

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)Nos.244 & 245 of 2018
and C.M.P.Nos.1393 & 1394 of 2018

GKV Properties
A Partnership Firm,
rep. by its Partner,
K.Velumani
No.33/12, Natesar Mill Compound
Perundurai Road,
Erode - 638 011.

... Petitioner in
both CRPs.

Vs.

1. V.Aravindan (died)
2. UGS Impex,
A Partnership Firm,
Rep. by its Partner D.Saravanan
G.K.Fashion,
No.1/171, Indhu Nagar,
Palayapalayam,
Thindal Post,
Erode - 638 012.

3. D.Saravanan
4. K.Vadivel
5. A.Chinnammal

6. A.Amuthavalli
7. A.Harikrishna
8. Minor A.Vijaykumar,
Rep by his mother and
Natural guardian A.Amuthavalli
(RR4 to R8 brought on record as
Legal heirs of the deceased first
respondent vide Court order dated
03.02.2021 made in C.M.P.No.7228
of 2019 in CRP.No.244 of 2018)

... Respondents in
CRP.No.244 of 2018

1. K.Sakthi
2. R.Natarajan
3. UGS Brothers
A Partnership Firm,
Rep. by its Partner D.Saravanan
G.K.Fashion,
No.1/171, Indhu Nagar,
Palayapalayam,
Thindal Post,
Erode - 638 012.

4. UGS Impex
A Partnership Firm,
Rep. by its Partner D.Saravanan
G.K.Fashion,
No.1/171, Indhu Nagar,
Palayapalayam,
Thindal Post,
Erode - 638 012.

5. D.Saravanan

... Respondents in
CRP.No.245 of 2018

Common Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India, to strike of the petitions in I.P.Nos.8 & 9 of 2017 respectively, on the file of the Second Additional Subordinate Judge, Erode, insofar as its relates to the petitioner in the above Civil Revision Petition and with respect to the petition mentioned property of the petitioner alone in the above Civil Revision Petition.

(Prayer amended vide order of this Court dated 30.01.2018 made in C.M.P.No.1676 & 1677 of 2018 in C.R.P.Nos.244 & 245 of 2018 respectively.)

For Petitioner
in both CRPs : Mr.V.P.Sengottuvel

For Respondents
in CRP.244/15
R1 : Died
For R5 & R7 : Mr.S.Kaithamalai Kumaran

For Respondents
in CRP.245/15
For R1 & R2 : Mr.S.Kaithamalai Kumaran
For R3 to R5 : Notice served

COMMON ORDER

These Civil Revision Petitions have been filed to strike of the petitions in I.P.Nos.8 & 9 of 2017 both on the file of the Second Additional Subordinate Judge, Erode.

2. The learned counsel appearing for the petitioner in both Civil Revision Petition submitted that the petitioner is the third and fourth respondent in the petition filed by the first respondent and respondent 1 & 2 respectively. The petitioner purchased the suit property from one D.Saravanan viz., the third respondent and fifth respondent in both Civil Revision Petition, by a registered sale deed dated 04.10.2016, registered vide document No.6144 of 2016 on the file of the Join I Sub Registrar Office, Erode.

3. Thereafter on the request of the said D.Saravanan, the first respondent and the respondents 1 & 2 in both Civil Revision Petition had lent a sum of Rs.30,00,000/- and Rs.6,00,000/- respectively on 20.10.2016 and 15.10.2016 respectively. In order to discharge the said debt and repaying the same the borrower issued post dated cheques and same were presented for collection. It was returned dishoured with an endorsement "funds insufficient".

4. Therefore, the first respondent and the respondents 1 & 2 in both Civil Revision Petitions filed petition in I.P.Nos.8 & 9 of 2017 respectively to adjudicate the third respondent and the fifth respondent in both Civil Revision Petitions. As the creditors in both petitions, they also prayed direction directing the Official Assignee to take charge of the property which was purchased by the petitioner herein from the said D.Saravanan for administration and to sell the same in order to pay the amounts due to the first respondent and respondents 1 & 2 in both Civil Revision Petitions.

