



**CRP(MD).No.681 of 2014**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 20.07.2023**

**PRONOUNCED ON : 07.09.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**C.R.P(MD).No.681 of 2014**

The India Cements Ltd.  
Represented by its Senior Executive President  
Mr.T.S.Raghupathy .....Petitioner

**Vs**

Mrs.Usha Devi  
Sole Proprietor  
Usha Devi Agencies  
No.136, Kamarajar Salai  
Madurai ...Respondent

(This revision petition is restored  
vide Court order dated 20.07.2023)

**PRAYER:-** Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order dated 22.10.2010 passed by the Principal District Judge, Madurai in E.A.No.29 of 2007 in E.P.No.45 of 2006 to the extent of terminating E.P.No.45 of 2006 as having accorded full satisfaction of the decretal amount and consequently direct the lower Court to reopen E.P.No.45 of 2006 for further adjudication.



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For Petitioner : Mr.M.Aravind Subramaniam

For Respondent : Mr.G.Vidhyamaheswaran

### **ORDER**

The decree holder in an Arbitration Award is the revision petitioner herein challenging the order of allowing an application under Section 47 of C.P.C and thereby terminating the execution proceedings.

#### **Factual Background:**

2.According to the revision petitioner, the petitioner company as claimant had initiated arbitration proceedings as against the respondent herein on the basis of a stockist agreement dated 29.10.1995 and supplementary agreement dated 29.06.2004. As per the said claim petition, the revision petitioner was engaged in the business of manufacturing and sale of various brands of cement and the respondent herein was a stockist. In the business transaction, the stockist did not pay the entire amount due to the claimant and in order to secure the said amount, the respondent had mortgaged 2.22 acres agricultural lands in Avaniyapuram Village, Madurai District by depositing the title deeds relating to the said lands with the claimant.

3.Arbitration proceedings were initiated claiming a sum of Rs.16,31,959.03. The said arbitration proceedings culminated in favour



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of the claimant and an award was passed by the sole arbitrator on 25.10.2005. In order to execute the said award, the claimant had filed E.P.No.45 of 2006 on the file of the District Court, Madurai to bring the property for Court auction sale without attachment and to appropriate the sale proceeds towards the decree amount. The said E.P was filed claiming a sum of Rs.19,93,730.92.

4.The respondent in the execution proceedings had filed a counter disputing the calculation on the ground that the amount that were already paid by him were not deducted. The respondent had further contended that the benefits of discounts have not been deducted by the claimant. While the execution proceedings were pending, the judgment debtor had addressed a letter to the decree holder enclosing a copy of minutes of discussion dated 28.08.2000 requesting the decree holder to withdraw all the cases on the ground that the entire amount arising out of the award has already been satisfied. Since the decree holder proceeded with the execution petition, the judgement debtor had filed E.A.No.29 of 2007 under Section 47 of C.P.C on 04.10.2007 to terminate the execution proceedings on the ground that the decree has been satisfied in full and the decree holder was liable to repay a sum of Rs.8,92,500/-. In the said



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petition, the judgment debtor had contended that the decree holder had already handed over the original documents of the agricultural lands which was mortgaged to the decree holder as a security for the outstanding dues.

5.The decree holder had filed a counter contending that the decree amount has not been satisfied in full and return of the documents are not connected with the claim petition. The decree holder has also disputed the claim of the judgment debtor to repay a sum of Rs.8,92,500/-.

6.The Executing Court relied upon the communication dated 17.01.2007 and found that on receipt of payment of Rs.16,25,000/- by the judgement debtor, the decree holder has already returned the document held as security to the judgement debtor. Once the documents have been returned, it would amount to redemption of mortgage. Therefore, the said communication of the judgement debtor and the subsequent conduct of the decree holder would only reveal that the mortgage money has been realized and thereafter the original document relating to the mortgaged property was released by the decree holder only after full and final settlement.



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7.The Executing Court further found that the judgment debtor cannot raise a counter claim in his application under Section 47 of C.P.C and rejected the said prayer. Based on the said findings, the Executing Court had partly allowed Section 47 of C.P.C application and terminated the execution proceedings. Challenging the same, the present revision petition has been filed by the decree holder.

**Submissions of the Counsels:**

8.The learned counsel for the revision petitioner had contended that as per communication dated 17.01.2007, only a sum of Rs. 13,85,000/- was paid towards the decree amount and the rest of the amount relate to Section 138 proceedings that were pending before the Chief Metropolitan Magistrate Court, Chennai. This communication was only a request made by the judgment debtor to treat the receipt of the said amount as full and final settlement and to withdraw the case. However, the said request was not accepted by the decree holder and he proceeded with the execution proceedings. There are no records to establish that the decree holder had accepted the said amount as full and final settlement towards the arbitration award. Merely because the original documents were released, that would not in any way come in the way of a decree



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holder in executing the arbitration award. The Executing Court had placed too much reliance upon the return of the original document to arrive at a conclusion that the decree amount has been settled in entirety and only thereafter the original documents have been returned.

9.The learned counsel for the petitioner had further contended that when the decree holder has not accepted the request of the judgment debtor to treat the receipt of Rs.13,85,000/- as full and final settlement, the Executing Court ought not to have arrived at a finding that the entire decree amount is settled and satisfied in full. Hence, he prayed for allowing the revision petition and to restore the execution proceedings.

