



C.R.P(MD).No.1130of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1130 of 2023

and

C.M.P(MD).No.5417 of 2023

Selvi

... Petitioner/Petitioner/3rd party

Vs.

1.Sakthi Finance Limited

Through its General Manager (Operations),

Office at No.62, Naanjappa Road,

Coimbatore.

... 1st Respondent/1st Respondent/Decree Holder

2.Thangadurai

... 2nd Respondent/2nd Respondent/Judgment Debtor

PRAYER:- This Civil Revision Petition has been filed under 115 of CPC, to call for the records relating to the Order dated 25.03.2022 in E.A No.1 of 2021 in E.P No.114 of 2019 in ACP No.23 of 2016 on the file of the Principal District Judge, Tirunelveli, set aside the same and allow the Civil Revision Petition.

For petitioner : Mr.S.Xavier Rajini

For R1 :Mr.R.Sundar Srinivasan for
Mr.S.Manikandan (in SR stage)



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ORDER

WEB COPY This Civil Revision Petition has been filed by the petitioner to set aside the Order passed by the Principal District Judge, Tirunelveli, in E.A No.1 of 2021 in E.P No.114 of 2019 in ACP No.23 of 2016 dated 25.03.2022.

2.The petitioner is the wife of the second respondent who had been taken a loan from the first respondent Company herein for purchasing JCB. In this connection, Hire Purchase Agreement also said to have been signed between the respondents herein on 31.12.2012. It appears that the second respondent had also serviced the loan up to a point and thereafter, committed default. Therefore, the first respondent herein initiated the proceedings under Arbitration and Conciliation Act, 1996. The notice dated 16.05.2015 was said to have issued to the second respondent and two other sureties. It was received by the first surety. Notice on the second respondent and the other surety remained unserved. Follow up notices were also issued on 03.07.2015 and on 25.12.2015 respectively which were also unserved on the second respondent. During the interregnum, the second respondent executed a settlement deed on 09.12.2015 of the property in favour of the petitioner herein.



3.The specific case of the petitioner is that the property having been settled before the award came to be passed by the learned Arbitrator on 31.12.2016 in ACP.No.23 of 2016 cannot be attached or sold. The property stood vested with the petitioner. The petitioner and her husband namely the second respondent were estranged from each other and therefore, the property which has been settled in favour of the petitioner by the second respondent on 09.12.2015 cannot be attached. It is therefore submitted that the impugned order attaching the property of the petitioner is liable to be interfered with.

4.It is submitted that the second respondent has other assets also and therefore, it is always open for the first respondent to proceed against the second respondent and other assets to recover the award amount in terms of award dated 31.12.2016 and ACP.No.23 of 2016. It is submitted that the petitioner has also executed mortgage deed in favour of Life Insurance Corporation and taken a loan for Education of the children and therefore, on this count also the impugned order is liable to be interfered with.

5.On the other hand, the learned counsel for the first respondent submits that the impugned order passed by the learned Principal District



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Judge, Tirunelveli, on 25.03.2022 is well reasoned and requires no interference. It is further submitted that during enquiry, the petitioner herself deposed that she has no contact with the second respondent since 2013 and was not aware of the execution of the settlement deed. That apart, it is submitted that the settlement deed is dated 09.12.2015 in favour of the petitioner. It is hit by Section 53 of the Transfer of Property Act. It is further submitted that the settlement deed also indicates that the property was settled out of affection to the petitioner. Therefore, there is no truth in what the petitioner has stated. It is submitted that the value of the property declared in the settlement deed is about Rs.2,24,73,638/- and was executed only with a view to defeat the rights of the first respondent.

6.I have considered the argument advanced by the learned counsel for the petitioner and the learned counsel for the first respondent.

7.In terms of Section 21 of the Arbitration and Conciliation Act,1996, an Arbitration proceeding is deemed to commence from the date on which a request was made to refer the dispute for arbitration and is received by the respondent. Section 21 of the Arbitration and Conciliation Act, 1996, reads as under:-



“21. Commencement of Arbitral Proceedings.-
Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

8. Admittedly, after the commencement of the Arbitration proceedings on 16.05.2015, the property was settled by the second respondent in favour of the petitioner on 09.12.2015. In the Settlement Deed dated 16.05.2015, the second respondent has stated that he was settling the property in favour of the petitioner due to his ill health and out of love and affection to the petitioner.

9. Therefore, it is clear that the petitioner and the second respondent were not estranged couples since 2013. It cannot be also believed that they were estranged couples and yet the property was settled out of love and affection to the petitioner by the second respondent. The Settlement Deed is prima facie hit by Section 53 of Transfer of Property Act, 1882 as it was made during the pendency of the Arbitration Proceeding.

10. Therefore, there is no scope for interfering with the impugned order passed by the learned Principal District Judge, Tirunelveli. The impugned order has merely confirmed the order of attachment dated 10.02.2021. It is



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open for the petitioner to establish her rights under Section 47 of Code of Civil Procedure, 1908.

11.This Civil Revision Petition is dismissed with the above observations. No costs. Consequently, the connected miscellaneous petition is closed.

26.04.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

- 1.The learned Principal District Judge,
Tirunelveli.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

Dss

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