

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM

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

CRP.(NPD).No.4569 of 2017

and

C.M.P.No.17850 of 2017

S.Venkataraman

... Petitioner

vs.

1.K.S.Balakrishnan (Babu)

(Cause title amended vide order of Court dated
06.12.2017 made in C.M.P.No.19588/2017 in
CRP.SR.73555/2017)

2.V.V.Seethalakshmi

... Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908, praying to set aside the fair and decreetal order dated 19.04.2017 made in E.A.No.11 of 2015 in E.P.No.21 of 2012 in O.S.150 of 2005 on the file of the Learned Additional District Judge V at Coimbatore.

For Petitioner : Mr.S.V.Pravin Rathinam

For Respondents : Mr.V.Sivakumar

ORDER

The present civil revision petition is filed as against the fair and decreetal order dated 19.04.2017 made in E.A.No.11 of 2015 in E.P.No.21 of 2012 in O.S.150 of 2005 on the file of the Learned Additional District Judge V at Coimbatore, thereby dismissing the petition challenging the order passed in execution petition in E.P.No.21 of 2012 dated 03.04.2014 filed under Order XXI Rule 11(2) of Civil Procedure Code, 1908 (hereinafter referred to as the 'Act').

2. Learned counsel for the petitioner would submit that it is mandatory under Order XXI Rule 72-A of C.P.C., that the Court shall fix a reserve price as regards the mortgage and the reserve price has not been less than the amount due under the decree. Whereas, the respondents though obtained permission to bid on the auction, the Court did not bestow its attention to the necessity of fixing the reserve price nor decree holder bring it to the notice of the Court that the Court had failed to fix the reserve price in respect of auction property along with upset price and as such, the sale itself is void and liable to be set aside. The respondents had purchased the

suit property for a meagre value and it is lesser than the market value. Order XXI Rule 72-A of C.P.C., is mandates to fix the reserve price for the mortgaged property and such a reserve price shall not be fixed less than the amount due under the decree.

3. In support of his contention he relied on the following judgements:-

- (i) *Navalkha and Sons vs. Sri Ramanya Das and Others* reported in (1969) 3 SCC 537.
- (ii) *Ram Kishun vs. State of U.P* reported in (2012) 11 SCC 511.
- (iii) *Fcs Software Solutions Ltd vs. La Medical Devices Ltd. and others* reported in (2008) 10 SCC 440.

4. Per contra, learned counsel for the respondents would submit that the petitioner did not challenge the sale within a period of 60 days from the date of sale. Therefore, directly hit under Article 127 of the Limitation Act, 1963 and it provides only 60 days to challenge the sale. He further submitted that when the petitioner invoke Order XXI Rule 72-A of C.P.C.,

he has to comply the Rule 89 of Order XXI of the C.P.C. Without complying the Rule 89, he cannot challenge the sale. He further submitted that guideline value of auctioned property is Rs.3,000/- per Sq.Ft., and the total area of the petition mentioned property is 2968 Sq.ft., and as such, the property valued at Rs.89,04,4000/- and a sum of Rs.11,00,000/- was fixed for the value of the building. Therefore, the value fixed for the property is correct and genuine.

5. In fact, the respondents after obtaining leave of the Court under Order XXI Rule 72-A of C.P.C., and participated in the auction. He further submitted that the respondents filed a Execution Petition in E.P.No.21 of 2012 for recovery of Rs.1,39,72,143/- by bringing the auctioned property for sale. Initially the value of the property was fixed by the Court below at Rs.1,75,00,000/-. No bidder was participated in the court auction and as such, the upset price was reduced to Rs.1,50,00,000/- in the 2nd time. Even then, no bidder was ready to purchase the property and again, the upset price was reduced to Rs.1,40,00,000/- and the auction was conducted on 20.01.2014. Again, the property did not fetch the value and as such, again the guideline value of the property was fixed and the auction was

conducted. In which the respondents have filed an application in E.A.No.3 of 2014 for seeking permission to participate in the court auction and buy the said property and adjusted the decree amount towards the sale price. He further submitted that in fact after the decree passed in the suit, the petitioner filed appeal suit in A.S.SR.No.20590 of 2014 with an application to condone the delay of 18 days. He did not approach this Court with clean hands since he already obtained a certified copy of the judgement and decree in the suit and thereafter, he filed another application for certified copy of the judgement and decree and filed appeal suit. Therefore, this Court by an order dated 26.10.2015 dismissed the appeal suit in the SR stage itself and aggrieved by the same, the petitioner also filed Special Leave Petitions in S.L.P.(CC).Nos.5880 and 5881 of 2016 before the Hon'ble Supreme Court and the same was also dismissed by an order dated 30.03.2016. Therefore, the Court below rightly dismissed and it does not warrant any interference of this Court.

6. Heard Mr.S.V.Pravin Rathinam, learned counsel for the petitioner and Mr.V.Sivakumar, learned counsel for the respondents and perused the materials placed on record, apart from the pleadings of the parties.

7. The respondents filed a suit in O.S.No.150 of 2005 on the strength of mortgage in respect of the suit property. The suit was decreed by judgement and decree dated 05.06.2012. On the strength of the decree, the respondents filed Execution Petition to bring the suit property for sale to realise the decree amount.

