

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.2103 of 2018

&

C.M.P.Nos.12623 & 12624 of 2018

U.Selvi

...Petitioner

Vs

G.Kathirvel

... Respondent

Prayer: Civil Revision Petition is filed under Article 226 of the Constitution of India against the order passed by the learned District Judge, Karaikal, Puducherry in E.A.No.14 and 15 of 2018 in E.P.No.72 of 2012 in E.P.No.81 of 2009 in O.S.No.8 of 2009 dated 26.04.2018.

For Petitioner

:

Mr.B.N.Chandrasekar

For Respondent

:

Mr.R.Vasudevan

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ORDER

The above Civil Revision Petition is filed challenging the order passed in E.A.Nos.14 and 15 of 2018 in E.P.No.72 of 2012 in O.S.No.8 of 2009 on the file of the District Judge, Karaikal. E.A.Nos.14 of 2018 is filed by the auction purchaser who is the decree holder for a direction to the Station House Officer, Neravy Police Station to assist the Court to break open the door of the respondent's house and to execute the warrant. E.A.No.15 of 2018 is filed for an order to break open the respondent's house and for executing the warrant.

2.The brief facts preeceeding the filing of the above applications are as follows:

The decree holder/plaintiff had filed a suit for recovery of money on a promissory note executed by the revision petitioner/defendant in his favour on 12.06.2007. Since the amount was not repaid despite legal notice dated 01.11.2008 which was received by the defendant on 04.11.2008, the plaintiff had come forward with the suit for recovery of a sum of

Rs.1,18,000/- together with an interest at 12% per annum at Rs.1,00,000/- from the date of the plaint till the date of realisation. Alongside the suit, the plaintiff had also filed I.A.No.12 of 2009 for an attachment before Judgement of the properties belonging to the defendant. The defendant had not entered appearance in person or through counsel, ultimately, she remained ex parte and the ex parte decree came to be passed on 29.06.2009.

3. Thereafter, the decree holder had filed E.P.No.81 of 2011 for a sale of the schedule mentioned property which was attached. In the said application, notice has been served on the defendant for hearing on 23.12.2011 and despite receipt of the notice she has not entered appearance. Meanwhile it is seen that the defendant had parted from her husband by filing H.M.O.P.No.588 of 2011 and an order of divorce was granted on 24.04.2012 by the Family Court, Madurai.

4. It appears that the E.P.No.81 of 2011 was dismissed for default and thereafter the decree holder had filed E.P.No.72 of

2012 on the file of the District Judge, Karaikal. Summons has been once again issued to the revision petitioner and she has however not entered appearance.

5. Thereafter, on 03.01.2013 the revision petitioner had filed I.A.No.260 of 2013 in O.S.No.8 of 2009 for setting aside the ex parte decree dated 29.06.2009. In the affidavit filed in support of the said petition, the revision petitioner would contend that she was not served summons and that her husband and the plaintiff had colluded together. She would contend that she was not residing at the petition premises but was residing at Madurai, where she was moved on account of the quarrel with her husband. She would also submit that in the year 2011, her husband lodged a false complaint based on which she was arrested thereafter enlarged on bail.

6. She would also contend that her husband had colluded with the plaintiff and the suit summons was received by the husband and not served on her, the plaintiff had therefore obtained an ex parte decree. She would also attribute knowledge

about the proceedings only in the last week of November 2012, when she had appeared before the Magistrate Court, where she was informed that the property was auctioned and that the respondent herein had become the owner. She thereafter, rushed to the counsel's office and was informed about the pendency of the proceedings. She has thereafter filed I.A.No.260 of 2013. This application was ultimately dismissed for default on 30.08.2016, since, neither the petitioner nor the counsel entered appearance before the Court. As against this order, the revision petitioner/defendant has not taken out any steps to restore I.A.No.260 of 2013 which was dismissed for default.

7.Meanwhile, the revision petitioner had also filed E.A.No.85 of 2013 for setting aside the sale dated 18.04.2012 in the execution proceedings. The revision petitioner would contend that the respondent had committed a fraudulent act in bringing the property to sale. Once again she would submit that her husband was receiving summons and had not informed her about the same and that he had colluded with the plaintiff/decree

holder.

8.The respondent/decreed holder had filed a detailed counter inter alia contending that the defendant was served through substituted service by paper publication and that the revision petitioner had entered appearance through counsel in E.P.No.71 of 2009 and had filed E.A.No.108 of 2011 for adjournment of the sale in the execution proceedings and that she had made a part payment of Rs.60,000/-.

9.The decreed holder would further contend that E.P.No.71 of 2009 was dismissed for default on 30.09.2011 and thereafter the other execution proceedings in E.P.No.81 of 2011 was filed and the revision petitioner was served but did not enter appearance and was set ex parte on 23.12.2011. The decreed holder was the successful bidder in the auction that was conducted in the execution proceedings and on deposit of Rs.3,01,500/-, a sale certificate is also issued in his favour on 23.08.2012.

