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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.NO.19 OF 2010

AND

M.P.NO.1 OF 2010

Ethirajan

.. Appellant/
2nd Respondent/Purchaser

Vs.

1.R.Manickam

... 1st Respondent/Appellant/
Creditor

2.Umar Farooq

.. 2nd Respondent/1st
Respondent/Debtor

Civil Miscellaneous Second Appeal filed under Section 75 (2) of the Provincial Insolvency Act, 1920 r/w Section 100 CPC, against the judgment and decree dated 29.06.2010 passed in C.M.A.No.4 of 2010 on the file of the Additional District Court (Fast Track Court No.I), Salem, reversing the judgment and decree dated 19.12.2008 passed in I.P.No.39 of 2006 on the file of the Principal Subordinate Court, Salem.

For Appellant : Mr.S.Umapathy

For R1 : Mr.Kumar Rajan

JUDGMENT

The judgment and decree dated 29.06.2010 passed in C.M.A.No.4 of 2010 on the file of the Additional District Court, (Fast Track Court No.I), Salem, reversing the judgment and decree dated 19.12.2008 passed in I.P.No.39 of 2006 on the file of the Principal Subordinate Court, Salem, is under challenge in the present civil miscellaneous second appeal.

2. The learned counsel appearing on behalf of the appellant filed a memo, which reads as under:



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"The appellant prefers the above C.M.S.A. Against the judgment and decree dated 29.06.2010 made in C.M.P.No.4/2010, on the file of the Additional District Court, (Fast Track Court No.I), Salem, reversing the judgment decree dated 19.12.2008, made in I.P.39/2006 on the file of the Principal Subordinate Court, Salem.

Pending the above C.M.S.A. the appellant herein who is the 3rd party purchaser and I respondent, on mutual discussion and understanding arrived at a settlement. In compliance of such settlement, the above named appellant hereby tender a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) by way of D.D.No.814172 dated 18.03.2021, drawn on State Bank of India, Five Road Branch, Salem, favouring the I respondent (R.Manickam). Copy of D.D. is enclosed with acknowledgement.

The counsel for the I respondent hereby receives and acknowledges the same. In lieu of settlement and payment of the amount, the appellant herein pray that this Hon'ble Court may allow the C.M.S.A. and set aside the judgment and decree dated 29.06.2010, made in C.M.A.No.4/2010, on the file of the Additional District Court, (Fast Track Court No.I), Salem, and confirm the judgment decree dated 19.12.2008 made in I.P.39/2006, on the file of the Principal Subordinate Court, Salem and thus render justice."

3. In view of the fact that the money due to the creditor had already been settled by the appellant and the said statement is acknowledged by the learned counsel appearing on behalf of the respondent, the order impugned in the present appeal is to be set aside.

4. Accordingly, the judgment and decree dated 29.06.2010 passed in C.M.A.No.4 of 2010 on the file of the Additional District Court, (Fast Track Court No.I), Salem, reversing the judgment and decree dated 19.12.2008 passed in I.P.No.39 of 2006 on the file of the Principal Subordinate Court, Salem, is set aside.

As a sequel, this civil miscellaneous second appeal is allowed and the judgment and decree dated 19.12.2008 passed in I.P.No.39 of 2006 on the file of the Principal Subordinate



Court, Salem, stands confirmed. No costs. Connected M.P. is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Additional District Judge,
(Fast Track Court No.I), Salem.
2. The Principal Subordinate Judge,
Salem.

+1cc to Mr.S.Umapathy, Advocate, S.R.No.19265

C.M.S.A.No.19 of 2010

RLD(CO)
CS/19/11/2021