



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.2243 of 2022
and
C.M.P(MD)No.10497 of 2022

1.T.Suresh
2.T.Kasthuri

... Petitioners/Respondents 2,4/
Judgment Debtor 2,3/Defendants 2,3

Vs.

1.Sathaian
2.K.Suyambulingam

... Respondent/Petitioner/
Auction Purchaser
... Respondent/3rd Respondent/
Decree Holder/Plaintiff

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the docket order dated 14.09.2022 in E.A.No.6 of 2022 in E.P.No.5 of 2011 in O.S.No.103 of 2006 on the file of the I Additional Subordinate Judge, Nagercoil.

For Petitioners	:Mr.Raguvaran Gopalan
For R1	:Mr.J.Sulthan Basha
For R2	:Mr.T.Selvakumaran



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ORDER

The petitioners, who are the judgment debtors, have preferred this civil revision petition as against the order dated 14.09.2022 passed in E.A.No.6 of 2022 in E.P.No.5 of 2011 in O.S.No.103 of 2006 by the I Additional Subordinate Judge, Nagercoil.

2.According to the learned counsel appearing for the revision petitioners/defendants 2 and 3, they are suffered decree passed in O.S.No. 103 of 2006 in which, attachment was ordered and the property was brought under auction by the trial Court, on 28.04.2022. The first respondent, who purchased the property in the auction sale, deposited 25 % of the amount on 28.04.2022 itself. As per the condition of sale, the first respondent ought to have deposited the balance amount on or before 13.05.2022. Since he has not paid the balance amount, he moved an application in E.A.No.6 of 2022 in the month of August 2022 seeking extension of time for making payment and the same was allowed by the trial Court. Aggrieved by the same, the present civil revision petition is filed.

3.According to the learned counsel for the petitioners, the Court has no jurisdiction to extend time specified under the Code of Civil Procedure. The auction sale becomes nullity, on purchaser failing to pay balance sale



consideration within 15 days.

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4.The plaintiff in O.S.No.312 of 2006 filed the above suit for recovery of mortgage debt, in which, preliminary decree was passed on 31.08.2008 and final decree came to be passed on 11.08.2010. The plaintiff has preferred E.P.No.5 of 2011 for execution of the above decree. Thereafter, the property was brought to sale in the year 2020-2022 and the same was sold into Court auction on 28.04.2022. The upset price was Rs.15,15,000/-. The first respondent/auction purchaser deposited 25% of the sale price on the same day and for balance amount, chellan was issued on 05.05.2022 and he ought to have deposited the balance sale amount on or before 13.05.2022. However, the first respondent failed to do so, filed E.A.No.6 of 2022 under Section 151 of C.P.C., and the same was resisted by the petitioners in their counter stating that as per Order XX1 Rule 84, 85 C.P.C, on the fifteen day from the date of sale, the entire sale amount should be deposited into Court, otherwise the sale become nullity. The Executing Court, considering the above facts, allowed the said E.A.No.6 of 2022.

5.To support his contention, the learned counsel appearing for the petitioners has relied upon the decision reported in **2001(2) CTC 44** in ***S.V.Lakshmanan-vs-A.Venugopala Reddy and another***, wherein it has been



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held as follows:

“.... and it was clearly held that Rule 85 being mandatory, its non-compliance renders the sale proceedings a complete nullity requiring the executing Court to process under Rule 86 and the property has to be resold unless the judgment-debtor satisfies the decree by making the payment before the resale. The argument that the executing Court has inherent power to extend time on the ground of its own mistake was also expressly rejected.”

6. Therefore, the Court has no jurisdiction to extend the time specified under the Code of Civil Procedure, that is the entire amount should have been deposited within fifteen days from the date of auction. If it is not done so, the sale becomes nullity and therefore, the order passed by the Court below is legally incorrect and therefore, the same is set aside. The revision petitioner is permitted to withdraw the amount, which he had already deposited to the Court. The Execution Court also shall consider the same on application filed by the revision petitioners. Accordingly, this Civil Revision Petition is allowed.

7. However, considering the facts and circumstances of the case, this Court directs the I Additional Subordinate Judge, Nagercoil, to dispose the E.P.No.5 of 2011 on merits and in accordance with law, within a period of



two months from the date of receipt of a copy of this order. No costs.

Consequently, the connected miscellaneous petition is closed.

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NCC:Yes/No

Index:Yes/No

Internet:Yes/No

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To

1.The I Additional Subordinate Court,
Nagercoil.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.2243 of 2



K.GOVINDARAJAN THILAKAVADI, J.

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