



C.R.P.(MD) No.448 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.448 of 2023
and **C.M.P.(MD) No.2126 of 2023**

B.Kirija

... Petitioner

Vs.

N.Rajarathinam

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the fair and decreetal order dated 04.01.2023 in E.A.No.1 of 2022 in E.P.No.7 of 2020 in O.S.No.148 of 2017 on the file of the Subordinate Judge, Uthamapalayam.

For Petitioner : Mr.K.Guhan

For Respondent : M/s.Ajmal Association
for Mr.A.Arumugam

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 04.01.2023 passed by the Subordinate Court, Uthamapalayam in E.A.No.1 of 2022 in E.P.No.7 of 2020 in O.S.No.148 of 2017.



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2. By the impugned order dated 04.01.2023, the Subordinate Court, Uthamapalayam has dismissed E.A.No.1 of 2022 filed by the petitioner to permit the petitioner to pay the amount mentioned in E.P.No.7 of 2020 in O.S.No.148 of 2017 as 10 equal installments.

3. The petitioner is the unsuccessful defendant in O.S.No.148 of 2017. The said suit was filed by the respondent to recover a sum of Rs.6,00,000/- being the principal amount lent to the petitioner and further the amount towards interest, in all, amounting to Rs.8,46,800/-. A preliminary decree was passed on 01.02.2018 and final decree was passed on 02.11.2019.

4. Pursuant to the final decree passed in the above suit, the respondent filed E.P.No.7 of 2020 on 28.02.2020 to bring the property of the petitioner to sale. In the said E.P. proceedings, the respondent has stated that the petitioner was due for a sum of Rs.9,99,923/-, in all, as on the date of filing of E.P. on 28.02.2020. The said E.P. was allowed on 21.04.2022 by ordering the sale of the properties.



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5. After E.P. was allowed, the petitioner filed E.A.No.1 of 2022 on 29.06.2022 undertaking to pay the decree amount in installments which has been rejected by the Court below *vide* impugned order dated 04.01.2023. Aggrieved by the same, the petitioner is before this Court. The relevant portion of the impugned order reads as under:-

(iii) This court sees that the Petitioner did not pay any amount after 20.09.2021 and this petition is filed to drag on the execution proceedings. The Petitioner even during the pendency of this petition did not pay any part amount to show his bonafide intention to settle the EP amount. The Respondent when reluctant to receive any part amount this court cannot force him to receive the EP amount in 10 equal installments. This court finds no valid and reasonable grounds to allow this petition.

(iv) In the result, this petition is dismissed.

6. The learned counsel for the petitioner submits that the petitioner is a lady and is residing in the house property and that the petitioner will discharge the outstanding due to the respondent. It is submitted that further proceedings to bring the property to sale pursuant to the impugned order dated 04.01.2023 in E.A.No.1 of 2022 may be kept in abeyance.



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7. The learned counsel for the petitioner further submits that at the time of admission on 22.02.2023, this Court had directed the petitioner to pay a sum of Rs.2,00,000/- which has been complied with. He further submits that further time may be granted, so that, the petitioner will be able to pay back the balance amount to the respondent/decree holder in O.S.No.148 of 2017.

8. Per contra, the learned counsel for the respondent submits that the impugned order is well reasoned and requires no interference. That apart, it is submitted that I.A.No.1 of 2022 filed under Order XX1 Rule 89 of Code of Civil Procedure, 1908 was premature. Order XX1 Rule 89 of Code of Civil Procedure, 1908 applies to a situation where the sale has taken place. In this case, the petitioner's property has been brought to sale in Execution Proceedings and the petitioner ought to have deposited amount within the stipulated time therein.

9. That apart, even though the preliminary decree was passed on 01.02.2018 and final decree was passed on 02.01.2019, the petitioner has paid a sum of Rs.20,000/- as on 20.09.2021 and a sum of Rs.2,00,000/- only after the present Civil Revision Petition was filed pursuant to the



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order of this Court on 22.02.2023. It is submitted that the amount was due from 2014 and despite a lapse of 9 years, only Rs.2,20,000/- was paid by the petitioner and therefore, there is enormous delay on the part of the petitioner and thus, the present Civil Revision Petition is liable to be dismissed.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

11. The petitioner has no doubt been negligent and careless in not discharging the loan liability to the respondent (decree holder). The amounts were borrowed as early as 2014 as is evident from a reading of the Judgment and Decree passed in O.S.No.148 of 2017. Even though already 9 years have lapsed, only a sum of Rs.2,20,000/- has been paid by the petitioner towards outstanding due so far.

12. Considering the fact that the property involved is a residential property and considering the fact that the petitioner is willing to discharge the outstanding due in terms of Judgment and Decree passed in O.S.No. 148 of 2017, this Court is inclined to balance the interest of the parties by



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directing the petitioner to pay a sum of Rs.1,50,000/- within period of 30 days from today and the balance outstanding due as per E.P.No.7 of 2020 in 6 Equated Monthly Installments (EMIs.).

13. In case the petitioner fails to pay such amount within the respective period, the respondent is at liberty to bring the property to sale.

14. This Civil Revision Petition stands disposed of with the above observations. No cost. Consequently connected Miscellaneous Petition is closed.

07.06.2023

NCC : Yes/No
Internet: Yes/No
Index: Yes/ No
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To

The Subordinate Court, Uthamapalayam.



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C.SARAVANAN, J.

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