



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.07.2018

DELIVERED ON : 07.09.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.2578 of 2017

and

CMP(MD)No.11941 of 2017

M.Peter

.. Petitioner/Petitioner/
Third Party Auction Purchaser

VS

1. Indian Overseas Bank,
rep. by its Manager,
Main Branch, Anna Nagar,
Door No.133, Palace Road,
Madurai.

2. P.Udhaya Baskar
Proprietor - M/s.P.C.Enterprises,
Door No.9, Subramaniapillai Street,
S.S.Colony,
Madurai - 625 016.

3.P.Rajeswari

4.P.Meenambal

5.P.Balakrishnan

.. Respondents

prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the order 03.08.2017 passed in E.A.No.266 of 2014 in E.P.No.83 of 2006 in O.S.No.775 of 1990 on the file of the II Additional Sub Court, Madurai.

For Petitioner : Mr.R.V.Rajkumar

For Respondents : Mr.N.Dilipkumar (for R1)

No Appearance (for R2 to R5)

ORDER

The petitioner who is a third party auction purchaser is aggrieved by the order of the Executing Court dated 03.08.2017 passed in E.A.No.266 of 2014 in E.P.No.83 of 2006 in O.S.No.775 of 1999 declining to restore E.P.No.83 of 2006, which was terminated on 16.06.2014 by recording full satisfaction memo filed by the 1st respondent.



2. According to the petitioner, he is a third party auction purchaser of the property mentioned in E.P.No.83 of 2006 held on 20.01.2009. The petitioner also deposited the entire sale amount into the Court, however, the sale was not confirmed. Meanwhile, the decree-holder and the judgment-debtor colluding with each other without giving notice to the petitioner, have filed a memo dated 16.06.2014 to record full satisfaction and on the basis of the memo, the Executing Court terminated E.P.No.83 of 2006. Since the order of the Executing Court dated 16.06.2014 is without notice to the petitioner and since the judgment-debtor had failed to deposit the decree amount, poundage and sale commission before the Court, the petitioner had filed E.A.No.266 of 2014 to set aside the order dated 16.06.2014 and to restore E.P.No.83 of 2006 on its file.

3. Opposing the prayer of the petitioner, the 1st respondent filed the counter.

4. Upon consideration of the rival submissions, the Executing Court dismissed E.A.No.266 of 2014 holding that on the date when the auction was held, the respondents 3 to 5 have filed claim petition and pending claim petition, the auction has been conducted and also the sale has not been confirmed. The Executing Court also held that the decree-holder has filed full satisfaction memo to record full satisfaction of the decree and therefore there ends the matter.

5. Assailing the impugned order, the learned counsel for the petitioner submitted that the Executing Court exceeded its jurisdiction in terminating E.P.No.83 of 2006 on the memo filed by the decree-holder without knowledge of the petitioner and therefore E.A.No.266 of 2014 filed for re-hearing is liable to be interfered with. He would submit that the order passed by the Executing Court terminating the proceedings is without jurisdiction as there is no provision under Order 21 of CPC to close the proceedings by simply recording the memo especially when the property was sold to the petitioner by the Court itself and that the petitioner was not heard before passing such order. Hence, prayed for setting aside the order of the Executing Court.

6. Reiterating the order of the Executing Court, the learned counsel for the 1st respondent submitted that there is no error in the order impugned and therefore, the same needs no interference.

7. I heard Mr.R.V.Rajkumar, learned counsel for the petitioner and Mr.N.Dilipkumar, learned counsel for the 1st respondent and also perused the materials available on record. No



8. It appears from the typed set of papers available on record that the petitioner is the Court auction purchaser of the property mentioned in E.P.No.83 of 2006 and pursuant to the sale, he had deposited the entire sale amount into the Court, however, the sale has not been confirmed for the reason that the claim petition filed by the respondents 3 to 5 was pending. However, on 16.6.2004, recording full satisfaction memo filed by the decree-holder, the Executing Court terminated E.P.No.83 of 2006. Admittedly, no notice was given to the petitioner by the Executing Court before terminating E.P.No.83 of 2006 after recording full satisfaction memo. There is no whisper in the order impugned as to issuance of notice to the petitioner before terminating E.P.No.83 of 2006.

