

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NO.3225 OF 2017
AND
CMP NO.15111 OF 2017

1.P.Kumaravel
 2.M.Thangavel
 3.P.Meiyalagan

... Petitioners

VS.

1.S.M.Arunachalam
 2.The Official Receiver
 Salem Combined Court Complex
 First Floor, Hasthampatti,
 Salem - 7.
 Representing the General Body of
 Creditors of the Insolvents
 M.Krishnan and K.Mohan

3.O.N.K.S.Balasubramaniya
 Finance by its Partner O.N.K.Sabapathy
 (3rd Respondent impleaded vide Court
 order dated 01.10.2018 made in CMP
 No.20710/2017 in CRP No.3225/2017)

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 11.12.2014 in I.A.No.33 of 2013 in I.A.No.58 of 2009 in I.A.No.32 of 2009 in I.P.No.8 of 2005 on the file of the Subordinate Judge, Salem.

For Petitioners	:	Ms.A.L.Ganthimathi
For Respondent-1	:	No appearance
For Respondent-2	:	Mr.M.Raja Sekhar
For Respondent-3	:	Mr.C.Veeraraghavan

ORDER

The petitioners are third parties to the insolvency proceedings. Originally, the third respondent filed a suit for recovery of money. Since the judgment debtors sold the property, in order to defeat the rights of the decree holder, they filed an insolvency petition against the judgment debtors. During the pendency of the insolvency proceedings, the first respondent, who is the purchaser of the property, sold it to the present petitioners/third parties. The second respondent has taken out an application to set aside the sale made by the judgment debtors, which was allowed. Against which, the first respondent filed an interlocutory application, to set aside the same. The Insolvency Court allowed the application on terms. However, the first respondent has not paid the cost and the application was dismissed. The first respondent again filed a petition in I.A.No.58/2009 to condone the delay of 764 days in paying the cost to set aside the order passed in I.A.No.32/2009. The said petition was dismissed on 11.12.2014. Challenging the same, the present petitioners / third parties are before this Court.

2. This Court granted leave and directed the petitioners/third parties to deposit a sum of Rs.8,00,000/-, being 50% of the money to be recovered from the judgment debtors, to the credit of I.P.No.8 of 2005 to show their *bonafide*. Now, the petitioners/third parties having shown their *bonafide* by depositing Rs.8,00,000/- seek intervention of this Court to permit them to contest the proceedings. They are agreeable to pay the balance amount to save the property purchased by them *bonafidely* without notice of the pending insolvency proceedings.

3. The learned counsel appearing for the third respondent/decreed holder would contend that the *lis pendens* transferee remains bound by the decree. He cannot seek as a matter of right to become a party to the proceedings.

4. It is seen from the records that the total claim in the execution proceedings is only Rs.15,00,000/- together with interest. The interest of the third respondent is only to recover the money for which purpose he filed the insolvency proceedings against the judgment debtors. Now that the third party purchasers are come out with a petition to satisfy the decree and to show their *bonafide* have deposited 50% of the decree amount.

5. Considering the facts and circumstances of the case, this Court considers that in the interest of justice, the petitioners / third parties should be allowed to contest the case on merits.

6. Accordingly, the order dated 11.12.2014 passed in I.A.No.33 of 2013 in I.A.No.58 of 2009 in I.A.No.32 of 2009 in I.P.No.8 of 2005 by the learned Principal Subordinate Judge, Salem, is set aside and the petitioners / third parties shall pay a cost of Rs.5,000/- (Rupees Five Thousand Only) to the second respondent, within a period of two weeks from the date of receipt of a copy of this order.

7. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected civil miscellaneous petition is closed.

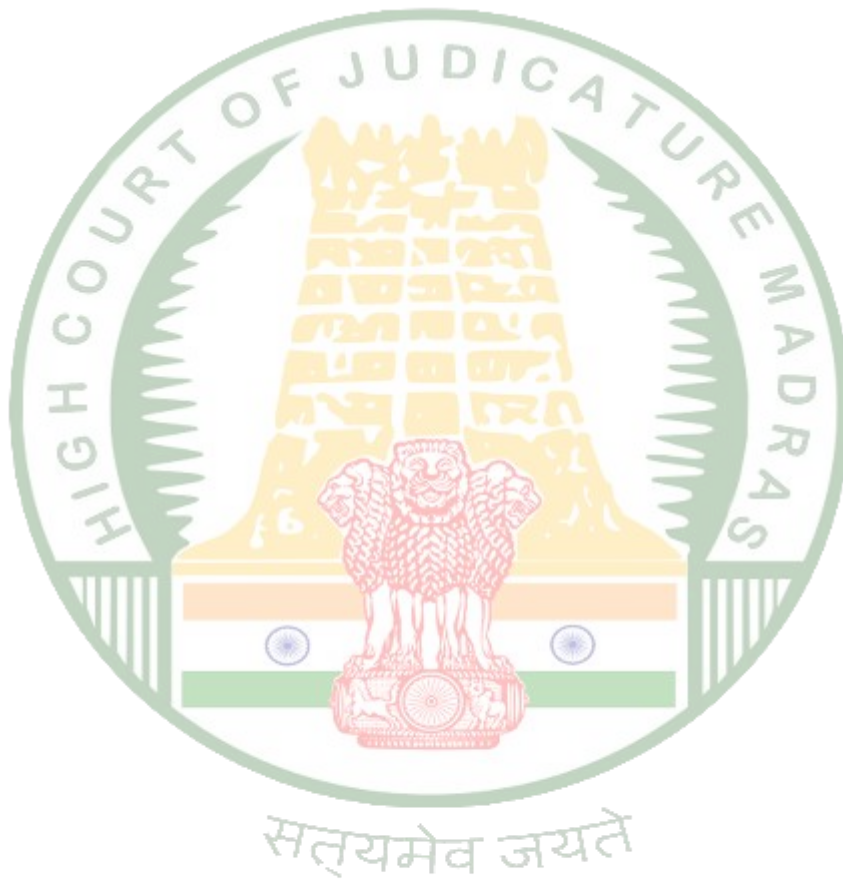
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06.08.2019

Index : Yes/No
Internet : Yes/No
TK

To

The Principal Subordinate Judge
Subordinate Court
Salem.



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M.GOVINDARAJ, J.

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