



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .Nos.1870 & 1871 of 2012 (PD)

and

M.P. (MD) .No.1 of 2012

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V.Lakshmi

...Petitioner in both petitions/
Respondent/3rd Party

Vs.

The Authorized Officer,
L.I.C. Housing Finance Limited,
Cantonment,
Trichy .

...Respondent in both petitions/
Petitioner/3rd Party

PRAYER in C.R.P. (MD) .No.1870 of 2012: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed on 24.08.2011 by the Principal Subordinate Judge, Karur, in E.A.No.8 of 2011 in E.P.No.152 of 1998 in O.S.No.8 of 1997.

PRAYER in C.R.P. (MD) .No.1871 of 2012: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed on 24.08.2012 by the Principal Subordinate Judge, Karur, in E.A.No.9 of 2011 in E.P.No.152 of 1998 in O.S.No.8 of 1997.

For Petitioner : Mr.M.Karthikeya Venkitachalapathy
For Respondent : Mr.Veerapandian
for M/s. Vast Law Associates
(In both petitions)

COMMON ORDER

These Civil Revision Petitions have been filed against the orders passed by the Court below allowing the impleading application filed by the L.I.C. Housing Finance Limited in the execution applications filed by the respondent, seeking for delivery of the property and consequentially, directing the withdrawal of the delivery warrant, which was issued in the execution applications filed by the respondent.

2. The respondent is an auction purchaser, who was the highest bidder in the auction sale that was conducted on 30.09.2009. The auction was confirmed on 30.11.2009 and the sale certificate was also issued in favour of the petitioner on 10.03.2010. Therefore, the petitioner filed execution applications for delivery of possession of the property. The Court below also issued delivery warrant. Parallely, the



petitioner had also filed a suit in O.S.No.242 of 2010, seeking for the relief of declaration and permanent injunction against the L.I.C Housing Finance Limited. At that point of time, the L.I.C. Housing Finance Limited came to know about the suit proceedings and also the auction sale in favour of the petitioner.

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3. The L.I.C. Housing Finance Limited filed three applications in E.A.Nos.8 to 10 of 2011, seeking for the relief of impleading themselves in the applications, to recall the delivery warrant issued in favour of the petitioner and for deferment of the payment of batta in the delivery warrant issued in the execution petitions.

4. The Court below took into consideration the fact that the respondent is the L.I.C. Housing Finance Limited, which is a public sector undertaking and it has given loan in favour of the judgment debtor and the property in question was mortgaged by deposit of title deeds in the year 2000 itself. Thereafter, the respondent Corporation had also initiated proceedings under the SARFAESI Act and taken the possession. The Court below took into consideration the fact that the respondent Corporation has to be necessarily heard before any final orders are passed in the applications filed by the petitioner, seeking for delivery of possession.

5. The learned counsel appearing for the petitioner submitted that the petitioner is a third party and an auction purchaser and already the sale certificate has been granted in favour of the petitioner. Therefore, as an auction purchaser, the petitioner is entitled to delivery of possession of the property and the Court below ought not to have entertained the application filed by the respondent Corporation.

6. Per contra, the learned counsel appearing on behalf of the L.I.C. Housing Finance Limited, submitted that the entire proceedings is an abuse of process of Court and it was done only to defeat the rights of the respondent Corporation to which the property has already been mortgaged by the judgment debtor in the year 2000 itself. The learned counsel submitted that the proceedings have been initiated under the SARFAESI Act and the possession has also been taken. Therefore, the learned counsel submitted that the Court auction purchaser does not have any right over the property and the entire sale has happened behind the back of the Corporation and the Corporation came to know about the auction sale only after the suit summons were received in O.S.No.242 of 2010 filed by the petitioner.

7. This Court has carefully considered the submissions made on either side and the materials available on record.



8.The Court below has taken into consideration the fact that the property in question was already mortgaged by the judgment debtor in favour of the L.I.C. Housing Finance Limited in the year 2000. The filing of the suit and the subsequent execution proceedings resulting in the sale of the property in the Court auction, was done behind the back of the L.I.C. Housing Finance Limited. The Court below has to necessarily decide the inter se rights as between the parties. If the delivery of possession is ordered without hearing the L.I.C. Housing Finance Limited, it will cause grave prejudice to the Corporation. Therefore, the Court below was absolutely right in allowing the applications filed by the respondent Corporation. This Court does not find any grounds to interfere with the order passed by the Court below.

9. In the result, the fair and final orders passed by the Court below in I.A.Nos.8 and 9 of 2011, dated 24.08.2011 and 24.08.2012 is hereby sustained and the Court below is directed to hear the applications on merits after giving an opportunity to the petitioner and the respondent and determine the inter se rights of the parties and pass final orders within a period of three months from the date of receipt of copy of this order.

10. Both the Civil Revision Petitions stands disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1.The Principal Subordinate Judge, Karur.

2.The Record Keeper, VR Section-2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.BALASUBRAMANI, Advocate (SR-99417[F] dated 19/11/2019)

+2 CC to M/s.VAST LAW ASSOCIATES, Advocate (SR-99845,99846[F] dated 20/11/2019)

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