10.The decreed holder would submit that despite being

served at every stage, the revision petitioner/Judgement Debtor has deliberately kept away from the proceedings. Ultimately, by an order dated 01.07.2017, E.A.No.85 of 2013 came to be dismissed. The Court below had held that the remedy which is available to the revision petitioner was only to file an application under Order XXI Rule 89 of the Code of Civil Procedure and not invoking proceedings under Order XXI Rule 90 of the Code of Civil Procedure, since no allegations of fraud has been pleaded in the conduct of the auction. Therefore, the application was dismissed. It is only after these petitions were dismissed, that the decree holder had taken out these two impugned petitions, since the revision petitioner/Judgement Debtor was in occupancy of the petition premises and not vacating the same.

11.The learned District Judge, Karaikal by his order dated 26.04.2018 was pleased to allow both the applications, as the Judgement Debtor/revision petitioner has failed to even file a counter. Challenging the same the revision petitioner is before this Court once again making the same plea which has been

rejected by the Court below.

12.Heard Mr.B.N.Chandrasekhar, learned counsel appearing for the revision petitioner/Judgement Debtor and Mr.R.Vasudevan, learned counsel appearing on behalf of the respondent/decree holder. A perusal of the papers would clearly indicate that the revision petitioner, despite receiving summons has not cared to appear before the Court, even conceding that she did not have prior information about the suit proceedings after filing of I.A.No.260 of 2013, to set aside the ex parte decree she has remained ex parte and this would clearly indicate the conduct of the revision petitioner.

13.It appears that she is only trying to protract the proceedings to ensure that the decree holder does not enjoy the fruits of the decree. I.A.No.260 of 2013 has been dismissed on 30.08.2016 and to date no steps have been taken to restore the said application. Therefore, the decree obtained by the respondent/decree holder has reached finality and I do not find any infirmity in the order passed by the learned District Judge,

Karaikal in E.P.Nos.14 and 15 of 2018.

The Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

02.04.2019

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Index : Yes/No
Speaking order/non-speaking order

Note: Order Copy to be issued on 08.04.2019.

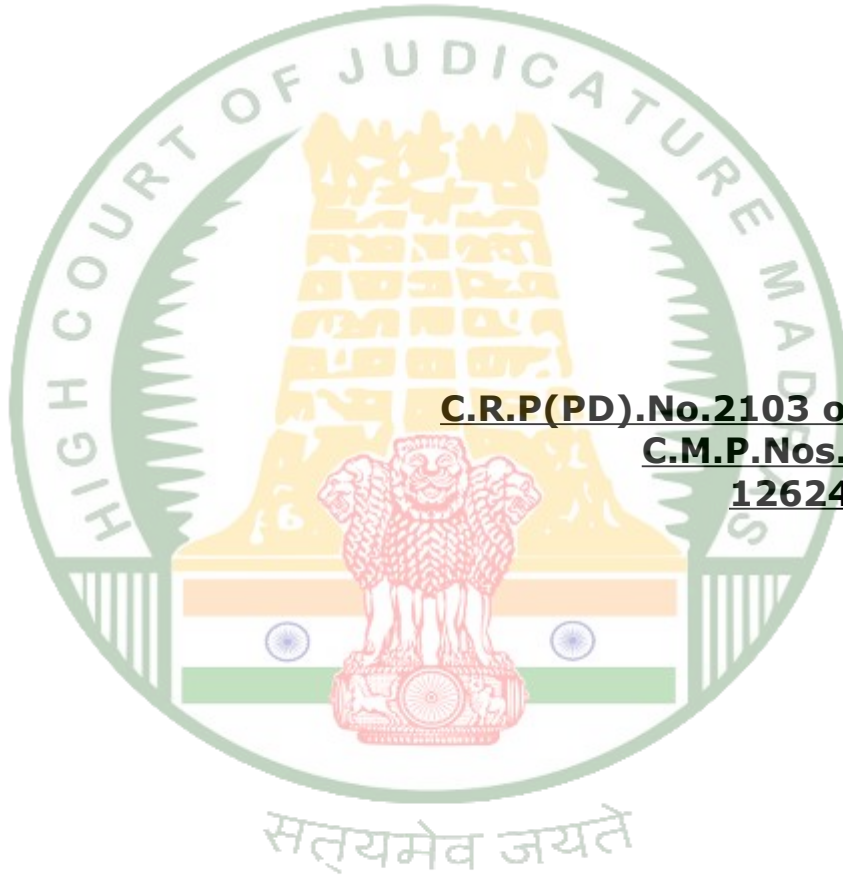
To
The District Judge,
Karaikal,
Puducherry



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P.T.ASHA, J.,

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