IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD). No. 2559 of 2019
and
C.M.P. Nos. 16841 and 16843 of 2019

S.R. Sundaram ... Petitioner

-Vs-

1. Anandha Financial Services,
   No. 406, 1st Floor, C.L. Road,
   Vaniyambadi - 635 751.
   Vellore District.
   (Rep. by Sl. Nos. 2 and 3.

2. V.T. Prabhakaran

3. P. Kavidha

4. The Competent Authority-cum-
   District Revenue Officer,
   Vellore District - 632 009.

5. Manager,
   Repco Bank,
   33, North Usman Road,
   T. Nagar,
   Chennai - 17. ... Respondents

Prayer : Petition filed under Section 115 of Civil Procedure Code against the order dated 24.09.2018 made in I.A. No. 9 of 2018 in I.A. No. 79 of 2013 in O.A. No. 9 of 2005 on the Court of Special Judge under the TNPID Act, Chennai.

For Petitioner : Mr. V. Raghavachari

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed in I.A. No. 9 of 2018 in I.A. No. 79 of 2013 in O.A. No. 9 of 2005 by the learned Special Judge, TNPID Act, Chennai, by order dated 24.09.2018.

2. Heard Mr. V. Raghavachari, learned counsel appearing for the petitioner. Though notice has been served on the respondents and the learned counsel entered appearance for respondents 1 to 3 and their names and the respondents 4 & 5 have also been printed, no one is appearing for the respondents.

3. It is the case of the revision petitioner as projected by the learned counsel for the petitioner that, the petitioner is an auction purchaser in respect of the property, which was given for auction by the

fifth respondent / bank. The property in question originally belongs to respondents 1 to 3 who are the borrowers from the fifth respondent / bank, they seems to have mortgaged the property in question to the fifth respondent / bank and ultimately the property was brought to sale in the year 2004 and the petitioner has been successful in auction purchase and the auction was completed in the year 2004.

4. While so, the application in I.A. No. 79 of 2013 was filed by the respondents 1 to 3 to set aside the sale effected by the fifth respondent / bank. The said I.A. No. 79 of 2013 seems to have been posted for several hearings between 27.10.2017 and 04.06.2018, for the purpose of the presence of District Revenue Officer on behalf of the fourth respondent i.e., Competent Authority for cross-examination. It seems that, in all those days, when the case came up for hearing for cross-examination, no one was cross-examined on behalf of the fourth respondent. Accordingly, instead of closing the evidence i.e., RW1, the Court below had set the petitioner herein exparte, by order dated 04.06.2018. In order to set aside the said order, the revision petitioner filed a petition in I.A. No. 9 of 2018 before the Court below and the said

I.A. has been dismissed by order dated 24.09.2018, as against which, this revision has been filed.

5. Mr. V. Ragavachari, learned counsel appearing for the petitioner has pointed out that, by relying upon the findings given by the learned Judge in the impugned order that, the matter was posted for cross-examination of RW1 for several dates between 27.10.2017 and 04.06.2018, and in all those days, it is the finding of the Court below that, only the District Revenue Officer was present, but he was not cross-examined.

6. In this context, the learned counsel for the petitioner submits that, in so far as the revision petitioner is concerned, he is only an auction purchaser and he had been present before the Court. Only after completion of the cross-examination by the fourth respondent, it is for the revision petitioner to cross examine and to say no cross. The learned counsel would further submit, assuming that, on the particular date, the revision petitioner though was not available and has not chosen to cross-examine RW1, at best, the trial Court could have closed

the evidence of RW1 and accordingly he could have proceeded further, instead, the learned Judge has set the revision petitioner exparte, as if, he had been absent on that day. Therefore, he would submit that, in order to set aside the wrong order dated 04.06.2018, the present application in I.A. No. 9 of 2018 has been filed and the same has not been considered in proper perspective and accordingly, it was dismissed with unsustainable reasons. Therefore, the learned counsel seeks indulgence of this Court in the said impugned order.

7. I have heard the learned counsel appearing for the petitioner and have gone through the materials placed before this Court.

