

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (NPD).No.2300 of 2014

and

M.P.No.1 of 2014

1.V.Maheswari
2.R.Venkateswaran

.. Petitioners

vs

M/s.Sundaram Finance Limited,
Represented by R.Pattabiraman
No.21, Patullos Road,
Chennai – 600 002.

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order passed in R.E.P.No.8 of 2012 in A.C.No.M.G./SFL/No.72 of 2009 on the file of the I Additional District Judge, Salem dated 19.03.2014.

For Petitioners : Mr.C.K.M.Appaji

For Respondent : Mr.T.Srinivasa Raghavan

ORDER

The present civil revision petition is directed against the fair and decreetal order dated 19.03.2014 in R.E.P.No.8 of 2012 in A.C.No.M.G./SFL/No.72 of 2009 on the file of the I Additional District Judge, Salem. By the said order Executing Court has passed an interim

order of attaching the house property of the petitioners, which according to the petitioners is valued at Rs.75,00,000/-.

2. The case of the petitioners is that the respondent has filed R.E.P.No.8 of 2012 pursuant to an ex parte award passed by the arbitrator on 31.01.2011. It is specifically stated by the learned counsel for the petitioners that the award came to be passed without notice to the petitioners and therefore, they were unaware of the same. It is also submitted that the petitioners have obtained vehicle loan from the respondent for a sum of Rs.7,25,000/-. The petitioners have paid about 14 monthly instalments and that on 29.07.2005, the vehicle was seized and has been sold for a sum of Rs.2,25,000/-. After the award came to be passed on 31.01.2011 in Arbitration Case No.M.G/SFL/72 of 2009, the respondent has filed the execution petition seeking to enforce the award to recover the amount of Rs.9,68,755/- being the award amount of Rs.5,23,368/- with interest, at 18% from 12.03.2007 to 04.11.2011. At the time of admission of the present civil revision petition, the petitioners were directed to deposit a sum of Rs.2,00,000/- which the petitioners had also deposited to the credit of the said R.E.P.No.8 of 2012 on 13.08.2014.

3. The learned counsel for the petitioners submit that since the award itself is an *ex parte* award and without notice to the petitioners, it does not bind on the petitioners and therefore the execution petition proceedings initiated before the First Additional District Judge, Salem was not maintainable and therefore, the petitioner seeks interference under Section 115 of C.P.C.

4. Per contra, the learned counsel for the respondent submits that the interim order has been passed under Order 21 Rule 64 of C.P.C and only attachment order has passed. The petitioners have remedies available under law and no prejudice would be caused to the petitioners by the impugned order.

5. The learned counsel for the respondent drew attention referred to the decision of the Travancore Cochin High Court in the case of **Krishnan and others Vs Travancore Bank Limited and others** reported in **1956 AIR (Travancore Cochin) 34**, wherein, it has been held as under:

“An attaching creditor obtains by the attachment a right to have the attached property kept in 'custodia legis' for the satisfaction of his debt, and any subsequent dealing with that property by the judgment-debtor and persons on whom the

attachment was binding at the time it was effected cannot be allowed to defeat that right.”

6. I have considered the rival submissions and the orders passed by the Court below. The order only protects the rights of the respondent in the said execution proceedings. However, that itself does not mean that the Court below can straight away proceed to order proclamation of sale by public auction under Order 21 Rule 66 of C.P.C. In case, the petitioners have substantial case on merits remedy is available under Section 34 of Arbitration and Conciliation Act subject to limitation.

7. The petitioner has already deposited a sum of Rs.1,00,000/- at the time of admission of the present civil revision petition. The petitioner may therefore, deposit the balance amount within a period of three months without prejudice their rights. On such deposit, the execution Court shall dispose the R.E.P.

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8. It is made clear that the execution Court shall not order sale before expiry of the aforesaid period and before hearing. The petitioner may raise the defence if any. The Court shall proceed thereafter. The present Civil Revision Petition stands disposed, leaving open all the issues to be

