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CRP.No.469 of 2022

In the High Court of Judicature at Madras

Reserved on: 20.03.2024

Delivered on : 12.07.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.469 of 2022

and CMP.No.2444 of 2022

R.Savithri Naidu

... Petitioner/Claimant/3rd party

-Vs-

1.M/s.The Cotton Corporation of India Ltd.

Rep. By its General Manager

Pranjal Prabhalas Joshi

1057, Trichy Road, Ramanathapuram

Coimbatore-641 004

..1st Respondent/claimant in AOP

/Award holder

2.M/s.Lakshmi Ganesh Textiles Ltd.

Rep. By its Managing Director

“ANUGRAHA' 1334, Avanashi Road

Peelamedu, Coimbatore-641 004

..2nd respondent/Opposite Party in AOP

/Judgment Debtor.



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PRAYER : Civil Revision Petition filed under Section 115 of CPC praying to set aside the order and decretal order dated 03.01.2022 in EA.No.141 of 2021 in E.P.No.300 of 2019 in AOP.No.12 of 2012 on the file of Principal District Judge, Tiruppur.

For Petitioner : Mr.Nithyes Natraj

For Respondents : Mr.Anirudh Krishnan for R1

R2- No appearance

ORDER

This Civil Revision Petition is filed by the 3rd party as against the order dated 03.01.2022 passed in E.A.No.141 of 2021 in E.P.No.300 of 2019 in AOP.No.12 of 2012 on the file of Principal District Judge, Tiruppur.

2. The revision petitioner filed E.A., in E.P., praying to accept their claim application and to recall the order of attachment that was ordered against the petition mentioned property in E.P.No.300 of 2019. After hearing both sides submission and recording evidence on the side of the petitioner/3rd party, the learned Judge, dismissed the petition. Against which, the present Civil Revision Petition is filed.



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3. The learned counsel for the revision petitioner would submit that the property belonging to the petitioner cannot be the subject matter of attachment. The petitioner is the absolute owner of the property with all rights by virtue of sale deed dated 23.04.2015. The petitioner states that she purchased the property from the 2nd respondent on 23.04.2015 for a valuable consideration. The property has already been sold under SARFAESI auction on 11.11.2013 and the petitioner purchased the property from ICICI bank in terms of the SARFAESI Act.

4. The learned counsel for the revision petitioner would submit that the 2nd respondent entered into Tri partite agreement with the petitioner on 31.03.2015. The physical possession of the property was handed over to the petitioner on 08.04.2015 by the Banker and a joint compromise memo was filed by the 2nd respondent. DRT agreed to the compromise. The title and ownership of the schedule mentioned property stands in the name of the petitioner. He would further submit that the sale deed between the 2nd respondent and the petitioner is registered and the same is reflected in Encumbrance Certificate of the registration department.



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5. The learned counsel for the revision petitioner would submit that if at all anything due to the 1st respondent from the 2nd respondent, the 2nd respondent ought to have paid the same. Due to non payment of the dues, resulted in filing of EP. The revision petitioner is not a party to the arbitration proceedings and the award is not binding upon the petitioner. The decree holder has no right to get the attachment of the property of the petitioner, as the individual property of the petitioner is not liable to be attached in the execution of the award.

6. Per contra, the learned counsel for 1st respondent would submit that the petitioner and the 2nd respondent colluded together and created the alleged sale deed. Knowing fully well about the arbitration award passed against the 2nd respondent, EP.No.300 of 2019 was instituted against the 2nd respondent on account of non-payment of arbitral award passed in favour of the 1st respondent for a sum of Rs.26,67,000/- with interest and cost. The award has become final and enforceable. The 2nd respondent filed AOP.No.09/1999 before the Principal District Judge, Coimbatore and the same was dismissed on 21.01.2013. The claim application filed by the petitioner is not sustainable. The 2nd respondent neither preferred revision against the order passed nor challenged the award



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passed in the arbitration proceedings. The award has become final and only to delay and drag on the proceedings, the petition in E.A.141 of 2021 is filed.

7. The learned counsel for the 2nd respondent would submit that the property of the 2nd respondent was taken over by the ICICI bank under SARFAESI Act on 11.11.2013. The petitioner has taken possession of the property under the joint compromise memo before the DRT.

