

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) No.760 of 2020

and

C.M.P.No.4047 of 2020

M/s.Patio Furniture Export,
represented by its Proprietor
Mrs.Jaya Viswanathan
[Accepted the cause title vide Court
order dated 04.02.2020 made in
CMP.No.2140 of 2020 in
CRP.SR.No.6815 of 2020]

... Petitioner

Vs.

1.M/s Sri Vari Enterprises,
represented by its Partner Mr.R.Sekar,

2.M/s. Deepa Panels Pvt. Ltd.,
represented by its Managing Director
Pradeep Chirakkal.

... Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the
Constitution of India, to set aside the docket order of the I Additional District
Judge, Tiruvallur, dated 04.12.2019 in E.P.No.51 of 2018 in O.S.No.179 of
2015.

For Petitioner : Mr.G.Thyagarajan

For R1 : Mr.J.Kamaraj

For R2 : Mr.Arun Kumar

ORDER

This Civil Revision Petition has been filed by the petitioner seeking to set aside the docket order of the I Additional District Judge, Tiruvallur, dated 04.12.2019 in E.P.No.51 of 2018 in O.S.No.179 of 2015.

2. The first respondent/plaintiff has filed a suit in O.S.No.179 of 2015 for recovery of money against the second respondent/Judgment Debtor before the learned I Additional District Judge, Madurai. Subsequently, an ex-parte decree was passed against the first respondent/Sree Vari Enterprises/Decree Holder. Further, the Execution Petition was filed by the first respondent in E.P.No.51 of 2018 to attach the immovable property which belong to the Judgment Debtor and bring them for sale to realize the EP amount against the suit schedule mentioned property as stated in the said application and the same was allowed on 26.09.2016. In the aforesaid petition, notice has been ordered to the second respondent-Company, which

entered into appearance and on 13.08.2018, in the execution petition, an ex-parte order was passed by the Court below. Pursuant to the aforesaid order, the Sale Proclamation Order / impugned order was issued by the Executing Court. The petitioner challenges the Sale Proclamation Order dated 04.12.2019 before this Court.

3. The learned counsel for the petitioner-Company would submit that the revision petitioner/third party has purchased the aforesaid suit schedule mentioned property on 25.07.2018 and the proclamation order was executed in favour of the revision petitioner. No attachment order has been passed by the Executing Court and therefore, the aforesaid attachment does not bind the revision petitioner and hence, the proclamation order passed by the court below is liable to be set aside.

4. In response to the above contentions, the learned counsel for the Decree Holder/first respondent strongly objected stating that the aforesaid decree was passed on 16.08.2016 against the second respondent, pursuant to the said decree, the first respondent has filed an application against the second respondent to attach the immovable property as mentioned in the

schedule mentioned properties. According to the first respondent, the revision petitioner/third party has also filed EA.No.1 of 2019 before the I Additional District Court, Thiruvallur, to raise the attachment order dated 11.02.2019 in E.P.No.51 of 2018 and the said application was dismissed for default. Thereafter, the revision petitioner/Third Party filed another application in I.A.No.22 of 2019 to grant leave to the petitioner to come on record on behalf of Principal to proceed to set aside the order dated 17.09.2019 in E.A.No.1 of 2019 in E.P.No.51 of 2018 passed by the Court below and the aforesaid interlocutory application was returned by the learned I Additional District Judge, Thiruvallur. Without filing any re-presenting application, the present Civil Revision Petition has been preferred by the petitioner and the same is liable to be dismissed.

5. According to the learned counsel appearing for the second respondent-Company, without setting aside the ex-parte decree before the trial court, the execution petition is not maintainable.

6. By considering the contentions of the petitioner and the respondents and perusing the materials available on record, it is seen that firstly, the

revision petitioner has filed an application in E.A.No.1 of 2019 before the Court below to raise the attachment order dated 11.12.2019 in E.P.No.51 of 2018 on the file of the I Additional District Court, Thiruvallur. Subsequently, the aforesaid application was dismissed for default and thereafter, the revision petitioner-Company has filed an application through its Power of Attorney in E.A.No.1 of 2019 and the said application is an unnumbered application and on 01.11.2019, the aforesaid application was returned by the I Additional District Court and the same was re-presented after curing the defects and again it was returned on 23.01.2020 by the Court, without proceeding the aforesaid application, the petitioner-Company has filed a revision petition before this Court challenging the order dated 04.12.2019 passed by the Executing Court, in which proclamation order was passed in respect of the suit schedule mentioned property. According to the revision petitioner-Company, they purchased the aforesaid schedule mentioned property from the second respondent; that they had entered into a sale agreement with the second respondent on 23.10.2013 for purchase of the properties for a sale consideration of Rs.76,29,020/-, and that the petitioner-Company had paid the sale consideration on various dates through ICICI Bank, Porur Branch.

7. According to the respondents, the aforesaid sale consideration was entered between the revision petitioner and the second respondent only to defeat the rights of the creditors of the Decree Holder. It is further contended by the respondents that the revision petitioner is the mother-in-law of the firm. Therefore, the intention is to defeat the rights of the creditors of the Decree Holder. Therefore, the aforesaid sale deed dated 25.07.2018 executed in favour of the revision petitioner is *non-est* in law.

8. As found in the records, the petitioner has filed E.A.No.1 of 2019 before the Court below to raise the attachment order dated 11.02.2019 passed by the Court below in the Execution Petition in E.P.No.51 of 2018 and the said execution application was dismissed for default, on 17.09.2019. Thereafter, through the Power of Attorney, the revision petitioner filed an application to set aside the order dated 17.09.2019 in E.A.No.1 of 2019 in the aforesaid Execution Petition, but the same was returned by the Court below. The petitioner, without prosecuting the aforesaid application, has filed the present Civil Revision Petition, challenging the sale proclamation order dated 04.12.2019, which is not maintainable. Hence, this Court is not

entitled to entertain the revision petition filed by the petitioner and the contentions of the learned counsel for the petitioner, are rejected as devoid of any merits.

9. Accordingly, the Civil Revision Petition shall stand dismissed. However, it is open to the revision petitioner to proceed with the execution application, if so advised, to seek appropriate remedy before the Court below. No costs. Consequently, connected Miscellaneous Petition is closed.

17.03.2020

Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order
msm/ak

To

1. I Additional Judge, Thiruvallur.
2. Section Officer, V.R.Section, High Court, Madras.

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D.KRISHNAKUMAR, J

msm/ak



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