

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. NPD No.3142 of 2014
and M.P.No.1 of 2014**

Judgment reserved on 11.12.2017	Judgment pronounced on 03.01.2018
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1.Seetha Arunachalam
2.Chandra Arunachalam
3.Meena Meyappan

...

Petitioners

Vs

1.The Andhra Bank Limited
17, Mills Road, Coimbatore
Rep.by its Chief Manager

2.The Kaleeswara Mills Limited
A limited company having registered office
at Kalayar Koil
Ramanathapuram District.

P.S.Somasundaram Chettiar (died)

3.Jayalakshmi Sathappan @ S.J.Lakshmi

4.Abiramani Sathappan

5.Jagan Somasundaram

6.S.Krishnakumar

...

Respondents

[R6 impleaded vide order of court
dated 28.08.2014 made in M.P No.2
of 2014 in CRP (NPD) No.3142 of 2014]

Civil Revision Petition is filed under Section 115 of CPC against the order and decretal order dated 22.04.2014 made in E.P.No.95 of 1978 in O.S.No.403 of 1976 on the file of the Principal Sub Court, Coimbatore.

For Petitioners : Mr.D.Selvam for
Mr.S.Thirumavalavan
For Respondents : Mr.P.Veeraraghavan for R1
Not ready in notice
regarding R2.
Mr.T.V.Ramanujam,
Senior Counsel for
M/s.R.Ramya for R3 to R5
Mr.K.K.Sivashanmugam,
Caveat counsel for R6

ORDER

This Civil Revision Petition is filed against the order and decretal order dated 22.04.2014 made in E.P.No.95 of 1978 in O.S.No.403 of 1976 on the file of the Principal Sub Court, Coimbatore.

2. The petitioners/judgment debtors are respondents 3 to 5, the first respondent / decree holder is the petitioner, the second respondent is the first respondent and the respondents 3 to 5 are

the respondents 6 to 8 in E.P.No.95 of 1978. The 6th respondent is the son of Late Shanmugam Chettiar, the auction purchaser.

Facts of the case :-

3. The first respondent filed O.S.No.403 of 1974 against the second respondent herein, P.S.S.Somasundaram Chettiar, The Kaleeswara Mills Limited (in Liquidation rep. by the Official Liquidator) and the Tamil Nadu Textile Corporation Ltd. for recovery of money. The said suit was decreed exparte on 15.04.1976. The first respondent filed E.P.No.95 of 1978 to realise the decretal amount by attachment of sale of eight items of the properties. The 8th item was the absolute property of Mr.P.S.S.Somasundaram Chettiar (hereinafter referred to as 2nd defendant). On 06.09.1979, one Shanmugam Chettiar, the father of the 6th respondent herein purchased Item No.8 for Rs.6,26,000/- in the court auction sale. The second defendant and his son Sathappan filed E.A.Nos.418 of & 419 of 1983 respectively, under Order XXI Rule 90 CPC, to set aside the action sale dated 06.09.1979.

3(a) According to the second defendant and his son Sathappan, the public auction was not held as per the procedures and number of irregularities were committed by the first respondent. The first respondent and second defendant colluded together and the property was sold for a very low amount. The above contentions were considered by Sub Court, Coimbatore and by order dated 10.10.1985, both the E.As were dismissed. Challenging the order dated 10.10.1985 passed in E.A.No.419 of 1983, Sathappan, son of second defendant filed CMA No.771 of 1985 before this Court. This Court, by order dated 08.10.1990, dismissed the said CMA. Sathappan, son of second defendant preferred LPA No.100 of 1991 against the order passed in CMA No.771 of 1985. A Division Bench of this Court, by judgment dated 24.08.1998, dismissed the said LPA No.100 of 1991 as not maintainable.

