



C.R.P(MD)Nos.1320 of 2023etc.,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)Nos.1320, 1321, 1353 and 1460 of 2023
and
C.M.P.(MD)Nos.6580, 67321 and 7287 of 2023

C.RP(MD)No.1320 of 2023

S.Sureshkumar

...Petitioner/Petitioner/
Respondent/Defendant

Vs.

K.Nagesh

...Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the docket order dated 26.04.2023 and direct the learned Principal District Judge at Nagercoil, Kanyakumari District, to number the unnumbered E.A.No. of 2023 in E.P.No.49 of 2019 in O.S.No.101 of 2011.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.M.Senthil Kumar



C.R.P(MD)Nos.1320 of 2023etc.,

C.RP(MD)No.1321 of 2023

S.Sureshkumar

...Petitioner/Petitioner/
Respondent/Defendant

Vs.

K.Nagesh

...Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the docket order dated 26.04.2023 and direct the learned Principal District Judge at Nagercoil, Kanyakumari District, to number the unnumbered E.A.No. of 2023 in E.P.No.49 of 2019 in O.S.No.101 of 2011.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.M.Senthil Kumar

C.RP(MD)No.1353 of 2023

S.Sureshkumar

...Petitioner/Petitioner/
Respondent/Defendant

Vs.

K.Nagesh

...Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 07.09.2022 passed in



C.R.P(MD)Nos.1320 of 2023etc.,

E.A.No.3 of 2022 in E.P.No.49 of 2019 in O.S.No.101 of 2011 on the
file of the Principal District Judge, Kanyakumari District at Nagercoil.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.M.Senthil Kumar

C.RP(MD)No.1460 of 2023

S.Sureshkumar

...Petitioner/Petitioner/
Respondent/Defendant

Vs.

K.Nagesh

...Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C.,
to set aside the fair and decreetal order dated 20.01.2022 passed in
E.A.No.2 of 2022 in E.P.No.49 of 2019 in O.S.No.101 of 2011 on the
file of the Principal District Judge, Kanyakumari District at Nagercoil.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.M.Senthil Kumar

COMMON ORDER

The petitioner herein is the unsuccessful defendent in O.S.No.101
of 2011, filed by the respondent to recover the money lent to the
petitioner. The above suit was decreed on 26.10.2018.



C.R.P(MD)Nos.1320 of 2023etc.,

2. Aggrieved by the same, the petitioner has filed A.S.No.75 of 2021 before this Court and secured an interim order in C.M.P.(MD).No. 2910 of 2021 dated 31.03.2021. As per the order of this Court, the petitioner was required to deposit 50% of the decreed amount together with the interest thereon.

3. The petitioner has however not complied with the order of this Court, dated 31.03.2021, in C.M.P.(MD).No.2910 of 2021 in A.S.No.75 of 2021. A.S.No.75 of 2021 is still pending before this Court. Meanwhile, the respondent filed E.P.No.49 of 2019, before the Principal District Judge, Nagercoil, Kanyakumari District in the light of judgment and decree dated 26.10.2018. In the E.P. proceedings, the petitioner had remained *exparte*. Therefore, he filed a petition in E.A.No.2 of 2021 to set aside the order of *exparte*. The same was dismissed, which is now the subject matter of C.R.P.(SR)(MD)No.3242 of 2023 in the E.P. proceedings. The upset value of the two properties sought to be auctioned was fixed at Rs.60,00,000/- (Rupees Sixty Lakhs Only), which was subsequently reduced to a sum of Rs.55,00,000/- (Rupees Fifty Five Lakhs). This was also put to challenge by the petitioner in E.A.No.3 of 2022, which is the subject matter of C.R.P.(SR)(MD).No.32068 of 2023.



C.R.P(MD)Nos.1320 of 2023etc.,

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4. It is the specific case of the petitioner that the two items which are sought to be auctioned are commanding a good market value and that the upset price of Rs.55,00,000/- (Rupees Fifty Five Lakhs) fixed by the Court, was obviously low.

5. It is further submitted that based on the report of Amin, dated 27.01.2023, the upset price was fixed for the two properties. It is submitted that the value of the property, namely, the first item has been fixed at Rs.26,00,000/- which is far below the market value.

6. The petitioner is aggrieved by the impugned docket orders declining to entertain the applications filed to stay all further proceedings in E.P.No.49 of 2019 and to increase the upset price of the properties, which has been rejected by the Court below with the following endorsement:

06.04.2023

1. As pleaded in Para No.10 of the affidavit, documents to be produced, the Item No.1, schedule of property is more than Rs. 1,20,00,000/- and Item No.2, schedule of property is Rs.40,00,000/-.



C.R.P(MD)Nos.1320 of 2023etc.,

2. Correct provision of law is to be stated.

3. Item No.2 schedule of property is not stated in the petitioner.

Hence returned. Time two weeks.

10.04.2023.

All the defects rectified, without document only through amin report the value fixed anyhow the petitioner will produce the present market value and nearby sold properties at the time of enquiry. Item 2 schedule stated correct provision of law stated Order 21, Rule 66(4). Hence resubmitted.

26.04.2023

Already the scheduled property Item No. 1 was sold on 06.04.2023, As such how this petition is maintainable?

Hence returned. Time two weeks.

7. The learned counsel for the petitioner submits that although the petitioner failed to deposit the amount as ordered on 31.03.2021 in C.M.P.(MD).No.2910 of 2021 in A.S.No.75 of 2021, the petitioner cannot be mulcted with a lower sale price of the property. It is submitted that the proper auction has to be conducted, based on the upset price and the Will, in fact, can be refunded after advancement of the surplus.



