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C.R.P. (PD) .No.678 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.678 of 2016
and C.M.P.No.3477 of 2016

M.Sudhakar

.. Petitioner

Vs.

1.The Official Receiver,
Vellore, representing the General Body
of Creditors, in I.P.No.7 of 2002,
Sub Court, Vellore.

2.The South Indian Bank,
Vellore Branch,
Rep by its Branch Manager
Having Office at 1st floor,
No.50, Katpadi Road,
Vellore 4.

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 06.07.2015 made in I.A.No.737 of 2011 in O.S.No.104 of 2011 on the file of the District Munsif Court, Katpadi, Vellore District.

For Petitioner : Mr.T.K.Ravikumar

For Respondents : Mr.R.Vasudevan for
Mr.E.Kannadasan for R1



ORDER

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(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decreetal order dated 06.07.2015 made in I.A.No.737 of 2011 in O.S.No.104 of 2011 on the file of the District Munsif Court, Katpadi, Vellore District.

2.The petitioner is the 2nd defendant, the 1st respondent / Official Receiver is the plaintiff and 2nd respondent is the 1st defendant in O.S.No.104 of 2011 on the file of the District Munsif Court, Katpadi, Vellore District. The 1st respondent has filed the said suit for declaration that all the said rights and beneficial interests, in respect of the 1st para of the schedule mentioned properties, continues to be with the plaintiff, in view of the vesting of it in I.P.No.7/2002 on the file of Sub Court, Vellore, to be duly and lawfully dealt with by the 1st respondent and also to transfer it duly and lawfully to the third parties, in spite of the alleged proceedings in O.A.No.26/2004 D.R.T.C. Chennai, taken by the 2nd respondent and petitioner and for restraining them from claiming or propagating that the 1st respondent as no agents in 1st item of the scheduled mentioned properties, against the 2nd respondent herein and the petitioner. In the said suit, the petitioner filed I.A.No.737 of 2011 under



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Order VII Rule 11 and Section 151 of Civil Procedure Code, to reject the plaint. According to the petitioner, he purchased the suit property in the auction sale brought by the 2nd respondent by Recovery Inspector, D.R.T-1, Chennai. The petitioner is a successful bidder and paid entire bid amount. The sale certificate was issued in his favour. From the date of purchase, he is in possession of the property and he has paid the statutory dues i.e., house tax, water tax and electricity connection and they were transferred in his name. The 2nd respondent is a secured creditor and stated that the petitioner is entitled to file an application under Order VII Rule 11 of CPC and as per Rule 11(a) and 11 (d), the plaint to be rejected. The petitioner has extracted Section 47 of the Provincial Insolvency Act and Order VII Rule 11 of CPC and head Notes in the judgment reported in **2003 (1) SCC 557 [Saleem Bhai Vs. State of Maharashtra]** and **2009 (9) SCC 173 [P.K.Palanisamy Vs. N.Arumugham and another]**.

3.The petitioner further stated that the 2nd respondent as a secured creditor, exercised the option as per Section 47 of the Provincial Insolvency Act. The petitioner is an innocent purchaser and the second respondent is bound to indemnify the petitioner as per Section 18 of the Recovery of Debts



Due to Banks & Financial Institutions Act, 1993 (hereinafter referred to as “the Act”). No Court has jurisdiction over the matters covered by Section 17 of the Act other than the writ jurisdiction of the High Court and Hon'ble Apex Court. The suit filed by the 1st respondent is vexatious and does not disclose any cause of action and prayed for rejection of the plaint.

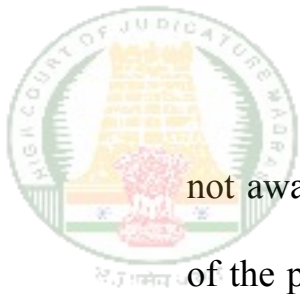
4.The 1st respondent filed counter affidavit and denied all the averments and submitted that the petitioner has not made any averments in the affidavit for rejection of plaint except reproducing the provisions of Section 47 of the Provincial Insolvency Act and Order VII Rule 11 of CPC. The 2nd respondent knew the appointment of the 1st respondent to the suit property as Receiver. Suppressing the insolvency proceedings and appointment of the 1st respondent as Receiver of the suit property, the 2nd respondent brought the property for sale. The proceedings of the Debts Recovery Tribunal are not binding on the 1st respondent, the petitioner has not made out any case for rejection of plaint and prayed for dismissal of the application.