5. He further submitted that the property was duly purchased for valid sale consideration vide registered sale deed dated 04.10.2016, whereas the loan borrowed only after the sale deed viz., on 15.10.2016 & 20.10.2016. Therefore at the time of purchasing the property, there was no borrowal of money by their vendor. While being so, the first respondent and the respondents 1 & 2 in both Civil Revision Petitions filed petition to adjudicate the borrower as an insolvent and bring the petition mentioned property for sale, after setting aside the sale executed in favour of the

petitioner herein. It is nothing but clear abuse of process of law and the second prayer in the insolvency petition is not at all sustained as against the petitioner and it is liable to be strike of. In support of his contention, he relied upon the following reported judgments:-

- i) 2002 (1) SCC 100 - Roshan Deen Vs. Preeti Lal*
- ii) 1998 (3) SCC 573 - K.K.Modi Vs. K.N.Modi*
- iii) 2013 (2) SCC 398 - Kishore Samrite Vs. State of UP & ors*
- iv) 2000 (3) CTC 74 - Seenii @ sundarammal Vs. Ramasamy Poosari & ors.*
- v) 2010 (4) CTC 690 - South and Rajamani Transport Pvt. Ltd., Vs. Srinivasan & ors*
- vi) 2013 (4) Online Mad 3302 - S.R.Nanda Kishore Vs. The Body of Villagers & Ors.*

6. Per contra, the learned counsel appearing for the respondents 1 & 2 in CRP.No.245 of 2018, submitted that while borrowing the loan the petition mentioned property was shown to the respondents 1 & 2 and seeing the said property the respondents 1 & 2 had lent money to the borrower. He further submitted that the petition mentioned property's guideline value comes to Rs.1,81,85,000/- whereas the petitioner had paid the deficit stamp duty of Rs. 10,21,000/-, which shows that there is a clear collusion between the borrower and purchaser and only to defeat the amount borrowed from

the respondents 1 & 2. Therefore he prayed for dismissal of the Civil Revision Petition in CRP.No.245 of 2018.

7. Heard Mr.V.P.Sengottuvel, learned counsel appearing for the petitioner, Mr.S.Kaithamalai Kumaran, learned counsel appearing for the respondents 5 & 7 in CRP.No.244 of 2018 and the respondents 1 & 2 in CRP.No.245 of 2018. Though notices served and name printed in the cause list, no one is appeared on behalf of the other respondents in both petitions.

8. The first respondent in CRP.No.244 of 2018 and the respondents 1 & 2 in CRP.No.245 of 2018 filed insolvency petitions in I.P.Nos.8 and 9 of 2017 respectively, to adjudicate the respondents 2 & 3 in CRP.No.244 of 2018 and respondents 3 to 5 in CRP.No.245 of 2018 as insolvent and also for direction to direct the Official Assignee to take charge of the petition mentioned property for administration and to sell the same in order to pay the amount due to the first respondent and respondents 1 & 2 in both Civil Revision Petitions.

9. On perusal of records revealed that the petitioner purchased the

petition mentioned property by the registered sale deed dated 04.10.2016 vide registered document No.1644 of 2016 on the file of the Join I Sub Registrar, Erode. Admittedly, only after purchase of the property, the first respondent and the respondents 1 & 2 respectively in both Civil Revision Petitions had lent money to other respondents. In fact, on the date of disbursement of the loan amount, the borrower also issued post dated cheques. All the cheques were presented for collection and returned dishonoured with an endorsement insufficient funds. Therefore, there is absolutely no connection between the purchaser of the property with the borrowal of loan. Admittedly, no documents in respect of the petition property were deposited while borrowing the loan by the borrower and also there was no mortgage in respect of the petition mentioned property.

10. Insofar as the insolvency petitions are concerned, it were filed for direction directing the Official Assignee to take charge of the petition mentioned property for administration and to sell the same and order to pay the amounts due to the first respondent and respondents 1 & 2 in both Civil Revision Petitions, which is not sustainable. In this regard, the learned

counsel appearing for the petitioner relied upon the judgment reported in **2002 (1) SCC 100** in the case of **Roshan Deen Vs. Preeti Lal**, which reads as follows :-

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it. {vide State of Uttar Pradesh vs. District Judge, Unnao and ors. (AIR 1984 SC 1401)}. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see

whether injustice has resulted on account of any erroneous interpretation of law. If justice became the byproduct of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

11. He also relied upon the judgment reported in **1998 (3) SCC 573** in the case of **K.K.Modi Vs. K.N.Modi**, in which the Hon'ble Supreme Court of India held as follows :-

"43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant

circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

44. One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has

to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

12. He also relied upon the judgment reported in **2013 (2) SCC 398** in the case of ***Kishore Samrite Vs. State of UP & ors***, as follows :-

"32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and

mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos

of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(viii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily

meddlesome bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.”