3(b) The said Sathappan preferred appeal before the Hon'ble Supreme Court in Civil Appeal No.689 of 1998. By judgment dated 07.10.2004, the Hon'ble Supreme Court allowed the Civil Appeal holding that LPA is maintainable and remanded the matter back to this Court. By judgment dated 13.03.2006, the Division Bench of

this Court dismissed the LPA after remand. Meanwhile, the second defendant filed O.S.No.824 of 1987 on the file of Sub Court, Coimbatore for mandatory injunction directing the Union of India and National Textile Corporation to discharge the decretal liability in O.S.No.403 of 1974, to declare the sale in E.P.No.95 of 1978 as void and for other reliefs, which was subsequently transferred to II Additional District Munsif Court, Coimbatore and re-numbered as O.S.No.2976 of 1996. In the said suit, M/s.Krishna Ginning Factory was the 6th defendant. The said M/s.Krishna Ginning Factory filed O.S.No.2977 of 1996 on the file of Sub Court, Coimbatore for declaration of title of 8th item of the suit property. By judgment and decree dated 13.06.2001, both the suits were dismissed.

3(c) Against the order of dismissal dated 13.06.2011 made in O.S.Nos.2976 & 2977 of 1996, the second defendant filed A.S.No.170 of 2001 and M/s.Krishna Ginning Factory filed A.S.No.148 of 2001, respectively. By judgment dated 18.12.2003, the Appellate Court dismissed both the appeals. The second defendant filed S.A.No.121 of 2006 against the dismissal order made in A.S.No.170 of 2001 and M/s.Krishna Ginning Factory filed S.A.No.293 of 2005 against the dismissal order made in A.S.No.148 of 2001. This Court, by judgment dated 27.01.2006

dismissed the S.A.No.293 of 2005 filed by M/s.Krishna Ginning Factory and by order dated 09.03.2006, admitted S.A.No.121 of 2006 filed by the second defendant. In CMP No.6662 of 2006 in S.A.No.121 of 2006, this Court by order dated 26.04.2006 granted stay of all further proceedings in E.P.No.95 of 1978 on condition that the second defendant deposits a sum of Rs.7,97,944.20 together with cost of the suit within a period of eight weeks.

3(d) In compliance of the order of this Court dated 26.04.2006 made in CMP No.6662 of 2006 in S.A.No.121 of 2006, on 07.06.2006, the second defendant deposited a sum of Rs.8,62,663/-. Further, on 01.09.2006, the second defendant paid a sum of Rs.15,38,875/- to the first respondent by way of Pay Order, being the interest payable from the date of suit till the date of payment, as per the calculation memo furnished by the first respondent. The first respondent filed full satisfaction memo into the court. The auction purchaser Shanmugam Chettiar died and the 6th respondent herein was impleaded as respondent in S.A.No.121 of 2006. By judgment dated 11.10.2013, this Court dismissed the S.A.No.121 of 2006 confirming the dismissal of A.S.No.170 of 2001 filed by the second defendant. Both the second defendant and his son Sathappan died. Their legal heirs are petitioners and

respondents 3 to 5 in this Civil Revision Petition and are impleaded as respondents 3 to 8 in E.P.No.95 of 1978.

3(e) On 22.04.2014, the first respondent filed a memo praying for confirmation of sale of item No.8 in E.P. in favour of the 6th respondent herein who is the son of auction purchaser and also prayed for (i) liberty to file cheque petition to withdraw the amount of Rs.21,78,816/- which is in court deposit, paid by the auction purchaser and (ii) liberty to the petitioners and respondents 3 to 5 to file cheque petition for receipt of Rs.8,62,663/- deposited by the second defendant. The Executing Court, by order dated 22.04.2014, recorded the memo confirming the sale with regard to Item No.8 and ordered to issue sale certificate and closed the EP.

4. Against the said order dated 22.04.2014 made in E.P.No.95 of 1978 in O.S.No.403 of 1976, the present Civil Revision Petition is filed by the petitioners.

