

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.06.2021
Pronounced on	22.06.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.196 of 2016

and

C.M.P.No.980 of 2016

1.M/s Tarja Fabs

Rep by its Partner

Osho Rajagopal

No.104, Rashmi Apartments,

Koregaon Park, Lane 5,

Pune – 411 001.

2.Osho Rajagopal

3.R.Chitra

... *Petitioners/Defendants 1,2 & 4/*

Judgment Debtor 1, 2 & 4

Vs.

1.The Catholyic Syrian Bank Ltd.,

Rep by its Branch Manager,

Tiruppur.

... *1st Respondent/Plaintiff/Decree holder*

2.P.C.Beemaraj

3.R.Sekar

... *Respondents 2 & 3/Auction Purchasers/*

Third Parties

4.Venkatachalapathy

...4th Respondent/3rd Defendant/
3rd Judgment Debtor

PRAYER : The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the Fair and Decretal Order dated 10.12.2015 passed in E.A.No.197/2005 in E.P.No.27 of 2002 in O.S.No.57 of 1997 on the file of the Principal Sub-Court, Tiruppur.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : M/s.Patrick
for K.Rajasekaran [R1]
Mr.Mukund
for M/s.Sarvabhauman Associates
[R2 & R3]
Mr.C.Ramaraj
for Mr.M.Guruprasad [R4]

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed praying to set aside the Order dated 10.12.2015 passed in E.A.No.197/2005 in E.P.No.27 of 2002 in O.S.No.57 of 1997 by the Principal Sub-Court, Tiruppur.

2. The petitioners were the defendants 1, 2 & 4/judgment debtors 1, 2 & 4. The first respondent is the plaintiff/decreed holder. The second

and third respondents are the auction purchasers/third parties and the fourth respondent is the third defendant/judgment debtor No.3.

3. The petitioners had filed the petition under Order 21 Rule 90 C.P.C before the Executing Court in order to set aside the sale. Though the petition was filed under Order 21 Rule 90, the petitioners have not proved any irregularity in publishing the notice and conducting the Court auction sale. The only contention of the petitioners is that even before the confirmation of sale, he had paid the decree amount along with 5% equal to the purchase money and hence the sale should be set aside.

4. On the face of it, it is seen that the petitioners have not chosen to deposit the money into the Court and has not filed any petition to set aside the sale on that ground by choosing to file a petition under Order 21 Rule 89. It seems the petitioner has deposited a sum of Rs.12,70,000/- to the first respondent/decreed holder bank and which sum, the bank is holding in its suspense account.

5. When the sale proceedings are pending, if the petitioners/judgment debtors intend to set aside the sale by paying the decree amount, it should have been done in accordance with the procedure contemplated Order 21 Rule 89 and should have also filed a petition to set aside the sale under the same provision.

6. The first respondent/plaintiff bank being Decree Holder is also well aware of the same. If the first respondent/decree holder intended to show any indulgence to the judgement debtors, he should have not pressed the Execution Petition and worked out the settlement out of Court or brought it to the knowledge of the same before the prescribed time limit. Or atleast the Petitioner should have opted to invoke Order 21 Rule 89 by complying its conditions.

7. Once the auction sale is concluded and the matter is posted for confirmation of sale, it is at the risk of parties if they hold negotiations and settle the claim between themselves without the leave of the Court

and not in compliance of Order 21 Rule 89. Such conduct of the parties will not in any way affect the interest of the auction purchaser who has taken the property in the auction sale and waiting for the confirmation of sale.

8. The Execution Petition was posted to 23.11.2005 for confirmation of sale. In the meanwhile, the petitioners/judgment debtors have filed a petition under Order 21 Rule 90 to set aside the sale. Even at that time, the amount was not deposited in the Court. Admittedly, there is no fraud or irregularity in giving the publication for sale or conducting the auction by adhering to the established procedural mandates. So the Executing Court has rightly dismissed the petition filed to set aside the sale.

9. All the confusions caused because of the double game played by the Bank. The Bank on one hand allowed the auction sale to go on for executing the decree. On the other hand, it had negotiations with the judgement debtor and collected money.

10. The auction purchasers, who have been declared as successful bidders, are entitled to get the sale confirmed in their favour in the absence of any Order to set aside the sale on the grounds envisaged under Order 21 Rule 89 or Order 21 Rule 90. Since the petitioners have filed the petition to set aside the sale under Order 21 Rule 90 but did not prove any fraud or irregularity in auction proceedings, I find no factual or legal error in the Order of the learned Executing Judge and it does not warrant any interference.

In the result, this Civil Revision Petition is dismissed. No costs. Connected civil miscellaneous petition is closed.

