

C.R.P.(NPD).No.1614 of 2017
&
C.M.P.No.7618 of 2017

P.T.ASHA, J.,

Today when the matter was listed under the caption "For Clarification" and after the last paragraph of the order dated 10.07.2019 was clarified, Mr.S.R.Raghunathan, learned counsel appearing on behalf of the 6th respondent produced a Demand Draft bearing No.011792 drawn in Kotak Mahindra Bank, Vellore dated 01.08.2019, favouring the revision petitioner for a sum of Rs.1,41,50,015/- constituting the total amount demanded in the Execution Proceedings. He would submit that the 6th respondent who has bonafide purchased the property after discharging the mortgage by paying over Rs.3,00,00,000/- in order to buy peace was ready to pay the entire amount demanded by the decree holder/revision petitioner. The counsel for the revision petitioner would submit that the sale certificate has been issued on 17.02.2017 and on 25.02.2017 itself the obstruction petition has

came to be filed when the subsequent purchaser had attempted to take possession of the property in pursuance to order in the Execution Proceedings.

2. It is also informed by the counsel for the revision petitioner that to date he has not received the amounts which is due to him as per award passed in the lok adalat and the auction purchaser has only deposited the amount to the credit of the executing Court. He would further submit that the revision petitioners have no objections to receive the said sum of Rs.1,41,50,015/- as it would satisfy his claim in the suit O.S.No.22 of 2014.

3. The issue with reference to the bonafides of the sale in favour of the 6th respondent as the 3rd party by the revision petitioner is to be agitated by the 6th respondent in the Execution Court. It is also to be noted that the 6th respondent has repaid the entire amount that has been due to the State Bank of Travancore, Commercial Branch, Bangalore, by the respondents

1 to 3 herein and in addition to the said mortgage amount a sum of Rs.1,41,50,015/- being offered to the revision petitioner. The mortgage/hypothecation in favour of the Bank is on 27.03.2010 and the suit O.S.No.22 of 2014 has been instituted on the file of the Principal District Judge, Vellore on 25.02.2014.

4. This Court has advised the revision petitioner to bring the Auction Purchaser before this Court so as to bring about a settlement to the issue. The counsel for the revision petitioner also undertook to make an attempt in this regard. Parties are directed to appear this Court on 08.08.2019.

Post the matter on 08.08.2019 after the Division Bench sitting.

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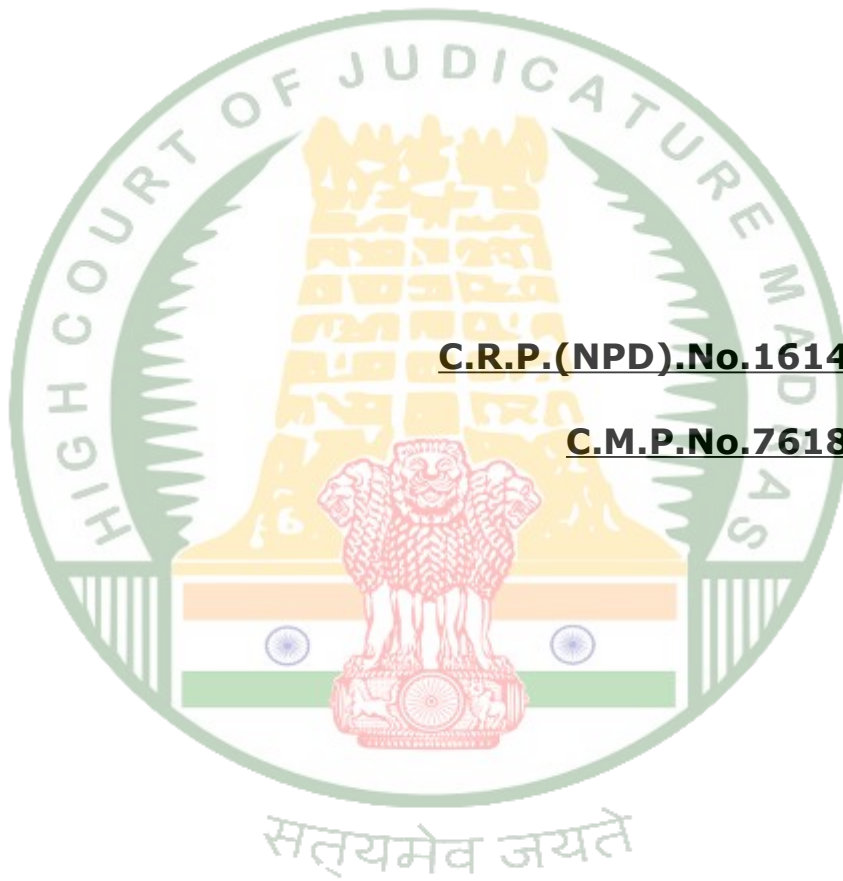
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P.T.ASHA, J.,

