is of the opinion that the revision petition is pre-matured and liable to be dismissed. However, the Trial Court is directed to proceed in accordance with the procedures laid down under Order 21 CPC and to ascertain the true value of the property been attached and likely to be subjected to court auction sale and any objection raised by the judgment debtor shall be dealt in accordance with law before proceeding with auction sale.

With this observation, this Civil Revision Petition is dismissed. No costs. Consequently, C.M.P(MD)No.2228 of 2017 is closed.

sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

The District Judge,
Sivagangai.

+1 cc to M/s.M.Vijaya Rathinam, Advocate in SR.No. 13363

nbi

CSL/BS/15.03.2017 : 2P/3C

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