



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD)No.2319 of 2019

&CMP(MD)No.12184 of 2019

WEB COPY

K.Alagammai

... Revision Petitioner

Vs.

M.Fasuludeen

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of CPC to set aside the order and decreetal order dated 02.12.2019 made in E.A.No.2/2019 in E.P.No.52 of 2019 in O.S.No.40/2015 on the file of Mahila Court, Trichirappalli.

For Petitioner

: Ms.AL.Ganthimathi

For Respondent

: Mr.Kamesh

ORDER

The revision petitioner herein is the plaintiff in O.S.No.40 of 2015, which she has laid for specific performance of an agreement of sale. The suit was decreed. In the meantime, the plaintiff has deposited the balance sale consideration of Rs.40,00,000/-. As indicated, the suit was decreed and no appeal was preferred by the defendant and the decree has become final. As per the decree, the Court has directed the defendant to pay a sum of Rs.5,28,045/- as cost. The revision petitioner/plaintiff has thereafter filed two Execution Petitions. One for execution of the sale deed and another for realization of cost. Be that as it may, in the second mentioned Execution Petition, the Execution Court has attached Rs.5,28,045/- from and out of the amount deposited by the plaintiff during the pendency of the suit. The defendant/JD respondent herein has filed E.A.No.2 of 2019 for withdrawal of the entire amount in the Court deposit and this was allowed. In other words, this order is likely to jeopardise the interest of the revision petitioner/decreed holder from realizing her cost of the suit.

2.Heard both sides.

3.The learned counsel for the respondent/Judgment Debtor would submit that the respondent is only keen to see that he receives the entire amount with interest.

4.There is some merit and some fallacy to his argument. First when the amount is deposited in the Court, the obligation of the plaintiff ends and if there is any amount and if the Court has invested the said amount, then, any interest that would accrue on the said amount accrues to the benefit of the Judgment Debtor.



However, the interest component in which the Judgment Debtor is interested cannot be imposed on the decree holder. Indeed, if only the Judgment Debtor had shown the wisdom that he is now showing, the suit itself would have been averted.

5. So far as the revision petitioner/plaintiff's interest for realization of the cost is concerned, she has the right to realize it from the assets of the respondent. One such asset that she has is the amount she has deposited in Court as balance sale consideration due to the respondent. The revision petitioner is hence entitled to realise the cost awarded to her from and out of this amount. In conclusion, this Civil Revision Petition is allowed and this Court sets aside the order passed in E.A.No.2 of 2019 and limits the entitlement of the respondent to

- a) such sum as is left remaining after providing for the cost due to the revision petitioner/plaintiff
- b) to such sum which might have accrued as interest in case the Court has invested that money

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Mahila Court, Trichirappalli.

2.The Section Officer

V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2C)

+1 CC to Mr.AL.Ganthimathi ,Advocate,in SR.No.24017.

+1 CC to Mr.N.Kamesh,Advocate,in SR.No.24020.

C.R.P. (PD) (MD)No.2319 of 2019

02.12.2020

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