8. Before the trial court, on the side of petitioner, oral and documentary evidence is recorded. The learned Judge, found that the award was passed on 11.06.2001 as against the 2nd respondent. The award was challenged before the Principal District Court, Coimbatore in AOP.No.10/2006 and the same was dismissed on 21.01.2013 after seven years. Thereafter, the execution petition has been filed before the Executing Court. In the sale deed, it is stated that the 2nd respondent had sold nine items of property stating that there has been no attachment, no encumbrance over the property. AOP was pending since 1999 and award was passed in 2013. The learned Judge pointed out that it is the duty of the 2nd respondent to disclose the award as well as the pending AOP proceedings to the vendor, who had entered into tripartite agreement with the 2nd respondent. The learned Judge also observed that the tripartite agreement had



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not been produced before the court to appreciate the agreement entered between the petitioner and the 2nd respondent. The learned Judge, therefore found that the claim made by the petitioner/3rd party is not legally sustainable as the AOP was pending since 1999; Pending AOP sale has been made, therefore, the same would be hit under Order 21 Rule 102 CPC. The learned Judge, also pointed out that pending proceedings if any sale has been made suppressing the proceedings, the claimant cannot make any claim over the property and he has to take risk of the execution petition. The learned Judge, held that the contention of the petitioner that she has absolutely become owner of the property is not sustainable as the sale has been made pending AOP proceedings. Therefore, the claim of the petitioner is not legally sustainable. The purchaser being member in the tripartite agreement is bound to discharge the loan amount due.

9. The learned Judge also drew the attention to the Supreme Court decision in the case of Rahul S.Shah Vs. Jinendrakumar Gandhi in Civil Appeal No.1659 of 2021, which was circulated to all the District Courts with directions to scrupulously follow the instructions, wherein the direction was to complete the execution petition within the time frame within six months from the date of filing of petition and the period shall be extended only by recording reasons in writing for such delay.



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10. The learned Judge, with the above said findings, impleaded the claimant as 2nd respondent in the execution proceedings for proper adjudication of the case and for realization of EP amount. The claim application of the revision petitioner/petitioner/3rd party has been dismissed and directed that EP has to be proceeded against the property of the 2nd respondent.

11. At the time of admission of this civil revision petition, notice was ordered to the respondents and interim stay was granted on 02.03.2022 till 06.04.2022. Thereafter, the matter was listed on various dates and the interim order of stay was extended from time to time. Since there was no representation for the revision petitioner on 15.03.2024, this court directed the Registry to post the matter under the caption 'for dismissal', on 20.03.2024. On 20.03.2024, the matter was heard.

12. A perusal of the impugned order would go to show that the 3rd party/claimant who sought for recall of the order of attachment in E.A.No.141 of 2021 in E,P.No.300 of 2019 has been dismissed by the learned Judge, Executing Court. The learned Judge impleaded the 2nd respondent in the main execution proceedings for proper adjudication of the case and for realization of



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the E.P., amount from the property of the 2nd respondent. The learned Judge, trial court, referred to the judgment of the Supreme Court in ***Rahul S.Shah Vs. Jinendrakumar Gandhi in Civil Appeal No.1659 of 2021*** and pointed out the direction of the Supreme Court that execution petition should be completed within six months from the date of filing of petition and period shall be extended only by recording reasons in writing for such delay. Therefore, the learned Judge, Executing Court clearly pointed out that in the present case, the claimant had entered into agreement to discharge the due of the 2nd respondent and hence, she has to be impleaded as party in the E.P., for effective adjudication. Further the learned Judge, Executing Court, impleaded the claimant as 2nd respondent in the execution proceedings for proper adjudication of the case and for realization of the E.P. Amount.

13. The findings of the learned Judge, Executing Court, is well reasoned one. Further the facts of the case would go to show that AOP was pending since 1999 and pending AOP, sale has been made and the same would hit under Order 21 Rule 102 CPC. The learned Judge, rightly held that the claimant has to take risk of the execution petition. This court, do not find any ground to interfere into the impugned order passed in E.A.No.141/2021 in



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E.P.No.300 of 2019 in AOP.No.12 of 2012. Accordingly, this Civil Revision

Petition is dismissed. Consequently, interim stay stands vacated. No costs.

12.07.2024

nvsri

To

- 1.The Principal District Judge, Tiruppur.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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J.NISHA BANU, J.

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