8. In order to appreciate the said contentions of the learned counsel for the petitioner, the relevant portions of the findings given by the learned Judge in the impugned order are hereby extracted:

> "*On 07.09.2017, in terms of paying Rs. 200/- as cost to all respondents on or before 20.09.2017, the said I.A. No. 14 of 2017 was allowed and posted the matter on 21.09.2017. Interestingly, the fifth respondent REPCO*

Bank, who set ex-parte, received the cost of Rs. 200/-, but not attended the Court till now to restore themselves. On 09.10.2017, RW1 the District Revenue Officer was present but not done the cross examination. Hence the case was posted on 27.10.2017, 14.11.2017, 20.11.2017, 13.12.2017, 27.12.2017, 10.01.2018, 19.01.2018, 31.01.2018, 14.02.2018, 21.02.2018, 06.03.2018, 20.03.2018, 09.04.2018, 27.04.2018, 14.05.2018, 04.06.2018. Though the second respondent Competent Authority appeared on 04.06.2018, the petitioner herein chosen to evade the Court proceedings. Hence, this Court on 04.06.2018 set exparte the petitioner along with REPCO Bank.

When the case was posted for the cross-examination of RW1 this petitioner has failed to cross-examine the RW1 and was set exparte. Subsequently he filed a petition to set aside the exparte order in I.A. No. 14 of 2017 and it was allowed on condition to pay Rs. 1000/-, Rs. 200/- to each respondent. Again he failed to cross-examine the RW1. Hence he was again set exparte on 04.06.2018."

9. On perusal of these findings made by the learned Judge in the impugned order, it shows that on 09.10.2017, RW1 was present but was not cross-examined. Hence, the case was posted on so many dates

and the Competent Authority i.e., the fourth respondent herein appeared on 04.06.2018, the petitioner has not chosen to cross-examine and accordingly, the learned Judge given a findings that, the petitioner has evaded the Court proceedings.

10. Assuming that, on 04.06.2018, the petitioner though was present, has not cross-examined, wherein he evaded the proceedings, the best option available before the Court is to close the evidence, without the cross-examination of the petitioner and accordingly could have proceeded further.

11. Therefore, the question of setting him exparte does not arise, as the petitioner has appeared before the Court on 04.06.2018 and that the learned Judge used the language 'chosen to evade the Court proceedings' and he has not specifically stated that, the petitioner is absent on that day. Therefore, in the opinion of this Court, the Court below ought not have set the petitioner exparte.

12. When the said order dated 04.06.2018 was requested to be set aside by filing the present application in I.A. No. 9 of 2018, the learned Judge with a condition to fix the date to cross-examine RW1 could have allowed the same even on costs.

13. When the case is taken up for hearing, the learned counsel for the revision petitioner on instruction states that, if any particular date is fixed by this Court, on that day, if RW1 is present for cross-examination, certainly on behalf of the petitioner, he will be cross-examined without any further adjournments.

14. Moreover, in the very impugned order, the stand of the fifth respondent is that, the plea raised by the second and third respondents has been discussed and ultimately, the learned Judge found that, the issues raised against the fifth respondent could altogether be decided at a later point of time and in order to decide those aspects, the presence of the petitioner / auction purchaser is also necessitated, as he is the present owner of the property in question.

15. Therefore, for all these reasons, this Court feels that, a chance can be given to the revision petitioner to appear before the Court to cross-examine RW1, on a specific date to be fixed in this regard, failing which, the chance of cross-examining RW1 by the petitioner side can be dispensed with.

16. In that view of the matter, this Court is inclined to accept this revision and pass the following order:

"That the impugned order is hereby set aside and the revision is allowed, the matter is remitted and the learned Judge is hereby directed to give one more opportunity to the revision petitioner in the said I.A. No. 79 of 2013 to cross-examine RW1. For the said purpose, I.A. No. 79 of 2013 can be called on by the trial Court on a particular day and on that day, the revision petitioner shall present through his counsel and cross-examine RW1. If the RW1 is not present or not able to present on that day, it is open to the trial Court to fix yet another date, of course after getting consent in this regard from the respondents as well as the revision petitioner and on that day so fixed, the cross-examination of RW1 by the revision petitioner can be completed.

17. Despite, this opportunity given to the petitioner if he has not chosen to utilize the same and has not come forward to cross examine RW1, it is open to the trial Court to close the evidence of RW1 without giving further opportunity.

18. With these observations, the Civil Revision Petition is ordered accordingly. Consequently, connected Miscellaneous Petitions are also closed. No costs.

30.09.2019

Index: Yes / No
Speaking order / Non speaking order

vji

To

1. The learned Special Judge,
   Chennai.

2. The Competent Authority-cum-
   District Revenue Officer,
   Vellore District - 632 009.

3. Manager,
   Repco Bank,
   33, North Usman Road,
   T. Nagar,
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R. SURESH KUMAR, J.

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