



C.R.P.No. 3551 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No. 3551 of 2017

and

C.M.P.No.16419 of 2017

1. S.Selvaraj

2. S.Neelavathi

3. S.Parthiban

4. S.Srinivasan

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Petitioners

Vs

1. G.Dillibabu

Proprietor

Axess Seven Block C, F-2

Vasanth Aparments,

1, N.S.N.Garden,

Voltas Colony Extension,

Nanganallur,

Chennai – 600 061.

2. M/s.Alwin Company,

Public Auctioneers,

260, I Floor, Thambu Chetty Street,

Chennai – 600 001.

3. M/s.Sri Raj & Co.,

Government Auctioneers,

No.7, Sunkurama Chetty Street,

First Floor, Chennai – 600 001.

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Respondents



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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order and decreetal order dated 11.07.2021 passed in C.M.P.No.626 of 2016 in C.M.A.No.38 of 2012 on the file of the I Additional Sessions Judge, City Civil Court, Chennai, by allowing the Civil Revision Petition.

For Petitioner	: Mr.R.Karunakaran
For R1	: Ms.S.K.Divya Subiksha\ for M/s.Nathan and Associates
For R2 & R3	: No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order and decreetal order dated 11.07.2021 passed in C.M.P.No.626 of 2016 in C.M.A.No.38 of 2012 on the file of the I Additional Sessions Judge, City Civil Court, Chennai, thereby dismissing the Civil Miscellaneous Petition.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for permanent injunction restraining the respondents from auctioning the suit schedule property. The petitioners mortgaged the suit schedule property and borrowed a sum of Rs.40,00,000/- from the defendants on 26.06.2009. The suit property was mortgaged and registered vide document No.1767 of 2009. The



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petitioners had committed default in payment of loan amount. Therefore, the first respondent approached the second respondent to proceed with auction in order to realise the loan amount from the suit property. At that juncture, the petitioners filed the present suit. In the said suit, the petitioners also filed a petition in I.A.No.12665 of 2011 seeking interim injunction, while pending the suit. On the said application, the Trial Court granted interim injunction by an order dated 16.08.2011 on the following conditions :

“1. That the petition be and the same is hereby allowed on condition that the payment of Rs.10,000/- by the petitioners/plaintiffs to the 1st respondent/defendant on or before 28.08.2011. The respondents/defendants are hereby restraining by way of interim injunction from selling, alienating or causing encumbrance over the petition mentioned property on payment of abovesaid amount, failing which, it is open to the first respondent/defendant to proceed for sale through public auction for realizing the dues payable by the petitioners.

2. that the petitioner be and are hereby directed to pay the cost incurred by the respondent in arranging for conducting the sale through public auction on or before conducting the alleged public sale.



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3. that the petitioner be and are hereby directed to settle the loan amount towards mortgage, within two months (September-October 2011) by making considerable payments including interest once in 15 days of every month. If any deviation or variation on the part of petitioners, as mentioned above, it is open to the first respondent, to proceed for sale for realizing the remaining balance amount due payable by the petitioners.

4. Call on 29.08.2011”.

3. Though the petitioners complied with a part of the order, they challenged the said order in CMA No.38 of 2012 on the file of the Principal City Civil Court, Chennai. After filing the counter by the respondents, the petitioners wantonly left the matter without any representation. Therefore, the Civil Miscellaneous Appeal in C.M.A.No.38 of 2012 was dismissed for default on 01.06.2016. Thereafter, the petitioners filed a petition to restore the Civil Miscellaneous Appeal, in which, the First Appellate Court allowed the petition on condition to pay a sum of Rs.2,000/- as cost. However, the petitioners conveniently failed to comply with the said condition and the Civil Miscellaneous Petition was again dismissed by an order dated



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11.07.2017. This Court, by an order dated 27.01.2023, directed the petitioners to pay a sum of Rs.10,00,000/- to the first respondent on or before 13.02.2023. Even today, the petitioners failed to comply with the said condition and he did not pay any amount.

4. Thus, it is clear that the petitioners had been protracting the matter for the past 12 years without making any payment as directed by this Court. Therefore, this Court finds no infirmity or illegality in the order dated 11.07.2021 passed in C.M.P.No.626 of 2016 in C.M.A.No.38 of 2012 on the file of the I Additional Sessions Judge, City Civil Court, Chennai. Accordingly, this Civil Revision Petition stands dismissed. The respondents are at liberty to proceed as against the suit schedule property in order to realise the loan amount in the manner known to law. The Trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.02.2023

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
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