The Hon'ble Supreme Court of India repeatedly held that the Court must ensure that its process is not abused and in order to prevent abuse of process of Court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty-bound to impose heavy costs. Further the process of Court must be used bonafide and property and must not be misused or abused. It is the duty of the Court to prevent improper use of its machinery. The Court has to see that it is not used as a means of oppression and the process of litigation is free from vexatiousness.

13. In the case on hand, the petition mentioned property was purchased by the petitioner as early as on 04.10.2016, whereas the amount was borrowed by his vendor only on 15.10.2016 and 20.10.2016. Therefore, the petition mentioned property is no way connected with the borrowal of loan. Therefore, the impugned proceeding is nothing but clear abuse of

process of law and it cannot be sustained as against the petitioner. Hence the prayer "(b)" in both petitions I.P.Nos.8 and 9 of 2017 is hereby struck off. Insofar as the other prayers are concerned, the insolvency petition can be maintainable as against the respondents 1 & 2 in I.P.No.8 of 2017 and against the respondents 1 to 3 in I.P.No.9 of 2017 on the file of the II Additional Subordinate Court, Erode.

14. Accordingly, both the Civil Revision Petitions are allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

15.04.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

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To

1. The II Additional Subordinate Judge,
Erode.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

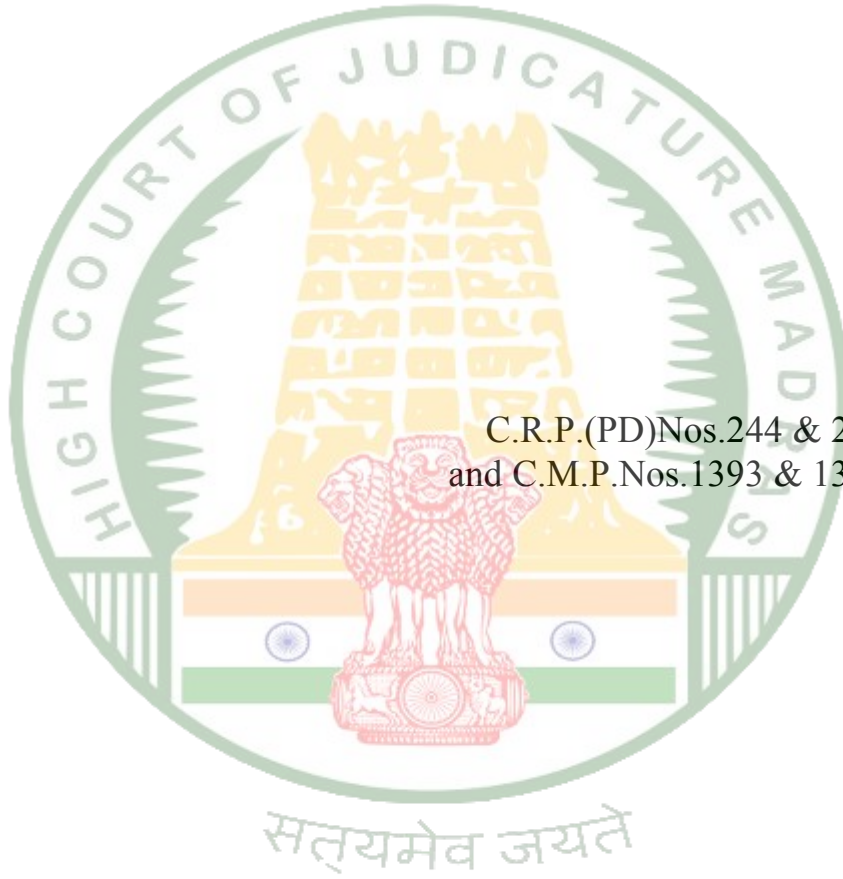


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C.R.P.(PD)Nos.244 & 245 of 2018

G.K.ILANTHIRAIYAN, J.

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