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P.T.ASHA, J.,

An Error in the last paragraph of the Judgement was brought to the notice of this Court by Mr.S.R.Raghunathan, learned counsel appearing for the 6th respondent and therefore the matter is today posted under the caption "For Clarification". The said error has crept on account of an oversight. This Court after holding that the Principal District Judge, Vellore has become functus officio has by an oversight added the following sentence "*The learned District Principal District Judge, Vellore is directed to dispose of the said application within a period of two months from the date of receipt of a copy of this order*".

2. The said sentence is deleted and the following shall be inserted in its place " *It is open to the 6th respondent to raise all defenses to the order of the attachment obtained by the revision petitioner in I.A.No.35 of 2014 regarding its validity, the challenge to the order dated 30.06.2014 etc in the obstruction petition filed by her in Ex.No.74 of 2016 on the file of the City Civil Judge, Bangalore*".

3.The final Paragraph shall therefore be modified with the deletions and insertions herein above referred to. The final paragraph shall therefore read as follows:

"The Civil Revision Petition is allowed. I.A.No.35 of 2014 in O.S.No.22 of 2014, pending on the file of the Principal District Judge, Vellore is restored to file. It is open to the 6th respondent to raise all defenses to the order of the attachment obtained by the revision petitioner in I.A.No.35 of 2014 regarding its validity, the challenge to the order dated 30.06.2014 etc in the obstruction petition filed by her in Ex.No.74 of 2016 on the file of the City Civil Judge, Bangalore. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed."

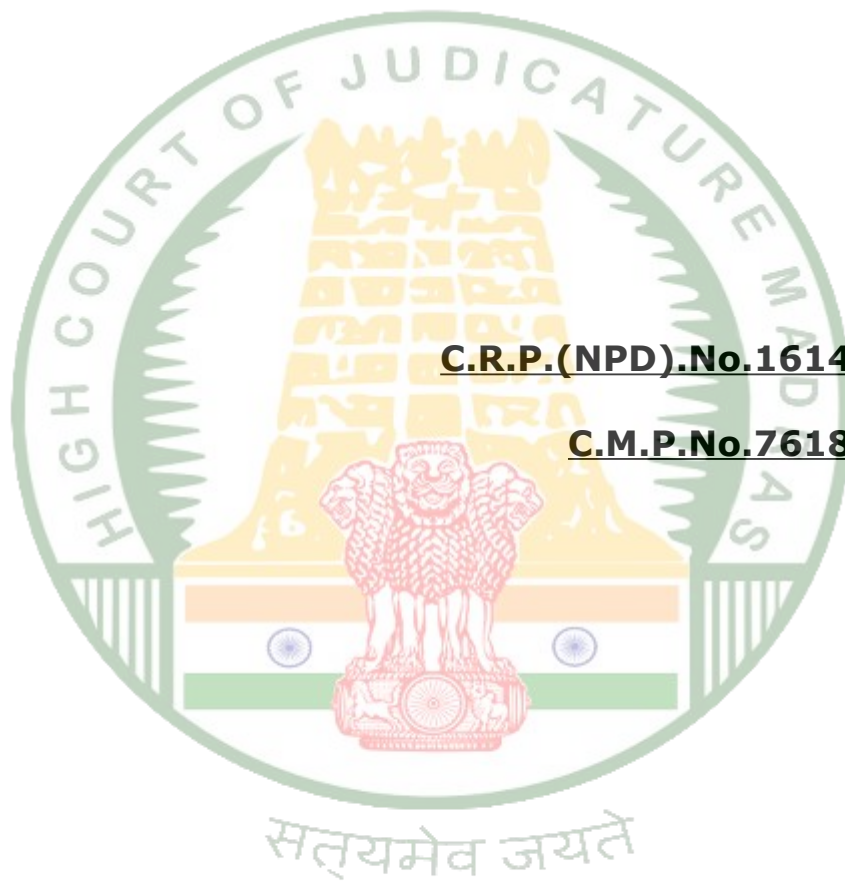
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02.08.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.04.2019

Delivered on : 10.07.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD)No.1614 of 2017

&

C.M.P.No.7618 of 2017

Surya Pelle Chemical & Mould

...Petitioner

Vs

1.HI-LITE LEATHERS

1521/F - CUTCHERY ROAD

VANIYAMBADI

VELLORE DT

represented by its partners

2.K.L.NAGENDRA partner

Representing HI-LITE LEATHERS

1521/F-CUTCHERY ROAD

VANIYAMBADI

VELLORE DT.