10.Per contra, the learned counsel appearing for the respondent had contended that in order to secure the outstanding amount to the decree holder, the judgment debtor has created an equitable mortgage by depositing the title deeds relating to 2.22. acres of agricultural lands in Avaniyapuram Village, Madurai District. The mortgagee would not release the original document unless the entire amount secured under the said mortgage is realized. Accepting the letter dated 17.01.2007 sent by the judgment debtor, the decree holder/mortgagee had released the original document. Therefore, it should only be construed that the decree



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holder had accepted the said amount in the communication dated 17.01.2007 towards full quit and released the document. The mere fact of release of document submitted for creating equitable mortgage would clearly indicate the there is a full and final settlement of the award amount. Therefore, the Executing Court was right in allowing Section 47 application and terminating the execution proceedings. Hence, he prayed for sustaining the order passed by the Executing Court.

11.I have given anxious consideration to the submissions made on either side and perused the material records.

**Discussion:**

12.The award passed by the Arbitration Tribunal, on 25.10.2005 in favour of the revision petitioner and against the respondent herein for realizing a sum of Rs.16,31,959.03 with 21% interest from 16.04.2005, has become final.

13.A perusal of the arbitration award indicates that in order to secure the outstanding amount, the stockist had handed over the original title deeds relating to 2.22 acres of agricultural lands in Avaniyapuum Village, Madurai District and has created an equitable mortgage. However, the arbitration proceedings have been initiated only for the



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purpose of recovery of money simpliciter and it was not based upon the equitable mortgage. After the award was passed on 25.10.2005, the execution petition was filed by the decree holder on 13.02.2006 to realize a sum of Rs.19,93,730.92. The relief column of the execution petition reveals that the claimants had resurrected the equitable mortgage and has prayed to bring the property for Court auction sale without attachment and to appropriate the sale proceeds.

14.In Section 47 of C.P.C application, the judgment debtor in Paragraph No.10 has specifically contended that on receipt of Rs.16,25,000/- the decree holder had returned all the original documents which were handed over for creating an equitable mortgage. This fact has been admitted by the decree holder in Para No.7 of the counter with a rider that the handing over of the document is not connected with the claim. The Executing Court had primarily relied upon the handing over of the documents to arrive at a conclusion that the decree amount has been fully satisfied and has proceeded to terminate the execution proceedings.

15.A perusal of the communication of the judgment debtor dated 17.01.2007 reveals that he had sent a demand draft to the decree holder



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for a sum of Rs.16,25,000/-. It further reveals that the judgement debtor had requested the decree holder to adjust Rs.13,85,000/- towards E.P.No. 45 of 2006 and the balance Rs.2,40,000/- towards proceedings pending before Chief Metropolitan Magistrate Court, Chennai. Therefore, it is clear that towards the E.P.claim of Rs.19,93,730.92 only a sum of Rs.13,85,000/- was paid by the judgment debtor. There is no proof whatsoever to indicate that the judgement debtor had paid the balance decree amount.

16.The issue that arises for consideration is whether the release of documents submitted for creating equitable documents could be construed to be full satisfaction of the decree.

17.As per Section 36 of the Arbitration and Conciliation Act, 1996, the arbitral award could be executed as if it were a decree of the Court. The Hon'ble Supreme Court in a judgement reported in (2011) 5 SCC 532 (*Booz Allen and Hamilton Inc.Vs. SBI Home Finance Limited and others*) in Paragraph Nos.46 and 49 has held as follows:



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*“46.....A mortgage suit for sale of the mortgaged property is an action in rem, for enforcement of a right in rem. A suit on mortgage is not a mere suit for money. A suit for enforcement of a mortgage being the enforcement of a right in rem, will have to be decided by courts of law and not by Arbitral Tribunals*

*49.A decree for sale of a mortgaged property as in the case of a decree for order of winding up, requires the court to protect the interests of persons other than the parties to the suit/petition and empowers the court to entertain and adjudicate upon rights and liabilities of third parties (other than those who are parties to the arbitration agreement). Therefore, a suit for sale, foreclosure or redemption of a mortgaged property, should only be tried by a public forum, and not by an Arbitral Tribunal. Consequently, it follows that the court where the mortgage suit is pending, should not refer the parties to arbitration.”*

18.This judgment of the Hon'ble Supreme Court was approved and followed by a subsequent judgement reported in (2021) 2 SCC 1 (*Vidya Drolia and others Vs. Durga Trading Corporation*). Therefore, it is clear that a money suit based on a mortgage could not be adjudicated upon by the Arbitration Tribunal. Conscious of this legal position, the claimant had initiated arbitration only for recovery of money. Therefore, the award passed by the Arbitrator on 25.10.2005 could only be treated as a money decree and not a decree for sale of mortgaged property for recovering the amount secured.



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19.A perusal of the execution petition shows that it has been filed as if to execute a final decree in a foreclosure suit. Only in view of the said prayer in the Execution Proceedings, the Executing Court was of the view that the release of the document entrusted for creating an equitable mortgage would result in discharge of the decree amount.

20. In view of the fact that there is no final decree in a foreclosure suit and the award of the arbitrator is only a money decree simpliciter, the decree holder can proceed to execute the decree only after attachment of the property. However, the decree holder is at liberty to amend the execution petition to attach the property in order to proceed with the execution petition. Since it is a money decree, the release of the documents by the decree holder would not in any way be relevant for the purpose of executing the said money decree. Therefore, the finding of the Executing Court that in view of release of the documents, the decree stands discharged is not legally sustainable.

21.In view of the above said deliberations, the order of the Executing Court is set aside and this Civil Revision Petition is allowed.



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The matter is remitted back to the file of the Principal District Court, Madurai to proceed with the execution petition in accordance with law after giving due opportunity to the parties. No Costs.

**07.09.2023**

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

1.The Principal District Judge  
Madurai

2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR,J.**

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Pre-delivery order made in

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