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A.Nos.2014 and 2015
in C.S.No.667 of 2018



A.Nos.2014 and 2015 of 2023
in
C.S.No.667 of 2018

S.SOUNTHAR, J.

The application in A.No.2014 of 2023 has been filed by the applicant/defendant/judgment debtor seeking to set aside the auction sale conducted by Advocate Commissioner on 14.08.2022 in pursuance of the order passed in A.No.2388 of 2021 in C.S.No.667 of 2018.

2. The application in A.No.2015 of 2023 has been filed by the applicant/defendant/judgment debtor seeking stay of confirmation of auction sale conducted on 14.08.2022 by the Advocate Commissioner.

3. The respondent herein filed a suit for recovery of Rs.3,00,00,000/- based on mortgage along with future interest calculated at the rate of 24% per annum.

4. After service of suit summons, the applicant/defendant failed to enter appearance and consequently, he was set exparte on 07.01.2019.



5. This Court after examination of witnesses by the plaintiff, passed a preliminary decree on 21.01.2019 fixing three months time for the applicant/defendant to satisfy the decree amount and in default the respondent/plaintiff was permitted to sell the property.

6. Thereafter, the respondent filed A.No.483 of 2020 for passing final decree. The applicant entered appearance and sought time for payment of the amount as determined by the preliminary decree. Thereafter, he failed to appear before the Court and consequently, recording his failure, a final decree came to be passed by this Court on 21.08.2020. While passing the final decree, this Court observed as follows:-

“6.Notice had been directed to the respondent / defendant and Mr.S.M.Sundaramoorthy, learned counsel had entered appearance. On 16.07.2020, this Court had stated that the defendant / respondent should come forward with an affidavit indicating a time schedule within which he would comply with a substantial portion of the amount determined in the preliminary decree. Thereafter, the matter was adjourned to 31.07.2020. The learned counsel took time to file necessary affidavit as directed. The matter had been listed again today. There is no representation on



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behalf of the respondent / defendant. Accordingly, the respondent / defendant is set ex-parte. It is made clear that he is not interested in participating in the judicial proceedings.”

7. Thereafter, the Court proceeded to appoint an Advocate Commissioner to conduct auction sale. Subsequently, the applicant filed an application in A.No.2388 of 2021 to condone the delay in seeking to set aside the preliminary decree. In that application, it was averred by the applicant as if, the respondent/plaintiff suppressed material facts and committed fraud. This Court by order dated 30.07.2021 made in A.No.2388 of 2021 found that the allegations of suppression of material facts and fraud against the respondent were not proved and consequently, the application was dismissed.

8. Thereafter, the Advocate Commissioner as per the directions of the Court proceeded with auction sale and the same had taken place on 14.08.2022. Now, the applicant has come up with the present application seeking to set aside the auction sale again on the ground of suppression of material facts by the respondent and also on the ground of fraud.

9. In support of the above said contention of suppression of material



facts and fraud, the applicant in the affidavit filed in support of this application had raised the following points:-

- (i) The property under mortgage is an agricultural land and therefore, it cannot be treated as commercial dispute.
- (ii) The plaintiff is not a Non-Banking Financial Company and hence, law applicable to money lenders under Tamil Nadu Money Lenders Act, 1957 and Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 are applicable to the plaintiff and the same has been suppressed by the respondent.
- (iii) The respondent fraudulently averred in the plaint as if, cause of action arose within the territorial limits of this Court and whereas, the entire cause of action for the suit arose at Vaniyambadi, Vellore District, outside the territorial limits of this Court.

10. The learned counsel for the applicant mainly contended that the subject matter of mortgage is an agricultural property and a simple loan transaction had been converted as a commercial dispute by the respondent and hence, filing of the very suit before the Commercial Division of this Court is not



maintainable.

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11. It is pertinent to note that the points now raised by the applicant in these applications were already raised by him before this Court in the application filed to condone the delay in seeking to set aside the preliminary decree in A.No.2388 of 2021. This Court while dismissing the said application filed by the applicant referred to an earlier application filed by the applicant in A.No.1988 of 2020 wherein, he admitted the loan transaction and it was for business purpose. Therefore, this Court found that after admitting the suit transaction was usual business transaction, it was not open to the applicant to turnaround and say that suit transaction was not a commercial dispute.

12. The objection of the applicant with regard to territorial jurisdiction of this Court was also considered in the earlier order passed in A.No.2388 of 2021. In the said order, after referring to the loan agreement dated 13.12.2021 this Court recorded that the place of residence of plaintiff was shown as No.243, Devdarshan Apartments, No.1, Barnaby Road, Kilpauk, Chennai 600 010 and rejected the contention of the applicant regarding its objection as the territorial jurisdiction. Therefore, the applicant is not entitled to raise very same point again in this application. Further, objection as to the territorial jurisdiction should be raised before the settlement of issues. Therefore, in an application to set aside the auction



sale that had taken place in pursuance of final decree passed in the suit, it is not open to the applicant to raise the question of territorial jurisdiction.

13. It is settled law that auction sale can be set aside only on the ground of fraud or material irregularity in conducting sale proceedings. In the case on hand, the applicant is unable to point out any material irregularity or fraud in conducting auction sale proceedings, which would result in irreparable injury to him. The contention of applicant that Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 is applicable to applicant is also of no use as the respondent has not claimed any exorbitant interest. Further, the applicant failed to appear before Court at the time of trial and raise this point. Hence, he is not entitled to raise the same or challenge the decree at this latter stage.

14. All the points raised by him mentioned earlier were already raised by him unsuccessfully in A.No.2388 of 2021, which had been filed by him to condone the delay in seeking to set aside the preliminary decree. Therefore, the applicant is not entitled to raise very same points again and again and try to frustrate the decree that had been passed against him. The applicant, who failed to appear before the Court when the suit was taken up for hearing is not entitled to raise points which ought to have been raised at the time of trial of the suit.



15. In view of the discussions made earlier, the applicant has not made out any case for setting aside the auction sale and consequently, the application in A.No.2014 of 2023 is dismissed.

16. In view of the dismissal of the application to set aside the auction sale, the other application filed by the applicants in A.No.2015 of 2023 seeking stay of confirmation of sale is also dismissed.

27.06.2023

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