C.R.P(MD)Nos.1320 of 2023etc.,

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

9. The petitioner has also filed two miscellaneous petitions in E.P.No.49 of 2019, which have been returned by two separate docket orders, dated 26.04.2023, which are subject matter of CRP(MD)Nos. 1320 and 1321 of 2023. The docket order, dated 26.04.2023, which returns the Miscellaneous Petition filed by the petitioner is impugned in CRP(MD)No.1320 of 2023. It pertains to the prayer of the petitioner for re-fixation of the upset price of Item No.1 property which was reduced along with the Item No.2 by the learned Principal District Judge, Nagercoil Kanyakumari District vide order dated 07.09.2022 in E.A.No.3 of 2022, which is subject matter of CRP(MD)No.1353 of 2023.

10. The return of un-numbered E.A.No. of 2023 Vide order dated 26.04.2023 impugned in CRP(MD)No.1321 of 2023 is on account of the rejection of E.A.No.2 of 2021 vide order dated 20.01.2022 filed by the petitioner. Challenge to the impugned order dated 20.01.2022 is subject matter of CRP(MD)No.1460 of 2023.



C.R.P(MD)Nos.1320 of 2023etc.,

11. The overall reading of the facts indicate that the upset price of the property at the time of proclamation of sale under Order 21 Rule 66 of C.P.C was fixed at Rs.60,00,000/-. When E.P.No.49 of 2019 was filed based on the judgment and decree of the Trial Court, the amount due from the petitioner was Rs.71,87,753/-. The petitioner was set *ex parte* on 20.12.2019. The sale was proposed on 18.02.2021. However, auction sale did not take place.

12. It is in this background, the respondent filed E.A.No.3 of 2022 for refixing the upset price. E.A.No.3 of 2022 was allowed on 07.09.2022. The upset price which was stated in the proclamation of sale for Rs.60,00,000/- was thus altered to Rs.55,00,000/-. This order has been passed on the same date in a hurry without proper opportunity for the petitioner to make submission presumably on the ground that the petitioner had already been set *ex parte* in E.P.No.49 of 2019 on 20.12.2019.

13. Subsequent auction was held on 06.02.2022. A third party has purchased the property in Item No.1, namely, house property on four cents of land (1744 square feet).



C.R.P(MD)Nos.1320 of 2023etc.,

14. The Amin who visited the property on 24.01.2023 has estimated the value of the building as Rs.8,00,000/-.

15. The learned counsel for the petitioner submits that although the value was enhanced to Rs.26,00,000/- by the learned Judge, neither the Court Amin nor the Court is competent to arrive at upset price unless the value is determined by an authorised valuer or a Chartered Engineer. The submission of the petitioner appears to be just and proper.

16. Although the petitioner has negligent in not paying the decree amount even though the petitioner has earlier secured an interim order from this Court in A.S.No.75 of 2017 vide order dated 31.03.2021, the property of the petitioner cannot be under valued and sold based on arbitrary upset price either that is fixed by the Amin or the enhance value by the learned Judge. The Hon'ble Supreme Court in ***Hindustan Derodo Limited Vs Collector of Central Excise*** reported in ***(1997) 2 SCC 677*** has held that even if the technical member of a Tribunal cannot brush aside opinion of an expert. The technical knowledge of member of a Tirbunal is for better appreciation of record and not to substitute the opinion of the expert. Ideally, after the property was visited and



C.R.P(MD)Nos.1320 of 2023etc.,

examined by the Amin, the Court should have called for a report from a property valuer with the help of an Advocate Commissioner and thereafter fixed upset price so that there was no scope for any undervaluation.

17. Therefore, I am inclined to set aside the impugned order, dated 07.09.2022 in E.A.No.3 of 2022 in E.P.No.49 of 2019, whereby, the value was reduced from Rs.60,00,000/- to Rs.55,00,000/-. Consequently, unnumbered E.A.No. of 2023, which is subject matter of CRP(MD) No.1320 of 2022 is directed to be numbered and decided independently. The Court shall endeavour to appoint a registered property valuer to give a report on the value of both the items, which are proposed to be sold and thereafter, auction the property. Consequently, there shall be an interim stay of all further proceedings pursuant to auction held so far. Therefore, CRP(MD)No.1321 of 2023 shall stand allowed. Considering the fact that the petitioner has straight away proceeded to file E.A.No.2 of 2021 without seeking to condone the delay as is required under Order 21 Rule 105 proviso as made applicable to Courts in Tamilnadu, the impugned order passed in E.A.No.2 of 2021, dated 20.01.2022 is set aside and the case is remitted back to the Court to pass fresh order. It will be



C.R.P(MD)Nos.1320 of 2023etc.,

incumbent on the part of the petitioner to file a supplementary application to condone the delay in filing E.A.No.2 of 2021 in accordance with the proviso to Order 21 Rule 105 of C.P.C. The Court shall therefore endeavour to dispose of the Execution Proceedings initiated by the respondent as expeditiously as possible. The petitioner is directed to co-operate with the respondent and the Court. In case, the petitioner fails to file application or take any of the steps mentioned above, the Court shall be at liberty to proceed in accordance with law.

18. The amount which has been paid by the auction purchaser shall be refunded if the auction purchaser wishes or be retained at the request of the auction purchaser for being set off against the amount to be bid in proposed auction to be held pursuant to the direction of this Court.

19. The present Civil Revision Petitions stand allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

21.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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C.R.P(MD)Nos.1320 of 2023etc.,

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To

- 1.The learned Principal District Judge,
Nagercoil, Kanyakumari District.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)Nos.1320 of 2023etc.,

C.SARAVANAN,J.

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C.R.P(MD)Nos.1320, 1321,
1353 and 1460 of 2023

23.06.2023