



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.09.2019
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

REV. APLC. (MD)No.132 of 2019
and
C.M.P.(MD).No.6705 of 2019
in
C.R.P.(MD).No.883 of 2019
and
C.R.P.(MD).No.1271 of 2019
and
C.M.P.(MD).No.7004 of 2019

N.Hidayatulla ... Petitioner in both the petitions/
Petitioner/Judgment debtor

Vs.

M.Neelakumar ... Respondent in both the petitions/
Respondent / Decree holder

PRAYER in Rev.Aplc(MD).No.132 of 2019:

Review Application filed under Order 47 Rule 1 r/w Section 114 of the Civil Procedure Code, against the order dated 26.06.2019 passed in C.R.P.(MD)No.883 of 2019 by this Court.

Prayer in CRP(MD).No.883 of 2019 :

Civil Revision Petition filed under Section 115 of the C.P.C., praying to set aside the sale proclamation dated 13.05.2019 made in E.P.No.64 of 2018 in O.S.No.20 of 2015 on the file of the III Additional District Judge (FAC), Tiruchirappalli.

PRAYER in C.R.P.(MD).No.1271 of 2019 :

This revision application has been filed under Section 115 of C.P.C. against the order, dated 07.03.2019, passed in E.A.SR.No.155 of 2019 in E.P.No.64 of 2018 in O.S.No.20 of 2015 by the learned II-Additional District Judge (FAC), Tiruchirapalli.

For petitioner in
both the petitions : Mr.K.Prabhakar

For respondent in
both the petitions : Mr.K.K.Senthil



COMMON ORDER

This review application has been filed by the revision petitioner / petitioner against the order, dated 26.06.2019, passed by this Court in C.R.P.(MD).No.883 of 2019.

2. C.R.P.(MD).No.1271 of 2019 has been filed by the petitioner challenging the order dated 07.03.2019 passed in E.A.SR.No.155 of 2019 in E.P.No.64 of 2018 in O.S.No.20 of 2015, whereby and whereunder the Court below has rejected the application filed by the petitioner for appointment of Advocate Commissioner to inspect the petition mentioned property and to assess the market value.

3. As the issue involved in both the petitions are inter-related to each other, they were heard together and are being disposed of by way of this common order.

4. Heard the learned counsel for both sides and perused the records carefully.

5. The main contention of the learned counsel for the petitioner is that this Court has failed to appreciate that in permitting the sale proclamation to carry the estimate price of Rs.70 lakhs provided by the decree holder and the estimate price of Rs.6 crores provided by the judgment debtor without interfering with the upset price of Rs.1.20 crores fixed by the executing Court, would only lead to a situation where the property will be sold for a knock-off price and therefore, this Court ought to have been interfered with the upset price fixed therein. For fixing the correct market value of the property, the Court below can appoint an Advocate Commissioner, but the Court below has erroneously rejected such application filed by the petitioner. Thus, he prayed to allow both the petitions.

6. In C.R.P.(MD).No.883 of 2019, the learned counsel for the petitioner mainly focused his argument to the effect that as per order 21 Rule 66 of C.P.C. the estimate value of the property given by both the parties should be included in the sale proclamation, but the same has not been included in the sale proclamation. Considering the facts and circumstances of the case, this Court directed the Court below to include the estimate given by the petitioner in column No.12 of the sale proclamation and then, to conduct auction in accordance with law. Now the petitioner took a different stand that this Court ought to have been interfered with the upset price fixed by the Court below. In the order dated 26.06.2019 itself it is stated that when the petitioner submitted that only lesser value has been fixed as upset price, this Court suggested the petitioner to verify as to the payment of balance amount even on instalment basis, refusing to interfere with the fixation of upset price. But, the learned counsel for the petitioner subsequently on instructions submitted that the petitioner is not able to make payment even on



instalment basis.

7. There is no error apparent on the face of the record. The petitioner has been taking different stand for dragging on the matter one way or the other. The learned counsel for the respondent has produced a registered sale agreement, dated 02.01.2015, in which the petitioner himself entered into a sale agreement with some third parties for a sale consideration of Rs.1.27 crores in respect of the subject property. When that be so, it is clear that in order to drag on the matter, the petitioner has intentionally filed this petition. In view of the above, this Court is inclined to dismiss the review petition.

8. In view of the above and as it is only a consequential order under challenge in the civil revision petition, this Court is inclined to dismiss the civil revision petition.

9. In the result, both the Review Application and the Civil Revision Petition are dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The III Additional District Judge (FAC), Tiruchirappalli.

2. The II-Additional District Judge (FAC),
Tiruchirappalli.

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The Section Officer,

VR Section, (2 Copies)

Madurai Bench of Madras High Court, Madurai

+2.CC. To Mr.K.Prabhakar, Advocate in SR No.91144,91146

+1.CC. To Mr.K.K.Senthil, Advocate in SR No.90673

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