

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.R.P. NPD No.316 of 2019

and

CMP Nos.9018 and 2289 of 2019

P. Chandrasekar ... Petitioner

versus

1. Aadhar Housing Finance Ltd.
rep. by Senior Manager,
T. Velmurugan

2. R. Loganathan ... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order of the learned First Additional District Judge of Coimbatore in E.A. No.42 of 2015 in E.P. No.11 of 2009 in O.S. No.540 of 2006 on the file of the Learned 1st Additional District Judge, Coimbatore and allow this Civil Revision Petition.

For Petitioner : Mr.J. Franklin

For Respondents : Mr.V. Balasubramani for R1
Mr.V. Kulandaisamy for R2

ORDER

The above Civil Revision Petition is filed challenging the order passed by the I Additional District Judge, Coimbatore in E.A. No.42 of 2015 in E.P.No.11 of 2009, wherein, the learned Judge has permitted the third party financial institution to withdraw the amount deposited by the plaintiff to the credit of E.P. No.11 of 2009, which constitutes the balance sale consideration due to the defendant by the plaintiff / second respondent herein, in a suit for specific performance in O.S. No.540 of 2006.

2. The first respondent herein had been assigned the loan due by the revision petitioner / defendant to DHFL Vysya Housing Finance Limited. The said DHFL Vysya Housing Finance Limited hereinafter referred as "DHFL Finance" had initiated proceedings under the SARFAESI Act and also taken symbolic possession of the suit property. Meanwhile, the second respondent herein had obtained a decree for specific performance against the revision petitioner and he had also got the sale deed executed in his favour in execution proceedings and had also deposited the entire balance sale consideration to the credit of the suit.. After the loan has been assigned to the 1st respondent herein,

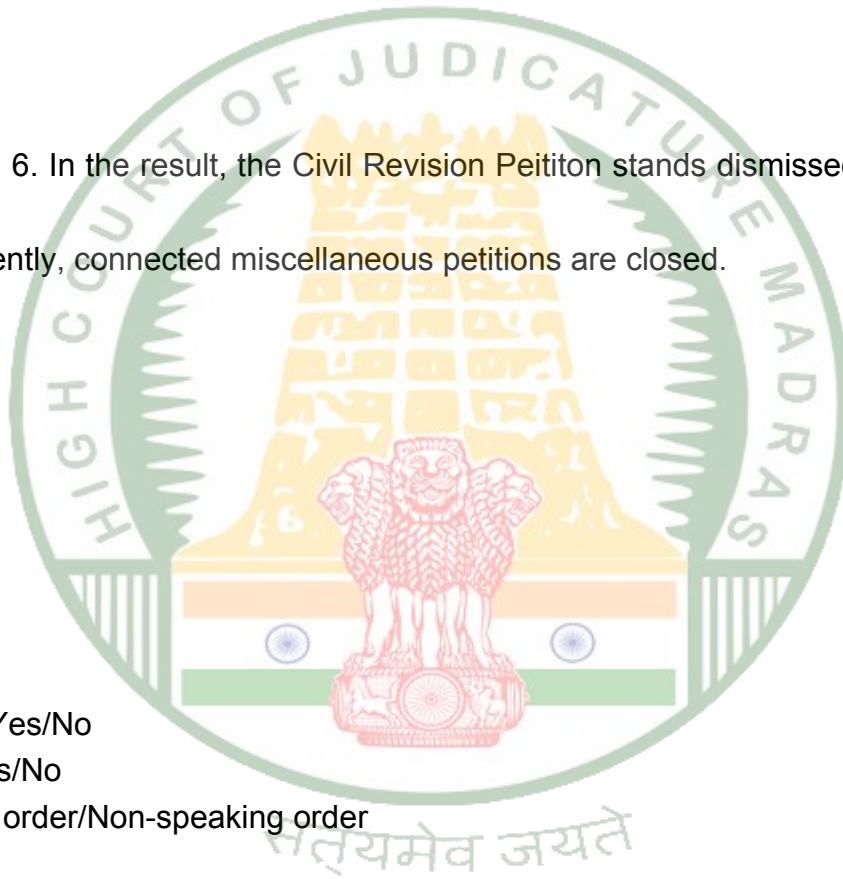
the first respondent have filed E.A. No.42 of 2015 permitting them to withdraw the amount deposited by the second respondent herein to the credit of the said application. Though the said petition had been opposed by the revision petitioner, the Court below has allowed the same on the ground that the revision petitioner has himself admitted that he owes over a sum of Rs.25,65,577/- to the Finance company. The said order is challenged before this Court.

3. Heard Mr.J. Franklin, learned counsel for the revision petitioner, Mr.V.Balasubramani, learned counsel for the first respondent and Mr.V.Kulandaisamy, learned counsel for the second respondent.

4. The learned counsel for the first respondent has produced a copy of the evidence given by the revision petitioner in E.A. No. 27 of 2014, wherein, he has categorically admitted that the agreement of sale between him and the second respondent has been made only with a view to ensuring that the Finance company does not get hold of the suit properties and that it is collusive. This admission is coupled with the admission given in the Court below that the amounts are due to the Finance company.

5. I do not find any infirmity in the order passed by the Court below permitting the Finance Company, who has taken symbolic possession of the property and to whom the revision petitioner admits amounts are due to withdraw the same.

