IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No.745 of 2023

M/S.Ramana Educational Trust,
Represented by its Trustees,
1.Mr.M.V.M. Velmurugan
2.Mr.M.V.M. Velmohan
No.17, Venkateswara Nagar Main Road,
Ambattur, Chennai – 600 053.

...Petitioner

PRAYER: This Civil Revision Petition is filed under Section 115 of CPC., to set aside the fair and decreetal order dated 28.11.2022 passed in I.A No.6 of 2022 in Trust O.P No. 42 of 2020 on the file of the Principal District Judge, Chengalpattu.

For Petitioner : Mr.A.L.Somayaji
Senior counsel

ORDER

Challenging the order passed by the Principal District Judge, Chengalpattu, in I.A No. 6 of 2022 in Trust O.P No. 42 of 2020, the petitioner filed this petition.

2. The learned counsel for the petitioner submitted that the petitioner's Trust is an educational Trust functioning in accordance with the law as per the rules stipulate in Trust deed by the Board of Trustees. The petitioners Trust had purchased the Scheduled mentioned property (i.e., the land measuring about 3 acres in S.No.109A/2B with buildup area measuring 24000 square feet, building at Door No. 156, Vandalur Kelambakkam Road, Mambakkam Village, Chengalpattu Taluk, Kancheepuram District, vide sale deed dated 14.11.2013. Subsequently, the petitioner's Trust had obtained planning permission to construct school building and constructed 1,00,000/- square feet buildup area and running school under the name and style of Velammal Vidhyashram. Thereafter, the petitioner Trust struggled to run the said school situated in the scheduled mentioned property, hence the petitioner's Trust availed loan to the tune of Rs.14,71,21,640/- from PNB Housing Finance Limited (herein after referred to as "PNB" by mortgaging scheduled mentioned property vide deed of simple mortgage dated 21.05.2019 registered as document No. 6360 of 2019 at Sub Registrar, Guduvancheri. Now the outstanding loan amount Rs.11,59,43,486.37/-. Thereafter, due to financial crisis the Trust could not able to pay the monthly EMI towards the above loan. So the Trust decide to sell the scheduled

mentioned property to another Trust. Therefore, the petitioner Trust filed Trust O.P No. 42 of 2020 before the Principal District Judge, Chengalpattu, seeking permission to sell the scheduled mentioned property and to utilize the money to repay the bank loans and other financial crisis of the Trust.

The above said Trust O.P was ordered on 29.10.2021 and the sale auction has been conducted by the Advocate Commissioner on 16.04.2022 and M.R. Educational and Social Trust succeeded as the highest bidder in the auction and also the bidder handed over the Demand Draft for a sum of Rs.29,05,00,000/- in favour of the "The Principal District Court, Chengalpattu" drawn at Indian Bank, Ekkatuthangal branch to the advocate commissioner. The Advocate commissioner had filed the report along with the original D.D on 18.04.2022, on the file of the above said Court. Subsequently, the petitioner's Trust filed I.A No. 4 of 2022 in Trust O.P No. 42 of 2020 for confirming the sale auction held on 16.04.2020 and the same was confirmed by above Court on 27.07.2022 and directed the petitioner to register the sale deed in favour of M.R. Educational and Social Trust, and the matter was adjourned to 28.09.2022. In the meanwhile, the petitioner Trust filed a petition for payment out in I.A (S.R.) No. 4203 of 2022 to release a sum of Rs. 28,73,29,760.65/- out of total deposited amount

29,05,00,000/- in the credit of Trust O.P No. 42 of 2020, but it not yet numbered. Due to emergency situation, in order to close the PNB loan out the existing loan the petitioner Trust not pressed the earlier petition in I.A S.R. NO. 4203 of 2022 and filed I.A No.6 of 2022 in Trust O.P No. 42 of 2020 for payment out of Rs. 11,11,76,134/- in order to close the loan obtained from PNB. Due to the pendency of mortgage before PNB the petitioner Trust not able to execute the sale deed in favour of the successful bidder M.R. Educational and Social Trust. So, in order to remove the said encumbrance the petitioner filed I.A No.6 of 2022 to withdraw a sum of Rs. 11,11,76,134/- with a view to pay the loan amount availed from PNB housing finance limited. After paying loan amount only they can cancel the mortgage deed and get back original document. Further he stated that even after auctioning the property the petitioner unnecessarily paying EMI till date with interest. But Trial Court dismissed the said I.A No.6 of 2022 stated that " since no order as to receive the sale proceeds this petition cannot be entertained. Cheque cannot be issued. Hence petition dismissed." Hence prays to allow this petition.

3. Considering the fact the petitioner/Trust filed Trust O.P No. 42 of

2019 praying to sell the scheduled mentioned property of M/s. Ramana Educational Trust property in favour of third party and deposit the sale proceeds with any nationalized or scheduled bank for its fainancial assistance, to repay the present loan, to purchase the property and to utilize the sale proceeds and any interest accrued thereto for carrying out the objects and developmental activities of the Trust. In the said Trust O.P No. 42 of 2019 the petitioner assigned reason that the petitioner availed loan to the tune of Rs.14,71,21,640/- from PNB Housing Finance Limited by mortgaging scheduled mentioned property vide deed of simple mortgage dated 21.05.2019 registered as document No. 6360 of 2019 at Sub Registrar, Guduvancheri. After considering the facts and circumstances of the case the the Trial Court allowed the above said Trust O.P on 29.10.2021, with certain conditions. Subsequently, on 16.04.2022, schedule mentioned property was auctioned by Advocate Commissioner and M.R.Educational and Social Trust succeeded as the highest bidder in the auction and also the bidder handed over the Demand Draft for a sum of Rs.29,05,00,000/- in favour of the "The Principal District Court, Chengalpattu" drawn at Indian Bank, Ekkatuthangal branch to the advocate commissioner. Subsequently the petitioner's Trust filed I.A No. 4 of 2022 in

Trust O.P No. 42 of 2020 for confirming the sale auction held on 16.04.2020 and the same was confirmed by above Court on 27.07.2022 and directed the petitioner to register the sale deed in favour of M.R. Educational and Social Trust, and the matter was adjourned to 28.09.2022. Thereafter the petitioner filed I.A No.6 of 2022 in Trust O.P No. 42 of 2020 for payment out of Rs. 11,11,76,134/- in order to cancel the mortgage deed executed between petitioner Trust and PNB while obtaining loan, without cancelling the said mortgage deed the petitioner will not able to execute sale deed in favour of M.R. Educational and Social Trust. Besides, even after auctioning the property the petitioner Trust paying EMI to the PNB with higher interest. Therefore, one of the reason for sold the scheduled mentioned property is to settle the loan with PNB. Now, after auctioning the property neither bidder execute the sale deed nor petitioner Trust utilise the auctioned amount to settle the loan. Therefore, this Court is of the view that the petitioner Trust is entitled to utilize the amount deposited in the account of the Principal District Judge, Chengalpattu, but the lower Court failed to appreciate this fact. Hence the order passed by the Principal Distrct Court, Chengalpattu, in I.A No.6 of 2022 in Trust O.P No. 42 of 2020 is hereby set aside. Thus, I.A No. 6 of 2022 in Trust O.P No. 42 of 2020 is allowed.

Further, the Petitioner Trust is directed to produce the acknowledgement receipt for the loan settled to the PNB Housing Finance Limited before the Trial Court.

4. In the result, the Civil Revision Petition is allowed. No costs.

24.03.2023

pbl

T.V.THAMILSELVI,J.

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