



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

CRP (NPD) No.3175 of 2019

WEB COPY

1.P.K.Venkatesh (died)
2.S.Venkateshwari
3.V.Dhanusudhan

4.Minor V.Joshitha
Rep. by her Nature Guardian and Mother
S.Venkateshwari

(Petitioners 2 to 4 brought on record as LR's of the deceased Sole Petitioner viz. P.K.Venkatesh vide Court order dated 14.03.2022 made in C.M.P.No.3443 of 2022 in CrI.No.3175 of 2019 by NSSJ)

...Petitioners

Vs.

1.Shriram Chits Tamil Nadu (P) Ltd,
Amman Complex, 2nd Floor,
No.159 - A, Mettur Road,
Erode.
Now business at D.No.10, LKA Tower,
141/2, Perundurai Road,
Erode - 11, Rep. By its Foreman.

2.P.Sankar,
Son of Palaniappan

... Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the Fair and Decretal Order dated 24.07.2019 made in E.A.No.51 of 2017 in E.A.No.51 of 2016 in E.P.No.79 of 2013 in Arbitration No.44 of 2005 on the file of the Court of Subordinate Judge, Perundurai.

For Petitioners :	Mr.B.Vijayakumar for Mr.R.Babu
For R1 :	Mr.Adarsh Subramanian for Mr.V.Prakash Babu
For R2 :	Mr.V.Lakshminarayanan for Mr.M.Guruprasad



O R D E R

The revision petitioners herein are the heirs of a Judgment Debtor in E.P.No.79 of 2013 which was laid by the respondent for executing an award of the Arbitrator in Arbitration Case No.44 of 2005. The E.P.No.79 of 2013 was laid before the Sub Court, Perundurai.

2.1 As per the award, the Judgment Debtor was required to pay a sum of Rs.8,74,237/- with interest at 24% p.a. to the Decree Holder. The Execution Petition was laid for attachment and sale of two items of properties of the Judgment Debtor. Proper notice was served, but the Judgement Debtor did not appear and consequently an exparte order of attachment was passed. Later, sale proclamation was ordered, upset price were fixed which was thereafter came to be reduced by the Execution Court, and on 07.11.2015, both the items of the properties were sold in court auction to the 2nd respondent herein. The entire sale consideration too was paid, and accordingly the sale came to be confirmed and a sale certificate too was issued to the 2nd respondent on 23.04.2016.

2.2 Be that as it may, the Judgment Debtor had filed E.A.No.11 of 2017 under Order 21 Rule 90 C.P.C. raising certain objections to the auction. This application was taken out by him almost immediately after the entire sale price was deposited by the auction purchaser in the Court and before the sale certificate was issued. However, this application was returned for curing some defects and it was re-presented almost after a year. It is in this interregnum, the sale certificate came to be issued. Indeed, before E.A.No.11 of 2017 was taken on its file, the auction purchaser had moved the Court for delivery of the properties purchased by him.

3. So far as E.A.No.11 of 2017 is concerned, this application came to be dismissed on 03.07.2017 and this was challenged by the Judgment Debtor in C.R.P(NPD).No.3174 of 2017. On 13.08.2018, the C.R.P.No.3174 of 2017 came to be dismissed by this Court for default.

4. Thereafter, a certain Selvaraj and Subramani took out a set of applications, obstructing delivery of properties and all these came to be dismissed on 25.10.2018. The 2nd respondent took out E.A.No.80 of 2017 for removal of obstruction and that was allowed on 31.10.2017. It is at this juncture, E.A.No.51 of 2017 was filed by the auction purchaser for seeking effective



police protection for effecting delivery. This is ordered by the Execution Court on 24.07.2019 and this is now being challenged by the legal heirs of the Judgment Debtor since the Judgment Debtor had passed away by now.

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5. Heard Mr.B.Vijayakumar, the learned counsel for the revision petitioner and Mr.Adarsh Subramanian for the 1st respondent and Mr.V.Lakshminarayanan for the second respondent.

6.If at all the Judgment Debtor had any opportunity to challenge the Court auction that was available to him in E.A.No.11 of 2017, that was lost to him, if not forfeited to him and to his heirs, when C.R.P.(NPD).No.3174 of 2017 was dismissed. Unless the auction is set aside in the manner known to law, the heirs of the Judgment Debtor do not have any right to obstruct delivery of the properties. Hence, this Court, does not find any merit in the Revision and the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

The Sub Court
Perundurai.

+1 cc to Mr.R.Babu Advocate sr27808
+1 cc to Mr.M.Guruprasad Advocate sr27390

CRP (NPD) No.3175 of 2019

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