9. The Executing Court while dismissing the petition of the petitioner observed that when the claim petition was pending, the auction took place and therefore, the sale held is not a valid sale and also the sale has not been confirmed by the Court.

10. According to the petitioner, the claim petition in E.A.No.947 of 2008 was dismissed as not pressed by the claimant and the auction has been conducted at that stage only and that on 07.7.2014, the petitioner had also filed memo to that effect, however, the Executing Court has not considered the same and closed the E.P.No.83 of 2006 on 16.06.2014.

11. As is seen from the xerox copy of the certificated copy of E.P.No.83 of 2006 and orders thereon annexed to the typed set of papers, it is seen that the adjudication dated 22.01.2009 recorded by the Executing Court reads thus:

"Property sold to 3rd party for Rs.10,51,000/- 1/4th sale amount of Rs.2,62,750 less poundage of Rs.3156/- balance of Rs.2,31,190/- deposited. The remaining balance of 3/4th amount with N.J.S. to be deposited within 14 days from the date of sale. E.A.No.947 of 2008 claim petition and E.A.No.948 is pending."

12. Thus, it is clear that on the date of sale, claim petition was pending. After the Court auction sale, the matter was also referred to Lok Adalat and the endorsement reveals that the matter was not settled, however, on 17.04.2014, the Executing Court adjourned the matter to 28.04.2014 for filing full satisfaction memo. On 28.04.2014, the Execution Petition was adjourned to 16.06.2014 and on 16.06.2014, the counsel for the petitioner filed full satisfaction memo and recording the same, the petition was terminated.



13. Nothing has been produced by the 1st respondent or the judgment-debtor to show that with the knowledge of the auction purchaser full satisfaction was recorded and also nothing has been produced to show that the judgment-debtor had filed petition to set aside the sale before settling the dues with the decree-holder. The action of the decree-holder and the judgment-debtor in filing the full satisfaction memo without giving notice to the petitioner is legally not sustainable.

14. When the third party participated in the auction and took auction in the Court sale, any petition filed to set aside the sale and/or proceeding to record full satisfaction subsequent to the sale, should be only after notice to the third party auction purchaser. Non confirmation of sale is not a reason for not issuing notice in E.P.No.83 of 2006.

15. It is settled that before passing an order adversely affecting a person, reasonable opportunity of hearing should be given. In the case on hand, the Executing Court has passed an order in E.P.No.83 of 2006 by simply recording the full satisfaction memo filed by the decree-holder without notice of the petitioner. Such an order of the Executing Court shows its non-application of mind and is against the spirit of provisions of Order XXI of Code of Civil Procedure, 1908.

16. The petitioner, who is a third party auction purchaser, purchased the property in Court auction sale conducted as early as 20.01.2009 and remitted the entire sale consideration as provided under Order XXI of CPC and without notice to the petitioner, the Executing Court terminated E.P.No.83 of 2006 which is in violation of principles of natural justice. In order to hear the petitioner auction purchaser and for adjudication of E.P.No.83 of 2006, the impugned order is liable to be set aside.

17. In the result,

(a) The Civil Revision Petition is allowed by setting aside the order passed in E.A.No.266 of 2014 in E.P.No.83 of 2006 in O.S.No.775 of 1990 dated 03.08.2017 on the file of the learned II Additional Sub-Judge, Madurai and E.P.No.83 of 2006 is restored on its file.

(b) The learned II Additional Sub-Judge, Madurai is directed to dispose of E.P.No.83 of 2006 in O.S.No.775 of 1990 on merits by giving opportunity to both the parties within a period of three months from the date of receipt of a copy of this order.

(c) Both the parties are directed to extend their fullest co-operation for early disposal of E.P.No.83



of 2006. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

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/True Copy/

Sub Assistant Registrar(CS-II)

To

The II Additional Sub-Judge,
Madurai.

+1cc to Mr.N.Dilipkumar, Advocate Sr.No.83077

VSV

VB/SKN/SAR2/22.11.2018/5P/3C

order made in
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and
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