3.JANHAVI NAGENDRA partner

Representing HI-LITE LEATHERS

1521/F - CUTCHERY ROAD

VANIYAMBADI

VELLORE DT

4.K.L.NAGENDRA

5.JANHAVI NAGENDRA

8/23

6.Smt.Mamatha Meghanath
Rep. by her Power of Attorney
Agent Mr.Subas M.Naidu

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed by the Principal District Judge, Vellore in I.A.No.35 of 2014 in O.S.No.22 of 2014 dated 30.06.2014.

For Petitioner : Mr.R.Vasudevan
For Respondents 1 to 5 : Not Ready in Notice
For Respondent 6 : Mr.S.R.Raghunathan

ORDER

This revision raises an interesting question as to the jurisdiction of Trial Court in raising an attachment and dismissing the petition filed under Order XXXVIII Rule 5 of the Code of Civil Procedure post the compromise decree being recorded between the parties and an award being passed by the Lok Adalat in terms of this compromise. The plaintiff in O.S.No.22 of 2014 on the file of the Principal District Judge, Vellore, is the revision petitioner before this Court. The parties are

referred to in the same litigative status as in the suit.

2.It is necessary to briefly allude to the chronology of dates and events and the facts so as to appreciate the issue involved in the present Civil Revision Petition.

Dates and Events:

Date	Event
06.01.2014	The suit O.S.No.22 of 2014 is filed by the plaintiff for a recovery of a sum of Rs.2,22,42,169/- due to them from the defendants for the supply of chemical. The pleadings would narrate that the plaintiff and the defendants have had a long standing relationship and there has been instances of the plaintiff giving loan to the sister concerns of the 1st defendant.
06.01.2014	I.A.No.35 of 2014 is filed seeking an attachment before Judgement.
25.02.2014	The defendants are directed to furnish the security to the tune of the suit amount on or before 03.04.2014.
03.04.2014	Though notice to respondents 1 to 3 and 6 had not been served and only the 5th defendant had been served their counsel undertakes to filed vakalat for all the defendants. Since the security was not furnished on the said date as directed, the attachment for the said amount was ordered.

Date	Event
23.04.2014	The property is attached and information had also been served on the Sub Registrar, Bangalore
04.06.2014	Request is made for filing a counter.
27.06.2014	I.A.No.101 of 2014 is filed to advance the hearing for referring the matter to the Lok adalat.
27.06.2014	The plaintiff and defendants signed a compromise memo in and by which the defendants agreed to pay the plaintiff a sum of Rs.1,50,00,000/- towards full and final settlement of the suit claim. Five Cheques for 1.5 lakh each from 21.07.2014 to 20.11.2014, Six Cheques for 2 lakh each from 21.12.2014 to 20.05.2015, Three Cheques for 3 lakh each from 20.06.2015 to 22.12.2018 were handed over to the plaintiff and an initial amount of Rs.1,50,000/- was paid to the plaintiff by RTGS. The terms of the memorandam of compromise clearly stated that in the event of cheque being dishonoured, the plaintiff was at liberty to take execution proceedings. It was also agreed that only on realising the entire amount of Rs.1,50,00,000/- the parties would stand totally discharged from the suit amount.
27.06.2014	The compromise decree is recorded by the Lok Adalak and an award is passed.
30.06.2014	The attachment is raised and the I.A. Is dismissed

Date	Event
	[Plaintiff is not aware of this order]
06.01.2016	Since only a sum of Rs.9,00,000/- was repaid and the compromise schedule was not adhered to the plaintiff moved the City Civil Court, Bangalore for bringing the property attached to sale for the balance amount
22.03.2016	The third party who has been impleaded as the 6th respondent in the revision petition had filed an obstruction petition from which the plaintiff comes to know about raising of the attachment on 30.06.2014, by the Principal District Judge, Vellore in I.A.No.35 of 2014 in O.S.No.22 of 2014. Thereafter the plaintiff had filed the above revision to set aside the order raising the attachment in I.A.No.35 of 2014 and dismissing the petition.