22.06.2021

Speaking/Non-speaking
Index : Yes

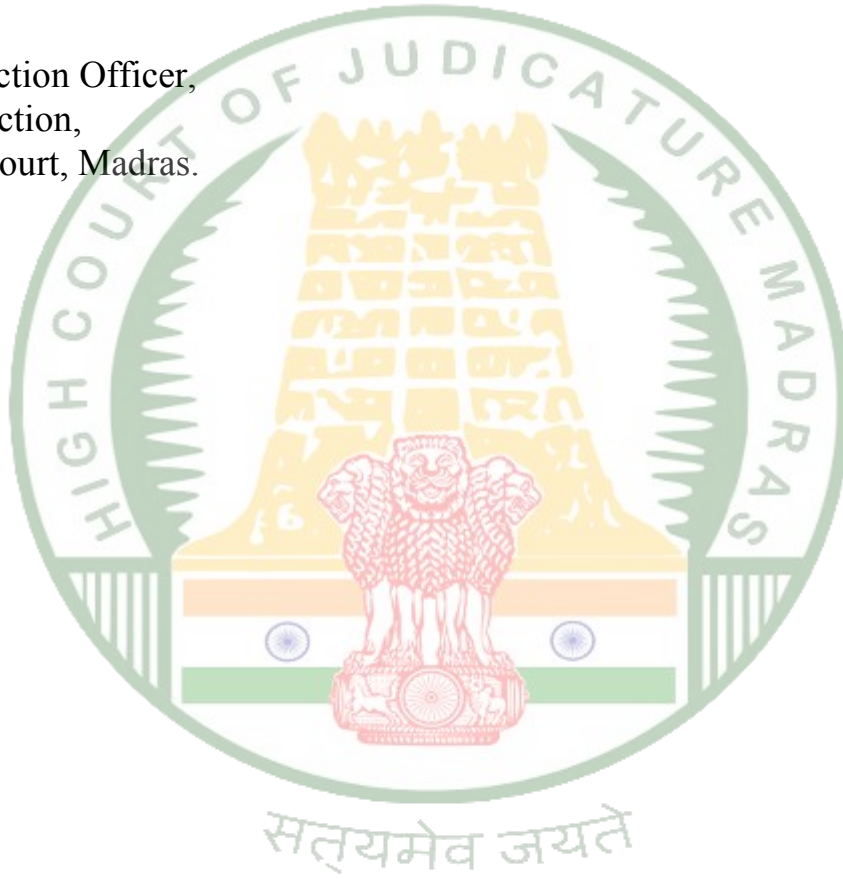
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To

1. Principal Sub-Court,
Tiruppur.

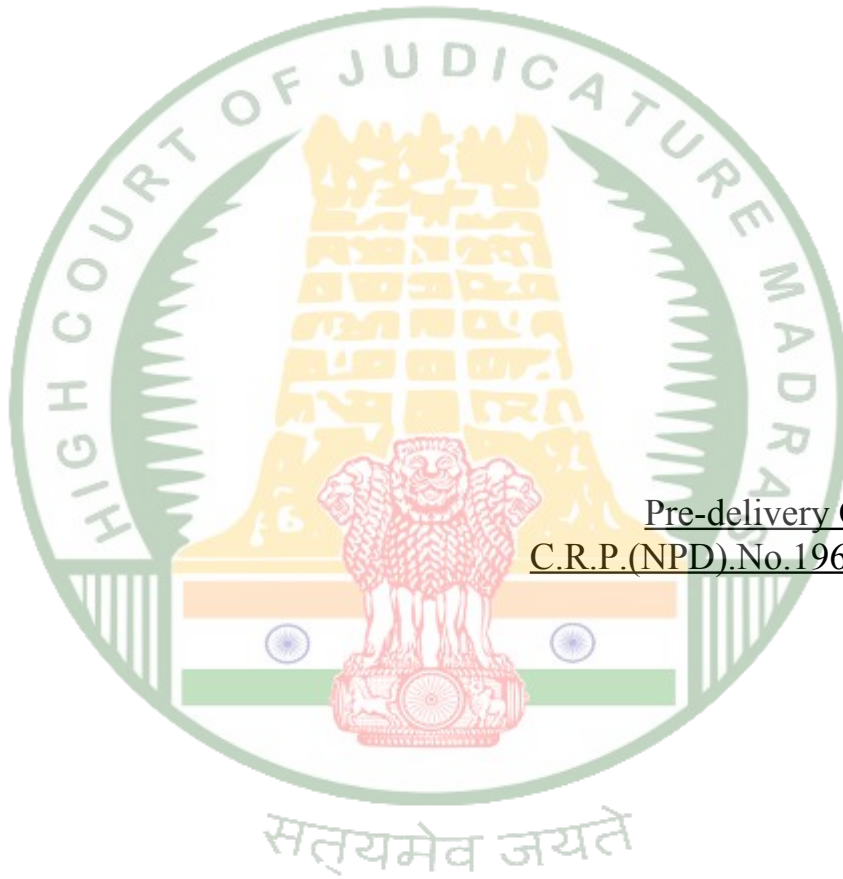
2. The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA,J.

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Pre-delivery Order in
C.R.P.(NPD).No.196 of 2016

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