5. The learned counsel for the petitioners contended that the second defendant has paid the entire decretal amount in the suit claimed by the first respondent together with interest to the credit of the suit as well as to the first respondent. The first respondent

accepted the payment as full and final settlement and issued full satisfaction receipt. The first respondent, through his counsel filed full satisfaction memo stating the receipt of decretal amount. In view of the payment of entire decretal amount, the Executing Court erred in confirming the auction sale in view of subsequent event namely discharge of loan amount by judgment debtor. The Executing Court, without applying its mind, without considering the materials on record, confirmed the sale. No sufficient opportunity was given to the legal heirs of the judgment debtor before confirming the sale. The order of the Executing Court is void in the eye of law as the entire suit claim was paid and the first respondent filed full satisfaction memo. The Executing Court failed to consider the memo filed by the judgment debtor on 08.06.2006 stating about deposit of suit claim as per the order of this Court. The Executing Court failed to consider the memo dated 09.04.2014 filed by 3rd petitioner and respondents 3 to 5 wherein they have categorically stated that the entire decretal amount is discharged and continuing E.P is without any valid reason. The order of the Executing Court confirming the sale is not a speaking order and it is not a judgment in the eye of law.

6. The learned Senior Counsel for the appearing for the respondents 3, 4 and 5 contended that the entire decretal amount was paid by the second defendant and the first respondent/ decree holder has filed full satisfaction memo. Having filed full satisfaction memo, the first respondent is not entitled to proceed with E.P. The first respondent/decreed holder has received the entire decretal amount and in equity, the auction sale cannot be confirmed. It is open to the auction purchaser to get the refund amount deposited by him into the court.

6(a) In the SLP No.13958 of 2014 filed by the legal heirs of the second defendant, the first respondent has admitted before the Hon'ble Supreme Court, the complete satisfaction of decretal amount, based on which the Hon'ble Apex Court permitted the legal heirs of the second defendant to withdraw the SLP with liberty to file review petition before this Court. The auction purchaser has not pleaded that there is collusion between the decree holder and judgment debtor and is not entitled to confirmation of sale and issue of sale certificate. The first respondent has realised the entire decretal amount from the second defendant and in equity, the legal heirs of second defendant are entitled to the property in question.

7. The learned counsel appearing for the first respondent contended that the first respondent did not receive the amount from the second defendant towards decretal amount. The second defendant, in CMP No.6662 of 2006 in S.A.No.121 of 2006 gave an undertaking to deposit a sum of Rs.7,97,994.20 to the credit of E.P.No.95 of 1978, as a condition for granting stay. This Court, by order dated 26.04.2006, granted stay on condition that the second defendant deposits the above said amount. Subsequently, this Court, by judgment dated 11.10.2013, dismissed the S.A. No.121 of 2006 filed by the second defendant. This Court did not pass any order with regard to the satisfaction of the decree passed in O.S.No.403 of 1974. The said order directing second defendant was passed in another suit filed by the second defendant. The first respondent filed memo of full satisfaction only in respect of the amount deposited by the auction purchaser and not with regard to the amount deposited and paid by the second defendant. The amount paid by the second defendant directly to the Bank is not to the credit of O.S.No.403 of 1974. The first respondent filed E.P. for sale of the 8th item of the property belonging to the judgment debtor. Only item No.8 was sold in the public auction and decretal amount was satisfied by sale of 8th item.

8. The learned counsel appearing for the 6th respondent contended that the first respondent has filed E.P to realise the amounts as per the valid decree. The said decree is in force. The judgment debtors have not got the said decree set aside. The sale of the property was validly held following all the procedures contemplated under Civil Procedure Code. A sale validly held can be set aside only if the judgment debtor or anybody claiming interest in the property by depositing 5% of purchase money to be paid to the purchaser and depositing the amount mentioned in the proclamation of sale. The judgment debtors may seek for setting aside the sale on the ground of material irregularity or fraud in publishing or conducting sale. Further, the judgment debtor has to prove that he suffered substantial injury by reason of irregularity or fraud. The judgment debtor cannot seek for setting aside the sale on any ground when he could have taken such a ground on or before proclamation of sale is settled.