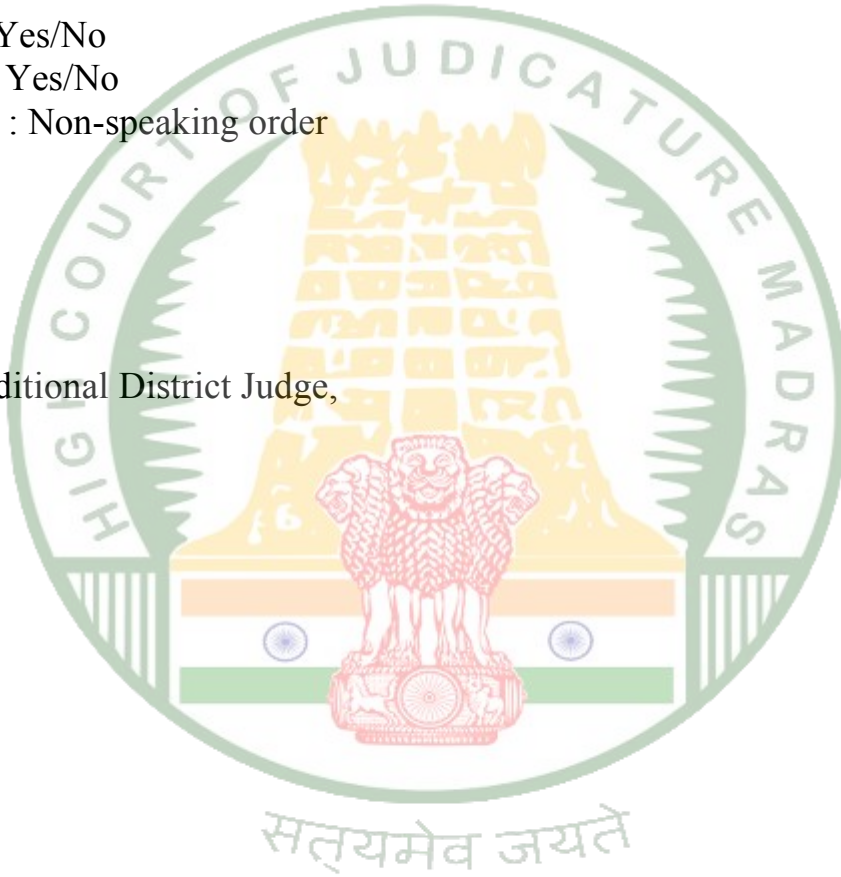
addressed before the execution Court. The connected Miscellaneous
Petition is also closed.

25.03.2019

Index : Yes/No
Internet : Yes/No
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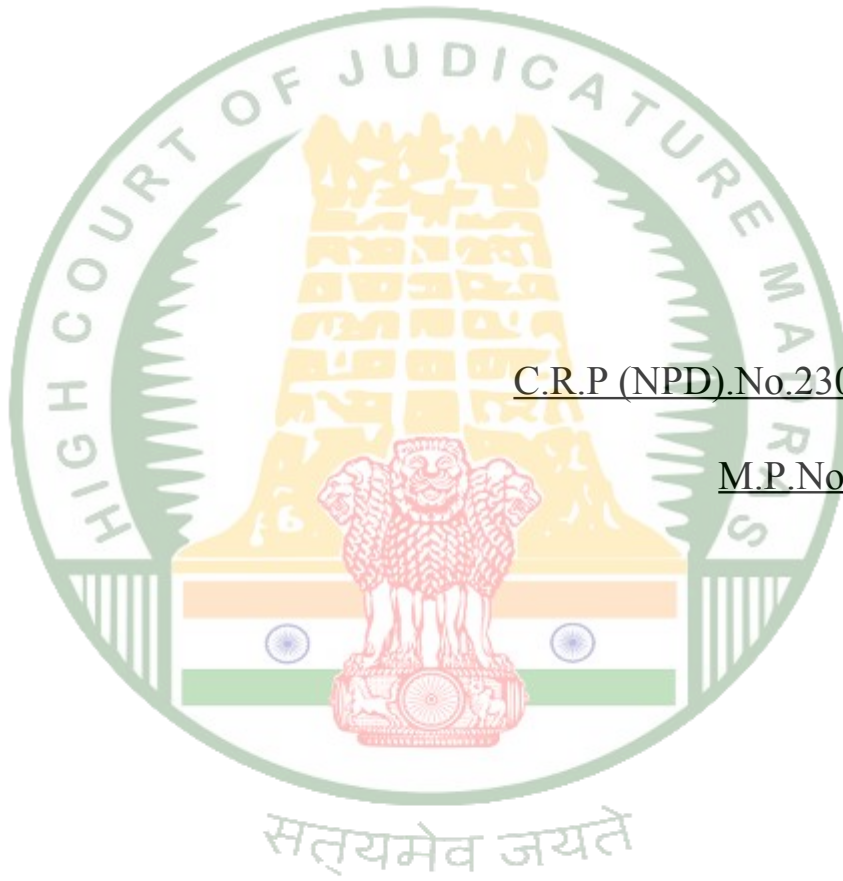
To

The I Additional District Judge,
Salem.



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C.SARAVANAN,J.
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