



C.R.P.No.337 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R. SUBRAMANIAN**

Civil Revision Petition (PD) No.337 of 2021

Gemini

... Petitioner

vs.

Balasubramanian Mudaliar

... Respondent

PETITION under Article 227 of The Constitution of India to set aside the impugned order in E.I.O.P.S.R.No.8536 of 2020 dated 10.11.2020 on the file of IX Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.B.Harinath

ORDER

I have heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.B.Harinath, learned counsel for the respondent.

2. The order challenged in this revision petition is an order passed by IX Assistant Judge, City Civil Court, Chennai concluding that the petition in E.I.O.P.S.R.No.8536 of 2020 (Exorbitant Interest Original Petition) was not maintainable and rejecting the same at the threshold without issuing notice to the respondent.



C.R.P.No.337 of 2021

3. In the said petition, the petitioner had sought for reliefs of determination of amount due to the respondent and for restoration of possession of the property.

4. It is the case of the petitioner that he borrowed certain sum of money from the respondent at usurious interest and as a security for the said borrowing, he was forced to execute a sale deed in favour of the respondent. It is the further plea that even though the sale deed comprised of the entire property measuring about 201 sq.ft., the respondent was actually put in possession of only half of the property measuring about only 100 sq. ft.

5. The learned Trial Judge examined the petition on the face of it and concluded that the petition could not be maintained under the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 (for short, the Act), since she found that there was no documentary evidence to support the plea of the petitioner that the sale deed was executed as a security for borrowing.

6. Mr.R.Sankarasubbu, learned counsel for the petitioner would contend that the Trial Court was not right in rejecting the petition at the outset, without even giving an opportunity to the petitioner to produce evidence in support of his case. He would also contend that in view of the provisions contained in Sub-Section (2) of Section 5 of



C.R.P.No.337 of 2021

the Act, it is incumbent upon the Court, on receipt of a petition, to issue notice to the respondent named in the petition, conduct an enquiry and thereafter decide the issues that arise between the parties. According to him, in view of the mandate of Sub-Section (2) of Section 5 of the Act, the Court cannot reject a petition as not maintainable.

7. Contending contra, Mr.B.Harinath, learned counsel for the respondent would submit that there was no evidence of any loan transaction between the parties and that it is a clear case of sale. He would further point out that the sale deed itself was executed some time in 2017 and the present petition has been filed in the year 2020 only as a counter-blast to his complaint to the police that was made on 05.10.2020 complaining of trespass by the petitioner.

8. I have considered the submissions of the learned counsel for the parties.

9. Sub-Section (1) of Section 5 of the Act enables a debtor to make deposit of money and present a petition seeking to record satisfaction of the loan. Sub-Section (2) of Section 5 of the Act mandates the Court to refer a copy of the petition, upon its receipt, to the respondent named in the petition and seek his response within 15 days. Thereupon, the Court may, after due enquiry, pass



C.R.P.No.337 of 2021

orders recording the satisfaction of the loan in full or as the case may be. Section 6 of the Act empowers the Court to direct restoration of property if it is found that the debtor has been forcibly dispossessed.

10. A reading of the above provisions would show that the Court below does not have the power to reject a petition in limine without conducting an enquiry. Therefore, this Court is satisfied that the order passed by the Trial Court suffers from material irregularity and the same is liable to be set aside.

11. Accordingly, the order dated 10.11.2020 passed by the Trial Court is set aside and the above civil revision petition is allowed. The proceedings in E.I.O.P.S.R.No.8536 of 2020 are restored. The Trial Court is directed to number the petition, issue notice to the respondent as mandated under Sub-Section (2) of Section 5 of the Act, proceed with the enquiry and thereafter, determine the issues that arise for consideration on the pleadings of the respondent. It is needless to point out that the Trial Court shall not be influenced by any of the observations contained herein-above. No costs.

08.11.2021



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C.R.P.No.337 of 2021

R.SUBRAMANIAN,J

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To
The Registrar, City Civil Court, Chennai.

C.R.P.No.337 of 2021

08.11.2021