



WEB COPY



CRP No.729 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.729 of 2024 and

CMP No.3684 of 2024

The Manager, M/s NIDO Home Finance Ltd.,
(formerly known as Edelweiss Housing Finance Ltd.,)
II floor, Lancor West Minister,
Old No.108, New No.70,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

... Petitioner

/vs/

1. R.Usha
2. H.Ashokmitra
3. P.Aravindan

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the order of arrest and detain in the civil prison, dated 03.01.2023 and to terminate the E.P.No.1841 of 2023 in O.S.No.186 of 2016.

For Petitioner ... Mr. V.Balasubramani



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ORDER

WEB COPY This civil revision petition has been filed to set aside the order of arrest and detain in the civil prison, dated 03.01.2023 and to terminate the E.P.No.1841 of 2023 in O.S.No.186 of 2016.

2. The petitioner herein is the first defendant and the first respondent herein is the plaintiff in the above said suit, which was filed against the defendants 1 to 3, seeking mandatory injunction, directing the first defendant to hand over the original settlement deed dated 20.06.2011 in document No.2704/2011, to the plaintiff. The above said suit was decreed exparte, in favour of the first respondent/plaintiff on 24.08.2021, by directing the petitioner/first defendant to hand over the above said settlement deed to the plaintiff, within one month. Subsequently, the first respondent/plaintiff has filed E.P.No.1841/2023 under Order XXI Rule 32 of CPC to direct the petitioner/first defendant to hand over the above settlement deed to the plaintiff. The Executing court, vide order dated 03.01.2024, has allowed the above executing petition, " *by ordering that the Judgment Debtor/ petitioner is to be arrested and detained in civil*



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prison for willful disobedience of a decree and also issuing arrest warrant

by 12.02.2024." Challenging the above order, this civil revision petition has been filed.

3. The learned counsel for the petitioner submitted that, the petitioner is a financier and the third respondent had availed a loan to the tune of Rupees 20,00,000/- from the petitioner, by executing a loan agreement dated 13.08.2014 and to secure the above loan, he had also created the mortgage over the property in favour of the petitioner, under a registered mortgage deed, dated 12.02.2015 in document No.777/2015. He further submitted that, the third respondent had committed default in repaying the loan amount from the inception and in such circumstances, the first respondent approached the petitioner and stated that, she had purchased the property from the second defendant and at the time of execution of sale deed, the second defendant assured to deliver the original settlement deed, dated 20.06.2011, by settling the entire loan amount payable to the petitioner.



4. He also submitted that, though the outstanding dues payable to the petitioner was not paid, the third respondent had illegally executed the sale deed in favour of the first respondent on 22.07.2014 and the respondents by colluding with each other, had availed the loan to the tune of Rs.20,00,000/- from the petitioner. As on today, a sum of Rs.24,06,994/- is outstanding and unless or otherwise the entire amount is paid by the third respondent, to the petitioner is not liable to return the said original settlement deed dated 20.06.2011. However, without appreciating the above facts in proper perspective, the learned Judge has passed the impugned arrest warrant hence the same is liable to be dismissed.

5. Heard the learned counsel for the petitioner and I have perused the materials on record.

6. It is an admitted fact that the second defendant was the owner of the suit property, vide settlement deed dated 20.06.2011, from whom the plaintiff had purchased the suit property, vide sale deed dated 22.07.2014. According to the first respondent/plaintiff, at the time of executing sale



deed, the above said settlement deed was not handed over to her, and it was assured by the second defendant that he would hand over the settlement deed, after getting it from the first defendant/ financier. But, latter, by mortgaging the above settlement deed in favour of the first defendant, the second and third defendants had obtained loan thereby, they committed the fraud. Therefore, the first respondent/plaintiff filed the suit and also obtained decree, by directing the first defendant/financier to hand over the settlement deed to the plaintiff, within one month. Since the above order was not complied with, the first respondent/plaintiff had filed execution petition, wherein, order of arrest was issued against the petitioner.

7. It is to be noted that, the petitioner/financier has not denied that, the settlement deed is under their custody, whereas, it is their contention that, unless and until the outstanding due is settled, they are not liable to return the settlement deed dated 20.06.2011 to the first respondent/plaintiff.



8. At this juncture, it is to be noted that the decree passed in O.S.No.186/2016, dated 24.08.2021 in favour of the first respondent/ plaintiff is not challenged by the petitioner. Since the petitioner/ first defendant did not return the sale deed within one month, as directed by the Trial Court, the plaintiff has filed the above E.P.No.1841/2023, to " deliver the original settlement deed dated 20.06.2011, in the occupancy of the first defendant/ J.D and hand over the same to the plaintiff/D.H. " Further, the execution court cannot go beyond the decree. In such circumstances, without challenging the decree passed in O.S.No.186/2016, the petitioner cannot argue that the amount borrowed by the defendants 2 and 3 is not yet settled and hence, the settlement deed, mortgaged in favour of them, cannot be returned. It is for the petitioner to work out their remedy by raising all their grounds for retaining settlement deed under their custody, before the appellate court only and not before the execution court. As such, this court is of the view that, since the petitioner/first defendant has disobeyed the order passed by the Trial Court, the execution court has rightly ordered for arrest of the petitioner/first defendant in civil prison and there is no infirmity to interfere over the same.



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WEB COPY 9. Accordingly, this civil revision petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

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To

The IX Assistant Judge, City Civil Court, Chennai.



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