8(a) In the present case, the second defendant and his son Sathappan filed E.A.Nos.418 & 419 of 1983 under Order XXI Rule 90 CPC to set aside the auction sale. They raised the irregularities in conducting the sale in publishing proclamation of sale and that selling the property for a meagre amount, much less than the

market value of the property. The Executing Court, considered all the objections and dismissed the applications on merits by giving valid reasons. All further proceedings taken by the second defendant and Sathappan were dismissed confirming the order of the Executing Court, rejecting the prayer of second defendant and Sathappan to set aside the sale. As per Order XXI Rule 92 CPC, when no application is filed by judgment debtor or persons interested in the property sold, under Order XXI Rule 89 or 90 or when such application was dismissed, the court has to confirm the sale and the said sale becomes absolute.

8(b) In the present case, when E.A.Nos.418 and 419 of 1983 filed by the second defendant and his son Sathappan were dismissed by the Court, the auction sale is confirmed and the sale has become absolute. Any subsequent payment in full satisfaction of the decree by second defendant will not vitiate the auction sale. The learned Judge has rightly confirmed the sale in favour of the 6th defendant and directed to issue the sale certificate. The second defendant has paid the amount voluntarily after the entire amount was deposited by auction purchaser towards decretal amount. The said payment by judgment debtor is in extraneous circumstances. In the suit filed by the second defendant, the auction purchaser who

purchased the suit property in the court auction sale on 06.09.1979 was not called upon at the time of payment by the second defendant directly to the first respondent Bank on 26.04.2006. Therefore, the auction purchaser could not make any objection.

8(c) This Court, while dismissing the Second Appeal, did not pass any order with regard to payment made by the second defendant voluntarily in CMP No.6662 of 2006 filed in the S.A.No.121 of 2006 or set aside the auction sale. The auction sale was conducted in the year 1976, the judgment debtor voluntarily paid the amount in the year 2006 which will not take away the accrued interest of the auction purchaser. The confirmation of sale is automatic after dismissal of E.A.Nos.418 & 419 of 1983 filed by the second defendant and his son Sathappan. There is no necessity to pass detailed order when the sale is confirmed under Order XXI Rule 92 CPC. The contention of the learned counsel for the petitioner that impugned order is not a judgment, as contemplated under Section 2 (9) of CPC and Order XX Rule 4 (ii) of CPC is untenable in view of Order XXI Rule 92 CPC.

9. The learned counsel appearing for the 6th respondent further contended that after dragging on the proceedings for more than 25 years, the petitioners and respondents 3 to 5 cannot claim relief in equity. On the other hand, in equity, the claim of the petitioners and respondents 3 to 5 has to be rejected and equity is in favour of the 6th respondent only.

10. The learned counsel for the 6th respondent, in support of his contention, relied on the following judgments -

(1) AIR 1967 SC 608 (1) [Janak Raj v. Gurdial Singh and anr.]

14. Let us now examine a few decisions given under the Code of 1908. In Shankar v. Jawaharlal(2) a Full Bench of the Judicial Commissioner's Court at Nagpur went elaborately into the question and came to the conclusion that :

" a private satisfaction of a decree certified in court after the sale of immovable property has been held and before the confirmation of the sale is ordered, does extinguish the decree and prevent the Court from confirming the sale in favour of the auction purchaser, if he be the decree-holder himself, but it does not extinguish the decree and prevent the court from confirming the sale where a third person has purchased the property bonafide at the auction sale."

In Kabiruddin v. Krishna Rao(3) an application to set aside the decree under O.XXI r. 89 was made by the judgment-debtor after the expiry of 30 days from the date of sale. The decree had been satisfied before the date of the application. It was held by the Judicial Commissioner's Court, by a majority, that the lower court was bound to reject the application made under O.XXI r. 89 and therefore to confirm the sale.

18. *In Amhujammal v. Thangavelu Chettiar* (3) it was observed:

"There is no provision in the Code for the cancellation of a sale merely because of the cancellation of the decree and though it is in accordance with justice that a person who has succeeded in appeal should get from the opposite party such restitution as is possible, there is no principle of justice whereby an innocent third party who has purchased in a valid auction held by the Court should be deprived of his property, merely because the decree under which the sale was held has been cancelled in appeal. On general principles the judgment-debtor can look to the decree-holder to give restitution when the decree has been set aside in appeal, but there is no general principle which would give him a similar right to look to a third party who has for good consideration purchased the property sold through the Court."