3.On a reading of this petition (Obstruction Petition) the following chronology emerges:

Date	Event
23.07.2009	The suit property has been mortgaged with the State Bank of Travancore, Commercial Branch, Bangalore.
28.07.2014	The loan is classified as a non performing asset (NPA by the State Bank of Travancore)
30.03.2016	The 6th respondent herein had purchased the property from the 3rd respondent. The recitals of the sale deed

Date	Event
	would indicate that the sale is being effected to settle the loan to State Bank of Travancore.
30.03.2016	Prithvi Asset Reconstruction and Securitization Company Limited released the mortgage originally in favour of the State Bank of Travancore. The revision petitioner/plaintiff would contend that it is only when the third party had filed the obstruction petition that they had become aware about the mortgage and the subsequent sale in favour of the third party. The attachment however to date continues to be recorded in the Sub Registrar Office, Bangalore.

Submissions:

4. The counsel for the petitioner Mr.R.Vasudevan, would submit that upon the attachment being made absolute the same continues till the entire amount due under the Compromise Award was fully paid. He would further argue that the Court below had no jurisdiction to pass orders dismissing I.A.No.35 of 2014 as the Court had become functus officio. The counsel had relied on the following Judgements in support of his arguments:

i) (1996) 3 SCC 289 – S.Noordeen Vs. Thiru Venkita Reddiar

ii) 2014-1-L.W.888 – M/s.L&T Finance Ltd., Vs.

M/s.J.K.S.Constructions Pvt. Ltd.,

*iii) **2012 (2) SCC 51** – K.N.Govindan Kutty Menon Vs. C.D.Shaji*

*iv) **AIR 2009 (Madras) 180** – Valarmathi Oil Industries and another Vs. Saradhi Ginning Factory*

5. Mr.S.R.Raghunathan learned counsel appearing on behalf of the 6th respondent/third party would submit that she is a bonafide purchaser for value and the mortgage in favour of the Bank by the defendants was much prior to the suit and the attachment order obtained by the plaintiff. He further argued that by paying of the mortgage debt of the defendants he had stepped into shoes of the mortgagor and was therefore entitled to the right of subrogation as envisaged under Section 92 of the Transfer of Property Act. He would therefore submit that the sale in her favour cannot be called into question particularly when she has redeemed the mortgage.

6. He would further contend that the attachment before Judgement is not to be given as a matter of right and the plaintiff in order to get such relief should first establish the debt and should establish the fact that the defendants were likely to remove the property away from the reach of the decree holder. In the absence of

the above the order of attachment should not be granted. In support of his argument, the learned counsel would rely upon the Judgement reported in **(2008) 2 SCC 302 – Raman Tech. & Process Engg. Co Vs. Solanki Traders.**

Discussion:

7. Heard both counsels and perused the papers. The issue that is now before this Court is whether the dismissal of I.A.No.35 of 2014 in O.S.No.22 of 2014 by the Principal District Judge, Vellore is correct in law. In order to examine the correctness of the order, it is necessary to briefly elaborate the scheme of Order XXXVIII Rule 5 of the Code of Civil Procedure.

8. Order XXXVIII deals with the arrest and attachment before Judgement. Rule 5 therein talks about the attachment before Judgement. Rule 5 would state that at any stage of the suit if the Court is satisfied that there is a likelihood of the defendant obstructing or delaying the execution of a decree is likely to remove the whole or any part of the property from out of the local limits of the jurisdiction of the Court. Then in such contingencies the Court can direct the defendant to first furnish security to the tune of the suit claim. If the

defendant fails to furnish security then the provisions of Rule 6 would come into play. In given cases the Court could also grant a conditional order of attachment. Order XXXVIII rule 6 of the Code of Civil Procedure reads as follows:

"6.Attachment where cause not shown or security not furnished.-

(1)Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2)Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit."

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9. It is seen that once the attachment has been made absolute then the same would continue till the decree is satisfied, which is evident from a reading of Rule 11 of the Code of Civil Procedure, which

reads as follows:

"11.Property attached before judgement not to be re-attached in execution of decree.-Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property."

