



Rev.Aplc.(MD)No.76 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 03.02.2023

Delivered On : 31.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

Review Application (MD) No.76 of 2022

and

C.M.P.(MD) No.3467 of 2022

R.Mani

.. Review Petitioner

-VS-

1.The Tamilnad Mercantile Bank Ltd.,
Having registered Office at
Thoothukudi,
One of its Branch at Theni,
functioning at
Periyakulam Road,
Theni.
Represented by its
Branch Manager.

2.Janardhanan

.. Respondents

Prayer : Review Application filed under Order 47 Rule 1 &2 r/w. 114 of Code of Civil Procedure, 1908, to review the order of this Court dated 06.08.2021 made in C.R.P.(MD)No.68 of 2017.



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For Applicant : Mr.M.Venkatesan
For 1st Respondent : Mr.N.Dilip Kumar
For 2nd Respondent : No Appearance

ORDER

This review application has been filed to review the order passed by this Court in C.R.P.(MD)No.68 of 2017, dated 06.08.2021.

2.The Civil Revision Petition is filed against the order, dated 27.09.2016 passed in E.A.No.59 of 2015, in E.P.No.62 of 2014 in O.S.No. 211 of 2013, on the file of the Subordinate Judge, Theni.

3.The revision petitioner is a third party, the first respondent herein is the plaintiff and the second respondent herein is the defendant in O.S.No.211 of 2013. The first respondent herein / plaintiff has filed a money suit against the second respondent herein / defendant. The suit was decreed. E.P.No.62 of 2014 was filed by the first respondent herein / plaintiff. In the Execution Proceedings the revision petitioner filed a claim petition in E.A.No.59 of 2015, under Order 21 Rule 58 and under Section 151 C.P.C.

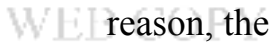


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4.Brief substance of the petition in E.A.No.59 of 2015 is as follows:~

(i)The petitioner is the claimant. The respondents are brothers. The first respondent / plaintiff filed a money suit against the second respondent and obtained a decree. To execute the decree, the first respondent / plaintiff filed an E.P. Petition and he has filed a petition in E.A.No.326 of 2013 for attaching the suit property. The second respondent /defendant endorsed 'no objection' in the petition and the suit properties were attached by the Court and immediately, that attachment order was registered before the Sub Registrar Office, Theni.

(ii)The second respondent mortgaged all the suit properties in the petitioner-s Bank and obtained a loan of Rs.18,00,000/-. The mortgage was registered before the Sub Registrar Office, Theni. The mortgage deed was executed before the attachment order was passed by the Court. The petitioner took steps for recovery of the loan amount under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. All the suit properties were brought for auction on 13.02.2015 and the property was sold for a sum of Rs.16,00,000/-. A person, by name, Navaneethan, S/o. Vengadasamy Naidu, Kovilpatti, has purchased the property and he has deposited Rs.4,00,000/- towards auction amount. When the auction purchaser enquired the Sub Registrar Office, he came to know that there was an attachment made in the suit properties and the auction purchaser did not pay the



balance amount and he got back the advance amount paid by him. For the above reason, the petitioner filed the claim petition.

5. Brief substance of the counter filed by the first respondent in E.A.No.59 of 2015 is as follows:-

The petitioner is not entitled for a prayer of declaration. The auction was not proper. There is no provision to return the advance amount paid by an auction purchaser. The first respondent is having every right to execute the decree of the Court. The petition is to be dismissed.

6. On the side of the petitioner, one witness was examined and six documents were marked. On the side of the respondents, no witness was examined and no document was marked. The trial Court after considering both sides, allowed the petition by confirming the right of the petitioner over the first item of the suit property. Against that order, the revision petitioner has preferred this Civil Revision Petition.

7.This Court has passed an order on 06.08.2021, modifying the order passed by the learned Sub Judge, Theni, in E.A.No.59 of 2015 in E.P.No.62 of 2014 in O.S.No.



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211 of 2013 dated 27.09.2016, stating that the revision petitioner/ Bank is having the first right over both the properties mentioned in the execution petition and the petitioner is at liberty to bring both the properties mentioned in the execution petition for auction sale. The first respondent is having only a secondary right over the properties.

8. Against this order, the review petitioner has come forward with this review application on the following grounds:

The first respondent could not advance an argument that there was some fraud and collusion, when there is no specific pleading to that effect. The review petitioner was a third party to the suit. The prayer in the petition is that the Bank is having the right over the properties. The averment as a collusive suit was not mentioned in the revision petition. Only in the arguments, the review petitioner has chosen to argue that the suit was a collusive suit between the brothers wherein the defendant in the original suit has made an endorsement that he has no objection in attachment of the suit property. This Court has not considered this particular aspect. This Court has not made any decision whether the suit was a collusive suit or a genuine suit and no decision was made regarding the genuineness of the suit. The contention of the review petitioner is unsustainable.



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9.On the side of the review petitioner, it is stated that the attachment was made before the property, was auctioned by the Bank. The course available to the Bank is to file a declaration suit against the decree in O.S.No.211 of 2013 and without challenging the order in I.A.No.326 of 2016, the appellant has straight away filed a petition in E.A.No.59 of 2015.

10.The properties in the second schedule were mortgaged with the bank on 05.10.2012. The attachment order was passed on 13.03.2014. It is subsequent to the execution of the mortgage. Hence, this averment made by the review petitioner is not maintainable.

11.There is no error apparent on the face of the order passed by this Court. Hence, there is no merits in the review application and the review application is dismissed. Consequently, connected miscellaneous petition is closed.

31.03.2023

NCC : Yes /No
Index : Yes/No
Internet : Yes/No
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R.THARANI, J.

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