(1) A.I.R. 1933 Mad. 598. (2) A.I.R. 1938 Nagpur 525.

(3) A.I.R. 1941 Madras 399.

In S. Chokalingam v. N. S. Krishna(1) there was a Letters Patent Appeal out of restitution proceedings in the Sub- Court at Madurai. The first respondent was the judgment- debtor, the second respondent was the decree-holder- purchaser and the appellant was a purchaser from the decree- holder- purchaser. A Division Bench of the Madras High Court observed:

"If the purchaser were to lose the benefit of his purchase on the contingency of the subsequent

reversal of the decree, there will be no inducement to the intending purchasers to buy at execution sale and consequently the property would not fetch its proper price at such sales, and the net result would be that the judgment-debtor would be the ultimate sufferer. This wise policy of protecting the title of the stranger purchaser, even though in any individual case it may work some hardship, is clearly conceived in the interests of the general body of judgment-debtors so that purchasers will freely bid at the auction without any fear of later objection. But in the case of a decree-holder-purchaser the rule is different and in that case the purchase is subject to the final result of the litigation between the decree-holder and the judgment-debtor."

24. For the reasons already given and the decisions noticed, it must be held that the appellant-auction purchaser was entitled to a confirmation of the sale notwithstanding the fact that after the holding of the sale the decree had been set aside. The policy of the Legislature seems to be that unless a stranger auction-purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrower and the creditor alike if sales were allowed to be impugned merely because the decree was ultimately set aside or modified. The Code of Civil Procedure of 1908 makes ample provision for the protection of the interest of the judgment-debtor who feels that the decree ought not to have been passed against him. On the facts of this case, it is difficult to see why the judgment-debtor did not take resort to the provisions of O.XXI r. 89. The decree was for a small amount and he could have easily deposited the decretal amount besides 5 per cent of the purchase money and thus have the sale set aside. For reasons which are not known to us he did not do so.

(2) 2014 (3) LW 27 (SC) [Sadashiv Prasad Singh v. Harendar Singh & Ors.]

12. It is, therefore, apparent that the rights of an auction-purchaser in the property purchased by him cannot be extinguished except in cases where the said purchase can be assailed on grounds of fraud or collusion.

(3) 2009 (1) SCC 86 [Chinnakarupathal and ors. v. A.D.Sundarabai]

4. During the pendency of the said execution proceedings, the surety Ramaswami Gounder died and his widow Rajammal was impleaded as his legal representative. On 14.12.1960, Rajammal moved an application (EA No.148 of 1961) under Order 21 Rule 89 CPC for setting aside the auction sale. But she did not deposit the amount mentioned in the sale proclamation nor the amount equal to 5% of the purchase money, as required under the said rule.

5. By order dated 17.9.1966, her application for setting aside the sale was rejected. Rajammal challenged the said dismissal before the High Court in CMA No.337 of 1966. The High Court by its judgment dated 26.8.1971 dismissed the appeal of Rajammal and confirmed the order of the Executing Court. Rajammal challenged the said judgment in an appeal by special leave before this Court (CA No.382 of 1973). During the pendency of the said appeal, Rajammal moved an application for scaling down the debt and setting aside the auction sale under the provisions of the Tamil Nadu Agriculturists Relief Act, 1938 ('Act' for short). This Court by order dated 7.11.1986 dismissed Rajammal's appeal, but however,

referred the application for scaling down the debt and setting aside the sale under the Act, to the Subordinate Court, Coimbatore, for disposal in accordance with law.

11. Heard the learned counsel appearing for the petitioners, learned counsel for the first respondent, learned Senior Counsel for the respondents 3 to 5 as well as learned counsel for the 6th respondent and perused the materials available on record.