6. In the result, the Civil Revision Peititon stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.



15.04.2019

Internet: Yes/No

Index: Yes/No

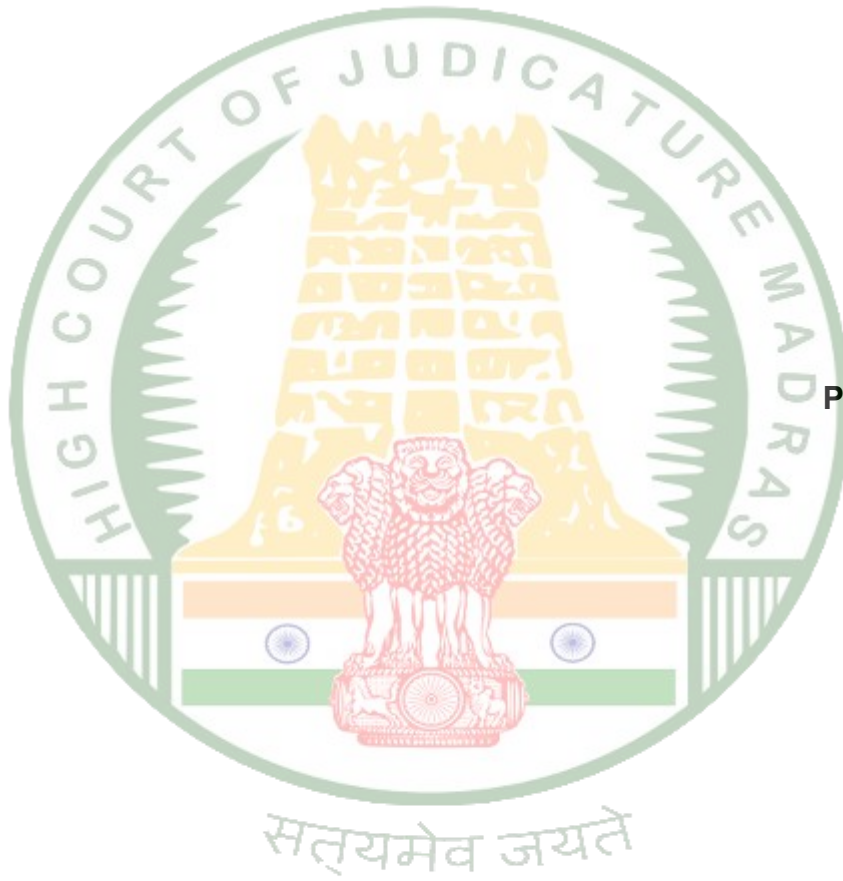
Speaking order/Non-speaking order

vsi2

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To

The First Additional District Judge,
Coimbatore.



P.T. Asha, J.

vsi2

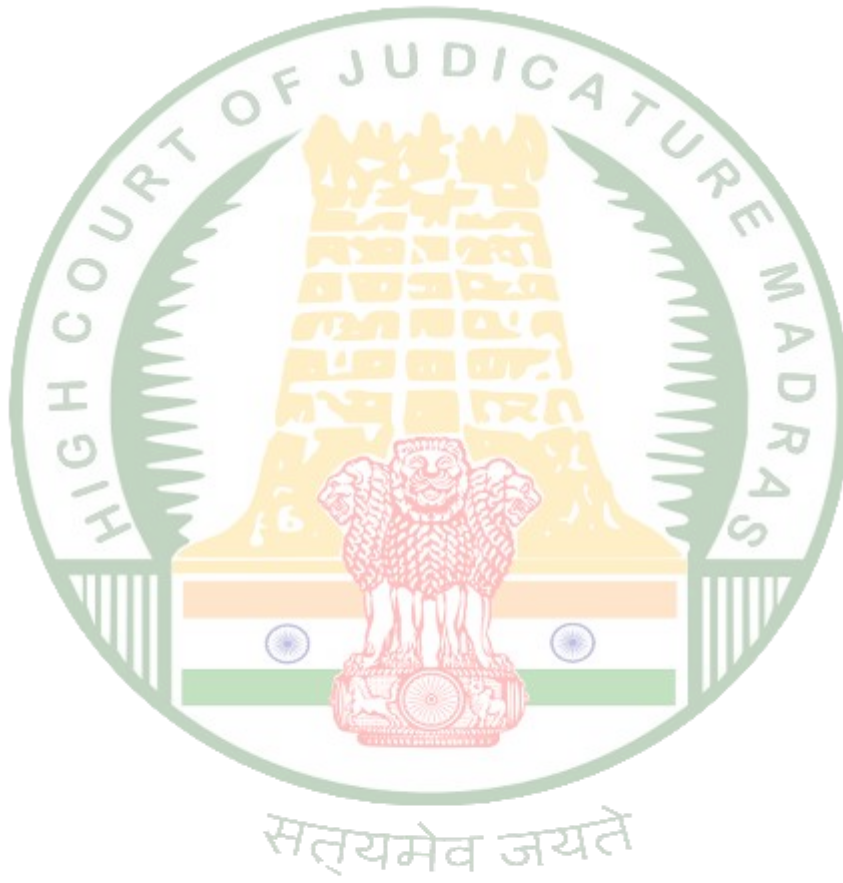
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