5.The learned Judge considering the averments made in the plaint, documents filed along with the plaint, affidavit and counter affidavit, dismissed the application holding that whether Section 18 of the Act, can be applied against the 1st respondent /Receiver is a mixed question of law and fact, the suit discloses cause of action and the petitioner failed to furnish the details as to how the suit is barred by limitation.

6.Against the said order of dismissal dated 06.07.2015 made in I.A.No.737 of 2011, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioner reiterated the averments in the affidavit filed in support of the above application and submitted that the 2nd respondent is a secured creditor. The 1st respondent/Official Receiver cannot take away the right of the secured creditor. The 2nd respondent/ secured creditor brought the property for sale, after issuing necessary publication in the newspaper. The Public auction was conducted. The petitioner participated in the public auction and he is the highest bidder and auction purchaser. The Recovery Officer executed the sale deed in favour of the petitioner and issued sale certificate. The petitioner is



not aware of the pendency of the insolvency proceedings. The sale in favour of the petitioner is perfect. The order of the Debts Recovery Tribunal cannot be challenged before the Civil Court, in view of Section 18 of the Act. The learned Judge misconstrued the scope of Order VII Rule 11 (d) of Civil Procedure Code and erred in holding that the Bar of jurisdiction of Civil Court under Section 18 of the Act, after the appointment of receiver in insolvency proceedings is a question of fact and the same should be decided only after conducting trial. The learned Judge erred in holding that the plaint discloses cause of action as to the sale of 1st item of the property without informing the 1st respondent before the Debts Recovery Tribunal, in his proceedings, when the Receiver has vested powers to deal with the said property and prayed for allowing the Civil Revision Petition and rejection of plaint.

8.The learned counsel appearing for the 1st respondent made submissions in support of the order of the learned Judge and submitted that the plaint discloses cause of action and whether Section 18 of the Act, is applicable to the suit cannot be decided in the application filed under Order VII Rule 11 of Civil Procedure Code and prayed for dismissal of the Civil Revision Petition.



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9. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials available on record.

10. From the materials available on record, it is seen that the 1st respondent was appointed as receiver in I.P.No.7 of 2002 on the file of the Subordinate Court, Vellore, filed by owner of the suit property. In the said insolvency proceedings, the 2nd respondent herein was impleaded as 1st respondent. The 1st respondent herein has contended that the 2nd respondent Bank is aware of appointment of the 1st respondent as Receiver and the suit property is vested with the 1st respondent. It is further case of the 1st respondent that he has taken possession of suit property and owner of the property was vacated. The 1st respondent has put seal and informed to the Police. According to the 1st respondent, without impleading the 1st respondent, suppressing the insolvency proceedings and appointment of the 1st respondent as Receiver, the 2nd respondent Bank filed O.A.Nos.26 & 27 of 2004 before the Debts Recovery Tribunal, Chennai. The 2nd respondent in O.A.No.27 of 2004 filed written statement and brought to the notice of the



Debts Recovery Tribunal about the pendency of insolvency proceedings and appointment of the 1st respondent as Official Receiver to the suit property.

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The suit is filed claiming the relief stating the above details disclosing the materials with dates in the cause of action paragraph, to substantiate the claim of 1st respondent. When the application was filed under Order VII Rule 11 of Civil Procedure Code, only the averments in the plaint and documents filed along with the plaint has to be considered to decide the application whether any of the ingredients of Order VII Rule 11 of Civil Procedure Code is complied with. The averments in the written statement, the documents relied on by the defendants and the averments in the affidavit filed in support of the application cannot be taken into account, while deciding the application under Order VII Rule 11 of Civil Procedure Code.

11. Further the learned Judge considering the contention of the petitioner that the suit is barred as per Section 18 of the Act, held that the grounds raised by the petitioner are mixed question of law and facts and the same cannot be decided in the application filed for rejection of plaint. The issue will be decided only after considering the evidence letting in before the trial Court. The learned Judge considering the entire materials in proper



perspective and also the scope of Order VII Rule 11 of Civil Procedure Code, dismissed the application by giving cogent and valid reason. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

12.For the above reasons, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No
Internet : Yes / No

To

The District Munsif Judge,
Katpadi, Vellore District.



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V.M.VELUMANI, J.

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