12. Point for consideration in this Civil Revision Petition is ***whether the order of the Executing Court confirming the sale in favour of the 6th respondent and directing issue of sale certificate is correct or not ?***

12 (a) The issue in the present Civil Revision Petition is a long drawn proceedings. From the year 1974 onwards, the proceedings are pending and till now, it has not attained finality. The first respondent filed suit in O.S.No.403 of 1974 against the father of the petitioners and others and a decree was passed on 15.04.1976. The property in question was sold in court auction sale on 06.09.1979. The father of the 6th respondent was the successful bidder in the public auction conducted by the Court. From

06.09.1979, the second defendant and his son filed various petitions before the Executing Court, appeal before the Appellate Court, revision before this Court as well as SLP before the Hon'ble Apex Court. They also filed suits challenging the decree as well as auction sale. In S.A.No.121 of 2006 filed by the second defendant challenging the dismissal of O.S.No.2976 of 1996 and dismissal in A.S.No.170 of 2001, this Court, on the undertaking given by the second defendant, directed him to deposit a sum of Rs.7,97,944.20 as a condition for granting stay. But subsequently, S.A.No.121 of 2006 was dismissed. The said amount was not directed to be deposited as a condition for setting aside the auction sale. The second defendant, after depositing the said amount, also paid certain amounts to the first respondent / decree holder. According to the petitioners and respondents 3 to 5, the said amount was paid in discharge of decretal amount and first respondent issued full satisfaction receipt and also filed full satisfaction memo into the court. This contention was denied by the first respondent.

12(b) According to the first respondent, they did not receive the amount paid by the second defendant in discharge of decretal amount and they did not file full satisfaction memo on receipt of payment by second defendant. On the other hand, the first

respondent has stated that auction purchaser has deposited entire amount on being declared as successful bidder. Only in receipt of the amount deposited by the auction purchaser, the first respondent filed full satisfaction memo into the court. This contention of the first respondent is acceptable on considering the memo dated 22.04.2014 filed by the first respondent. In the said memo, the first respondent has stated the entire facts including payments made by the auction purchaser as well as second defendant. The first respondent in the said memo has prayed for confirmation of sale of Item No.8 in favour of the 6th respondent, the legal heir of the auction purchaser and also prayed for liberty to file cheque petition and to withdraw the amount of Rs.21,78,816/- from the court deposit paid by the auction purchaser.

12(c) The first respondent also has stated that the petitioner and respondents 3 to 5 are at liberty to withdraw the sum deposited by them. In view of the same, the first respondent prayed for recording the full satisfaction memo and to close the E.P with regard to Item Nos.1 to 7. The contention of the learned counsel for the petitioners and respondents 3 to 5 that first respondent has filed memo of full satisfaction as they have received a sum of Rs.8,62,663/- by way of cheque to be issued by the Court and full

satisfaction may be recorded in the above matter is without any merits.

12(d) It is seen from the records that the sum of Rs.8,62,663/- was not withdrawn by the first respondent. Further, there is nothing on record to show that the said memo as well as full satisfaction receipt were filed into court. The memo produced in the typedset of papers by the petitioners does not contain the signature of the first respondent and its counsel. Further, in the full satisfaction receipt, the first respondent has stated that he has received a sum of Rs.15,38,375/- from the second defendant towards full and final settlement of his claim in the E.P. Due to this contradiction and non-payment of amount lying in the E.P., the full satisfaction receipt as well as the full satisfaction memo will not advance the case of the petitioners and respondents 3 to 5. In any event, the Hon'ble Apex Court, in the judgment reported in **2014 (3) LW 27 (SC)**, cited supra, relied on by the learned counsel for the 6th respondent, has categorically stated that rights of auction purchaser cannot be extinguished except on the ground of fraud or collusion.

