



C.M.A.No.2331 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 14.12.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2331 of 2023
and C.M.P.No.22132 of 2023

Indian Bank,
Bangalore Road Branch,
Represented by its Branch Manager,
Branch at Bangalore Road, Krishnagiri,
Krishnagiri Taluk and District

... Appellant

Vs

1.B.M.Mohan Kumar

2.N.Mohan

3.K.A.Akbar Basha

4.S.Mohammed Yusuf

5.H.Jeenathunnisa

... Respondents



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Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, seeking to set aside the fair order and decreetal order dated 07.01.2023 in E.A.No.11 of 2017 in E.P.No.18 of 2016 in O.S.No.100 of 2014 on the file of the Principal District Judge, Krishnagiri.

For Appellant : Mr.Sai Gautham

For Respondents : Mr.C.Jagadish for R1 to R3

JUDGEMENT

This petition has been filed seeking to set aside the fair order and decreetal order dated 07.01.2023 in E.A.No.11 of 2017 in E.P.No.18 of 2016 in O.S.No.100 of 2014 on the file of the Principal District Judge, Krishnagiri.

2.Respondents 1 to 3 herein are plaintiffs in O.S.No.100 of 2014 on the file of the Principal District Court, Krishnagiri. The suit is laid for recovery of certain sum of money from respondents 4 and 5. That suit came to be decreed, and that decree has attained finality when an appeal preferred by the respondents 4 and 5 herein came to be partly allowed by this Court in A.S.No.599 of 2016 giving some concession to the rate of interest payable by the judgment debtors / the



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respondents 4 and 5.

3. Pending the first appeal before this Court, the decree holders / the respondents 1 to 3 had taken out E.P.No.18 of 2016 for attachment and sale of a certain property of the judgment debtors. The property was duly attached and only the sale remains.

4. The appellant herein is the bank, to which items 1 and 8 of the 'B' Schedule property were offered as security for securing a loan advanced by the appellant to the judgment debtors. The appellant moved the Execution Court under Order 21 Rule 58 C.P.C., for vacating the order of attachment, but that came to be disposed of by the Execution Court holding that on the sale of the property, the appellant bank would be entitled to first claim. This order of the Execution Court is now under challenge.

5. Heard Mr.Sai Gautham, learned counsel for the appellant and Mr.C.Jagadish, learned counsel appearing for the respondents 1 and 3.

6. The learned counsel for the decree holders (the respondents 1 to 3 herein)



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submitted that as on date, the decree debt is about 4.10 crore.

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7.The learned counsel for the appellant submitted that as on today, the liability of the judgment debtors to the bank is about Rs.33 lakhs. The learned counsel also added that it did not resort to SARFAESI proceedings essentially because the judgment debtors are still servicing the debt and the loan has not yet been declared NPA.

8.At this juncture, the learned counsel for the respondents 1 to 3, on instruction, made a statement that his clients are willing to settle the bank to enable them to bring the property to sale by the Execution Court. The judgment debtors have not appeared before this Court. It is important in a matter where the judgment debtors are servicing the loan dues to the appellant herein, they must be in the loop. This Court also understands that the bank has not been arrayed as a party before the Execution Court.

9.This Court now deems it appropriate to implead the appellant herein as third respondent in E.P.No.18 of 2016. This Court now directs that whatever that has



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been offered and accepted by the appellant and respondents 1 to 3 herein may be worked out before the Execution Court.

10.This Civil Miscellaneous Appeal stands disposed of with the above direction. No Costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
Anu

To
The Principal District Judge, Krishnagiri.



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N.SESHASAYEE, J.

Anu

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