



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.910 of 2016

&

C.M.P.No.5046 of 2016

Punjab National Bank,
Asset Recovery Management Branch,
No.448 A, Dr.Nanjappa Road,
Coimbatore – 641 018.

.. Petitioner

Vs.

1.V.Pon Narayanan

2.A.Ananth

.. Respondents

Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the Judgment and Decree dated 11.12.2015 passed in I.A.No.511 of 2015 in O.S.No.200 of 2009 on the file of I Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.M.L.Ganesh
For R1 : No appearance

ORDER

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

This Civil Revision Petition is filed against the Judgment and Decree



dated 11.12.2015 passed in I.A.No.511 of 2015 in O.S.No.200 of 2009 on the file of I Additional District and Sessions Court, Coimbatore.

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2.The petitioner is third party in O.S.No.200 of 2009 on the file of the District Court, Coimbatore. The first respondent filed the said suit against the second respondent for recovery of money. Pending suit, the first respondent filed I.A.No.515 of 2009 for attachment before the judgment of immovable property belonging to the second respondent and attachment was ordered on 18.02.2010. Subsequently, the respondents 1 and 2 compromised the matter before the Lok Adalat and the first respondent agreed to receive a sum of Rs.10,00,000/- (Rupees Ten Lakhs) as a full and final settlement in twenty monthly installments of Rs.50,000/- (Rupees Fifty Thousand) each.

3.As per the terms of the compromise, if the second respondent fails to pay any of the installments, the first respondent can bring the property attached for sale to realize the decretal amount, deducting the installment amounts paid. The petitioner filed the present application in I.A.No.511 of 2015 in the said suit in O.S.No.200 of 2009 under Order XXXVIII Rule 9 read with Section 151 of the Code of Civil Procedure to re-open the suit and



to raise the order of attachment dated 18.02.2010. According to the petitioner, the second respondent borrowed money from the petitioner Bank and mortgaged the very same property by deposit of title deeds and memorandum of title deeds was registered on 12.02.2007 vide document No.1426 of 2007 on the file of SRO, Singanallur. According to the petitioner, the second respondent failed to repay the amount due to the petitioner Bank. The petitioner filed O.A.No.95 of 2013 before the Debts Recovery Tribunal, Coimbatore and the said O.A.No.95 of 2013 was decreed on 10.2.2015 directing the second respondent and other defendants to pay a sum of Rs.43,20,868.72/-. The petitioner also took proceedings under SARFAESI Act, 2002 (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002) and brought the property for sale. There is no bidders on the auction sale as there was an attachment before judgment ordered in favour of the first respondent in O.A.No.95 of 2013 and also in favour of another person and reflected in the Encumbrance Certificate. According to the petitioner, unless the attachment is raised, the petitioner Bank will not be in a position to sell the property and the petitioner Bank has given an undertaking that they will deposit the balance sale proceeds if any, after adjusting the dues to the Bank and existence of sale by filing affidavit of



undertaking.

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4.The second respondent remained exparte. The first respondent opposed the said application by filing counter.

5.The learned Judge considering the averments in the affidavit and counter affidavit, dismissed the I.A.No.511 of 2015 by the order dated 11.12.2015.

6.Against the said order of dismissal dated 11.12.2015 passed in I.A.No.511 of 2015, the petitioner has come out with the present Civil Revision Petition.

7.Though notice has been served on the first respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

8.The second respondent remained exparte before the Tribunal and hence, notice to second respondent is dispensed with.



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9. Heard the learned counsel appearing for the petitioner and perused the entire materials on record.

10. From the materials available on record, it is seen that there was a mortgage in favour of the petitioner Bank earlier to two attachments before the judgment of the same property. In view of the earlier mortgage, any attachment of property subsequent to the mortgage in favour of the petitioner Bank or even any subsequent mortgage only will be subject to the prior right of the petitioner Bank as per the mortgage by deposit of title deeds which is registered before the concerned Sub Registrar Office. The learned Judge dismissed the application holding that mortgage in favour of the petitioner is earlier to the order of attachment and therefore order of attachment is subject to the prior right of the petitioner Bank as a mortgagee. The learned Judge held that mortgage in favour of petitioner is earlier to the order of attachment and therefore order of attachment are subject to prior right of petitioner Bank as per the mortgage. The learned Judge held that if the order of attachment is raised, the first respondent will be losing his right to proceed with the sale of the said property in the event of second respondent failing to pay the amounts



as per the compromise arrived between the respondents 1 and 2 before the Lok Adalat. Since the application filed by the petitioner under Order XXXVIII Rule 9 read with Section 151 of the Code of Civil Procedure and not under Section XLVII or Order XXI Rule 97 of the Code of Civil Procedure, the exact amount due to the petitioner cannot be gone into in the present application and decide the issue. The learned Judge has rightly applied the well settled principles with regard to the prior mortgage and subsequent attachment and dismissed the I.A.No.511 of 2015 by giving cogent and valid reason, especially considering the fact that if attachment is raised, the first respondent will be losing his valuable right. There is no error in the order of the learned Judge warranting interference by this Court.

11.In view of the above, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.01.2022

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Index : Yes / No
Internet : Yes / No



C.R.P. (NPD) .No.910 of 20



To

The learned I Additional District and Sessions Judge,
Coimbatore.

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V.M.VELUMANI, J.

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