10. The manner in which an order of attachment would come to an end is provided in great detail in the provisions of Order XXI Rule 55 of the Code of Civil Procedure, which states as follows:

"55.Removal of attachment after satisfaction of decree.-Where-

(a)the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(b)satisfaction of the decree is otherwise made through the Court or certified to the Court, or

(c)the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgement-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceeding rule.”

11. Therefore, from a reading of the above it is clear that once the attachment is made absolute then the same enures till the decree is fully satisfied. In the instant case, it is seen that the memorandum of compromise had been entered into on 27.06.2014 and the discharge of the entire loan was spread over a long period. The compromise agreement had further specified that in the event of any post dated cheques being dishonoured, the plaintiff was free to institute execution proceedings and it is only on the payment of the entire sum of Rs.1.50 Crores that the parties would stand totally discharged from the liability under the decree. In the Judgement reported in **2012 (2) SCC 51** supra the Honourable Supreme Court has held that an award passed by the Lok Adalat is deemed to be a decree and executable by that Court.

12. That apart another factor that has caused concern in the

mind of this Court is the fact that the learned Principal District Judge, Vellore, has proceeded to pass orders in I.A.No.35 of 2014 after the suit had been decreed and the Court had become functus officio. Functus officio is a latin term meaning "*having performed his or her office*". The Honourable supreme Court in the Judgement reported in **(1999) 3 SCC 500 – Dwaraka Das Vs. State of Madhya Pradesh and another**, has held that after the passing of the Judgement and Decree the Court can entertain applications only for correcting errors arising therein on account of accidental slips or omissions. The Honourable supreme Court has held as follows:

"The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the Judgement, decree or order. The settled position of law is that after the passing of the judgement, decree or order, the Court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgements, decrees and orders earlier passed."

13. Similarly in the Judgement reported in **CDJ 2008 SC 775 – Bholi (Dead) by Lrs Vs. Lachhman Singh and others**, the Honourable Supreme Court had observed that in an earlier round of litigation between the parties which went up to the Supreme Court, the Supreme Court had held as follows:

"An application was filed under Section 147 CPC for extension of time to deposit the second instalment which was rejected by the trial Court. Aggrieved thereby, the defendants filed an application under Section 115 CPC which was allowed by the High Court by extending the time enabling the defendants to deposit the second instalment. Against the order of the High Court the plaintiff filed C.A.No.3422 of 1996 before this Court which was disposed of on 30th October, 2002. The relevant portion of the order reads under:

It is not disputed that the settlement arrived at between the parties was made part of the decree of the Court. It was a decree like any other decree passed by the Civil Court. Once a decree is passed by the Court, it

becomes functus officio to modify the decree. It is only the higher Court either to set aside the decree or to modify the decree. Since the Court, after passing the decrees became functus officio, it also had no power under Section 148 CPC to extend the time for depositing the money by modifying the terms of the decree which was passed on settlement between the parties. If the Court modifies the decree it varies the terms of the settlement which is not permissible. In that view of the matter, the High Court fell in error in extending the time for depositing the second instalment by the defendants. Consequently, the appeal deserves to be allowed."

14. The learned Judges followed the very same reasoning and dismissed the appeal C.A.No.Appeal (Civil) 953 of 2004. In the light of the above Judgements I have no hesitation in setting aside the order dated 30.06.2014 in I.A.No.35 of 2014. As I have been called upon only to consider the legality of the order passed by the learned Principal Judge, Vellore, in dismissing I.A.No.35 of 2014, after the compromise award had been passed before the Lok Adalat I do not intend to traverse into the proceedings now pending before the City

Civil Court, Bangalore.

15. Therefore, from a reading of the above provisions of Order XXXVIII Rule 5, 6, 9 and 11 read with Order XXI Rule 55 of the Code of Civil Procedure and a perusal of the Judgements it is clear that the Principal District Judge, Vellore, had no Jurisdiction to entertain and pass any orders in the interlocutory application in I.A.No.35 of 2014 after the compromise award dated 27.06.2014 as he had become functus officio.

The Civil Revision Petition is allowed. I.A.No.35 of 2014 in O.S.No.22 of 2014, pending on the file of the Principal District Judge, Vellore is restored to file. The learned District Principal District Judge, Vellore is directed to dispose of the said application within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

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

P.T.ASHA, J.,

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To
The Principal District Judge,
Vellore.



Pre-Delivery order in
C.R.P.(NPD)No.1614 of 2017 &
C.M.P.No.7618 of 2017

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