8. Aggrieved by the same, the petitioner preferred an appeal suit before this Court with an application to condone the delay of 18 days. The said petition was dismissed and also confirmed by the Hon'ble Supreme Court in S.L.P.(CC).Nos.5880 and 5881 of 2016 by an order dated 30.03.2016. Thereafter, the respondents filed Execution Petition in E.P.No.21 of 2012 to bring the suit property for sale. Initially, the upset price was fixed at Rs.1,75,00,000/-, there was no bidder for the sale of the mortgaged property and as such, the upset price was reduced and fixed at Rs.1,50,00,000/- and brought for sale for the second time on 21.10.2013. Again, there was no bidder and the sale price was reduced at Rs.1,40,00,000/-. Unfortunately, again no bidder and as such, the value of the property was reduced at Rs.1,25,00,000/-.

9. While being so, the respondents filed a petition in E.A.No. 3 of 2014 under Order XXI Rule 72-A and Rule 84(2) of C.P.C., seeking permission to bid in the court auction and to set off the decree amount with the sale price and to dispense with the condition to deposit 1/4th auction price, if they are declared as successful bidders. After giving an opportunity to the petitioner, the same was allowed and granted permission to the respondents to participate in the auction sale.

10. In fact, the petitioner also challenged the order passed in E.A.No.3 of 2014 thereby granted permission to the respondents to participate in the auction sale in C.R.P.No.1930 of 2014 before this Court and the same was also dismissed by an order dated 19.09.2014. The property was brought for sale, the respondents were successful bidder for the sale price of Rs.1,25,02,000/- and the same was also confirmed by this Court.

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11. That apart, the petitioner ought to have challenged the sale within a period of 60 days as contemplated under Order XXI Rule 90 of the C.P.C.

In this regard, it is relevant to extract Article 127 of the Limitation Act, 1963, that to set aside a sale in execution of a decree, including any such application by a judgement-debtor within a period of 60 days from the date of sale. Therefore, the present petition is clearly barred by limitation.

12. That apart, when the petitioner challenged the sale under Order XXI Rule 72-A of C.P.C., as that a mortgagee not to bid on sale without the leave of the Court, he has to comply with other conditions as contemplated under Order XXI Rule 89 of C.P.C. Admittedly, the petitioner did not comply the same.

13. Further, the respondents were permitted to participate in the auction sale by the Court below in E.A.No.3 of 2014. The respondent filed execution petition to realise the decree for a sum of Rs.1,39,72,143/-. Though the property was purchased at Rs.1,25,02,000/-, initially the upset price was fixed at Rs.1,75,00,000/- and subsequently, reduced the upset price to Rs.1,25,00,000/-. Since no bidder for the value of the upset price of the mortgaged property. Therefore, for the entire decree amount the mortgaged property has to be adjusted towards the full and final decree

amount. The respondents shall not file any other execution petition to realise the balance decree amount. Therefore, this Court finds no irregularity or illegality in the order passed by the Court below and does not warrant any interference of this Court.

14. Accordingly, the Civil Revision Petition is dismissed with above observation. No costs. Consequently, the connected civil miscellaneous petition is closed.

08.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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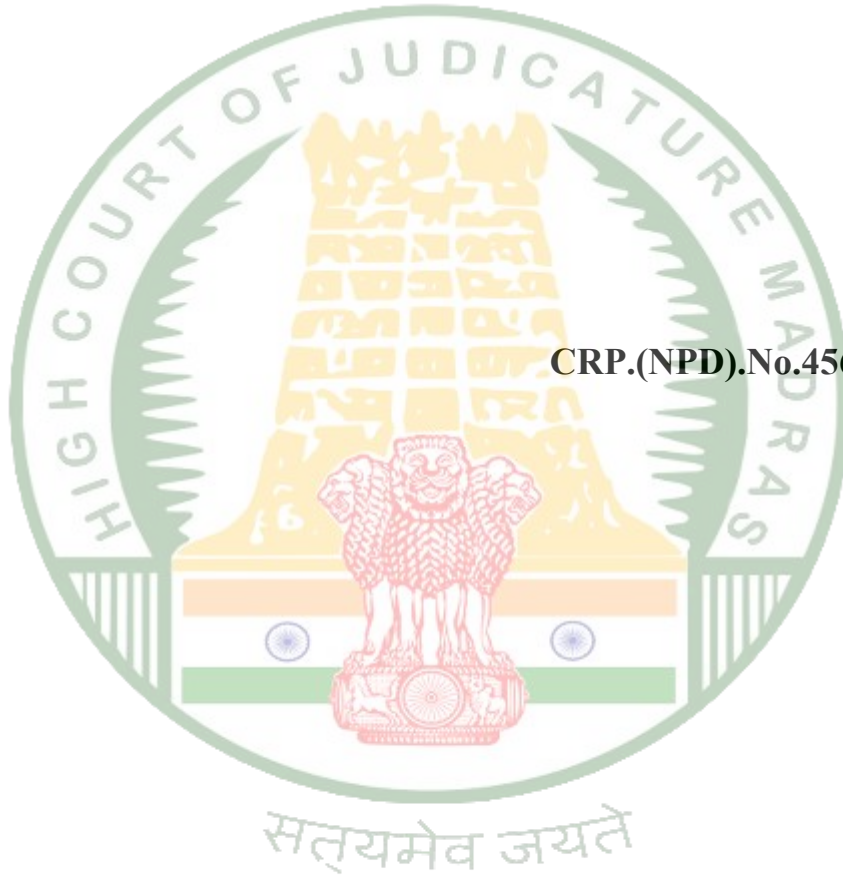
To

The Additional District Judge V at Coimbatore,

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G.K.ILANTHIRAIYAN,J.

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