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CRP No.507 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

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

C.R.P. No.507 of 2016

and

CMP No.2609 of 2016

1. Pachamuthu (Died)
2. P. Rajaram
(P2 is brought on record as LR
of the deceased sole petitioner
vide Court order dated 06.02.2020
made in CMP No.17063, 17064 and
17065 of 2018 in CRP No.507 of 2016)

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Petitioners

Vs

1.Chakrapani
2. Kuppusamy
3. Malar
4. Karpagam
5. Jayalakshmi
6. Sundari
(R2 to R6 are brought on record as LRs
of the deceased sole petitioner vide Court
order dated 06.02.2020 made in CMP Nos.
17063, 17064 and 17065 of 2018 in
CRP No.507 of 2016)

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Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 14.10.2015 in



E.A.No.3 of 2013 in E.P.No.166 of 2002 on the file of the Principal District Munsif, Tindivanam.

For Petitioner : Mr.N.Suresh
For R1 : Ms.R.Gobika
for Mr.S.Sathia Chandran
For R2 to R6 : Mr.J.Kannan

ORDER

This Civil Revision Petition has been filed as against the fair and decretal order dated 14.10.2015 in E.A.No.3 of 2013 in E.P.No.166 of 2002 on the file of the Principal District Munsif, Tindivanam, thereby dismissing the petition under Order 21 Rule 89 of CPC.

2. The revision petitioner is the Judgment Debtor and the first respondent is the Decree Holder. The first respondent filed a suit for recovery of money of a sum of Rs.15,000/- in O.S.No.396 of 1999. The said suit was decreed by a Judgment and Decree dated 04.01.2001. In pursuant to the decree, the first respondent filed an Execution Petition in E.P.No.166 of 2002 for recovery of the due of Rs.24,449/-. On 12.08.2002, the sale papers were filed by the first respondent herein and the same was admitted by the Court below and issued notice to the petitioner herein. On 23.09.2002, the petitioner herein entered appearance and thereafter he remained absent. Therefore, an ex-parte order was passed by the Execution



Court. As per the ex-parte decree, the upset price was fixed and the property was brought for sale on 18.02.2003. There was no bid for the sale fixed on 24.04.2003 and as such, the petition was filed to reduce the upset price in E.A.No.233 of 2003. The said petition was allowed and the upset price for the properties was reduced.

3. In the meanwhile, the petitioner also filed a petition to stay the sale proceedings in E.A.No.152 of 2004. Though the stay was granted, the first respondent filed a petition to vacate the stay and the same was allowed. Thereafter, on direction issued by this Court in C.R.P.No.476 of 2010, the Execution Court was directed to dispose of the Execution Petition within a period of two months. On such direction, the Execution Court issued sale warrant on 19.12.2012. Accordingly, the auction was held, in which the first respondent was permitted to participate in the auction and he successfully bid for a sum of Rs.20,000/- for the 1st item of the suit schedule property. He issued a receipt for satisfaction of the warrant amount and acknowledged the deposit of the remaining sale proceeds into the Court. At that juncture, the petitioner filed a petition to set aside the sale in E.A.No.3 of 2013 under Order 21 Rule 89 of CPC. It was dismissed on the ground



that the petitioner failed to deposit the amount, as contemplated under Order 21 Rule 89 of CPC, within a period of 60 days.

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4. The learned counsel appearing for the petitioner vehemently contended that the auction was conducted on 02.01.2013 and the petitioner filed a petition to set aside the auction sale on 18.01.2013 viz., within a period of 30 days from the date of auction sale. The petitioner also filed a petition along with lodgment schedule for issuance of challan in order to comply the provision under Order 21 Rule 89 of CPC. It was accepted by the Court below and the Court below failed to issue any challan for deposit in the sale. In fact, the petitioner also filed a petition to advance the hearing in E.A.No.3 of 2013. Though it was allowed, the Court below failed to issue any challan for depositing the amount. Therefore, it was completely the mistake committed by the Court below and not by the petitioner.

5. In order to substantiate his contention he also relied upon the Judgment reported in *AIR 1993 Calcutta 14* in the case of *Shyama Charan Auddy and another Vs. Smt.Bimala Balan Sen and another* and the Judgment reported in *CDJ 2015 MHC 4175* in the case of *M.Kannabiran Vs. R.Mangalam and another*.



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6. The learned counsel for the first respondent would submit that though the petitioner filed a petition under Order 21 Rule 89 of CPC, he failed to deposit the amount as contemplated under Order 21 Rule 89 of CPC within a period of 60 days. Therefore, the Court below rightly dismissed the petition.

7. Heard, Mr.N.Suresh, learned counsel appearing for the petitioner, Ms.R.Gopika, learned counsel appearing for the first respondent, Mr.J.Kannan, learned counsel appearing for the respondents 2 to 6 and perused the materials available on record.

8. A perusal of the records reveals that the auction sale was conducted on 02.01.2013 and the petitioner filed an application to set aside the auction sale under Order 21 Rule 89 of CPC. It is not in dispute that the petition was filed along with lodgment schedule.

9. On perusal of the notice paper revealed that on receipt of the said application, notice was ordered to the first respondent herein and



subsequently adjourned for filing counter. Thereafter, adjourned to 07.03.2013. Therefore, the petitioner filed an application to advance the hearing on 20.02.2013 and the same was allowed and the matter was posted for filing counter on 27.02.2013. Again on 27.02.2013, the Court below adjourned the matter for filing counter on 01.03.2013. Therefore, the Court below failed to issue any challan for depositing the amount in order to comply the provision under Order 21 Rule 89 of CPC.

10. The learned counsel for the petitioner relied upon the Hon'ble Division Bench of Calcutta High Court reported in ***AIR 1993 Calcutta 14*** in the case of ***Shyama Charan Auddy and another Vs. Smt. Bimala Bala Sen and another***, in which the Hon'ble Supreme Court of India held that it is the duty of the Court to dispose of such application before confirming the sale. The Court below did not proceed in the manner while dealing with the question of sale. This is more so in view of the amended Rule 92 of Order 21 that enjoins in its proviso that where any property is sold in execution of a decree pending final disposal of any claim to, or any objection to the attachment of such property, the Court shall not confirm such sale until the final disposal of such claim or objection.



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Further it was held that when an application was filed, it was the duty of the Court to dispose of the same promptly since the applicant declared that he would deposit the amount by the next day of the order to be passed by the Court in this regard. Therefore, the principle is *actus curiae neminem gravabit* which means that nobody should suffer for the act of the Court. It is the bounden duty of the Court to see that if a person is made to suffer by the mistake of the Court he should be restored to the position he would have occupied but for the mistake.

11. In the case on hand, as stated *supra*, the Execution Court failed to issue any challan in order to comply the provision under Order 21 Rule 89 of CPC. Such being the factual extreme, the Execution Court is not correct in rejecting the application to set aside the auction sale. Therefore, the order impugned cannot be sustained and it is liable to be set aside.

12. In view of the above, the order dated 14.10.2015 in E.A.No.3 of 2013 in E.P.No.166 of 2002 on the file of the Principal District Munsif, Tindivanam, is hereby set aside. Accordingly, this Civil Revision Petition is allowed. The Execution Court is directed to issue challan within



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a period of one week from the date of receipt of a copy of this order and the petitioner shall comply the provision under Order 21 Rule 89 of CPC forthwith, thereafter. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

27.01.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The Principal District Munsif,
Tindivanam.

2. The Section Officer,
V.R.Section,
High Court, Madras.

G.K.ILANTHIRAIYAN,J.



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