12(e) Further, in the said judgment, the Hon'ble Apex Court has held that the interest of the auction purchaser in the auctioned property is protected even if the decree based on which auction was held is set aside subsequently. The Hon'ble Apex Court, in paragraph 24 of the judgment reported in **AIR 1967 SC 608**, cited supra, has held that sale in favour of the auction purchaser has to be confirmed even if the decree was set aside subsequent to the auction sale. In the present case, the second defendant and his son Sathappan has filed E.A.Nos.418 & 419 of 1983 under Order XXI Rule 90 CPC to set aside the auction sale. Both the applications were dismissed and all further proceedings initiated by the second defendant and his son Sathappan were also dismissed by the Appellate Court, this Court and the Hon'ble Apex Court. In the judgment relied on by the learned counsel for the 6th respondent, it was held that unless interest of the auction purchaser is protected, there will be no bidders in the auction and it will affect the interest of the borrower as well as creditors. By applying the same principle, the present auction sale cannot be set aside merely because the judgment debtor has deposited and paid the decretal amount after 27 years, subsequent to auction sale and dismissal of application to set aside the sale which was confirmed in further

proceedings initiated by the second defendant and his son Sathappan by the Hon'ble Apex Court.

12(f) The second defendant and his son Sathappan filed applications to set aside the auction sale on the ground of irregularity, fraud and collusion in conducting the auction sale. They have not come out with the application under Order XXI Rule 89 CPC to set aside the auction sale by depositing 5% of sale price and decretal amount, as mentioned in the proclamation of sale. Having failed to invoke the said provision, it is not open to the petitioners and respondents 3 to 5 to contend that the entire amounts due under decree has been paid and sale cannot be confirmed. In CMP No.6662 of 2006 in S.A.No.121 of 2006, this Court permitted the second defendant to deposit the amounts to the credit of execution petition as a condition for stay of further proceedings, based on the undertaking given by the second defendant. Subsequently, the said Second Appeal was dismissed. From the materials on record, it is seen that the second defendant has suppressed the fact that the E.A.No.418 of 1983 filed him and E.A.No.419 of 1983 filed by his son Sathappan under Order XXI Rule 90 CPC to set aside the auction sale were dismissed and also dismissal of further proceedings initiated by the second defendant and his son. The

second defendant, suppressing the above facts in S.A.No.121 of 2006 has obtained stay of E.P. by giving an undertaking that he would deposit the decretal amounts and costs of the suits in the year 2006, when the auction sale was concluded on 06.09.1979.

12(g) In view of the above facts, the petitioners and respondents 3 to 5 cannot seek for recording the full satisfaction and dismissing the E.P. The auction purchaser, the father of the 6th respondent purchased the property in the court auction held on 06.09.1979 and having deposited the sale price, is entitled to protection of his interest, as held by the Hon'ble Apex Court in the judgment cited supra.

12(h) This Court did not pass any orders restraining the first respondent from proceeding with the execution petition or restraining the Executing Court from following the procedures contemplated under Order XXI Rule 92 CPC. In view of the above two judgments of the Hon'ble Apex Court cited supra, relied on by the learned counsel for the 6th respondent, it is clear that there is no irregularity in the order of the Executing Court in confirming the auction sale in favour of the 6th respondent. After court auction sale, the judgment debtor or his legal heirs have right to deposit or

pay the amounts due and seek for setting aside the auction sale. The remedy available to the judgment debtor to set aside the auction sale is by filing application under Order XXI Rule 89 or 90 CPC. Having filed such an application and having failed in getting favourable orders, it is not open to the judgment debtor or his legal heirs to seek to set aside the auction sale on the ground that they have paid the entire decretal amount. The remedy now available to the petitioner and respondents 2 to 5 is to get the amount from court deposit and refund of amount paid directly to the first respondent.

13. In the result, this Civil Revision Petition is dismissed as devoid of merits. It is open to the petitioners and respondents 2 to 5 to file petition to withdraw the amount deposited by the second defendant and seek refund of the amount paid directly to the first respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2018

rgr

Index : Yes/No

To

The Principal Subordinate Judge,
Coimbatore.

V.M.VELUMANI, J.



**Pre-delivery Order in
C.R.P.(NPD) No.3142 of 2014**

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