



C.M.A.Nos.460 & 944 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.10.2024

Pronounced on : 08.11.2024

CORAM : JUSTICE N.SESHASAYEE

C.M.A.Nos.460 & 944 of 2023
and CMP.Nos.3837, 8664 & 9532 of 2023

CMA.No.460 of 2023 :

M/s.Samy Property Developers
Rep by its Partner K.Dhandapani
No.3, NMS Towers, III Floor
Indra Nagar, Palladam Road
Tirupur.

... Appellant

Vs

1.M/s.VSP Property Promoters
Rep by its Partners

2.S.Venkatesan
3.V.Palanisamy
4.G.Shanmuganathan
5.T.R.Kumar Marappasamy
6.P.S.Amirtharaj

7.M/s.RSL Industries Ltd.
Sethu House
No.28, Alagappa Road
Chennai - 600 084.



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8.M/s.RSL Textiles (India) Ltd.,
No.59, Palakkad Main Road
Kuniamuthur Post
Coimbatore - 641 008.

... Respondents

CMA.No.944 of 2023 :

P.S.Amirtharaj

Vs

... Appellant

1.M/s.VSP Property Promoters
Rep by its Partners

2.S.Venkatesan
3.V.Palanisamy
4.G.Shanmuganathan
5.T.R.Kumar Marappasamy

6.M/s.RSL Industries Ltd.
Sethu House
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7.M/s.RSL Textiles (India) Ltd.,
No.59, Palakkad Main Road
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8.M/s.Samy Property Developers
Rep by its Partner K.Dhandapani
No.3, NMS Towers, III Floor
Indra Nagar, Palladam Road
Tiruppur.

... Respondents



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COMMON PRAYER: Civil Miscellaneous Appeals filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, praying to set aside the fair and decretal order dated 05.12.2022 made in E.A.No.52 of 2015 in E.P.No.168 of 2013 on the file of Additional Labour Court at Coimbatore.

In CMA.No.460 of 2023 :

For Appellant : Mr.S.Parthasarathy, Senior Counsel
Assisted by Mr.K.V.Muthuvisakan

For Respondents : Mr.R.Sankaranarayanan, Senior Counsel
Assisted by Mr.N.P.Vijayakumar for R1 to R5

Mr.T.Mohan, Senior Counsel
Assisted by Mr.K.Babu for R6
RR7 & R8 - Exparte before trial court

In CMA.No.944 of 2023 :

For Appellant : Mr.T.Mohan, Senior Counsel
Assisted by Mr.K.Babu

For Respondents : Mr.R.Sankaranarayanan, Senior Counsel
Assisted by Mr.N.P.Vijayakumar for R1 to R5

Mr.S.Parthasarathy, Senior Counsel
Assisted by Mr.K.V.Muthuvisakan for R8
R6 & R7 – Set exparte before trial Court



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COMMON JUDGMENT

These two appeals are preferred challenging an order of the Execution Court allowing the claim of respondents 1 to 5 under Order XXI Rule 58 CPC in E.A. No.52 of 2015. Of them, C.M.A. No.460 of 2023 was filed by the purchaser in an auction sale held in E.P. No.168 of 2013, which the appellant/workman in C.M.A.No. 944 of 2023 had laid for executing an award passed under Sec.33C (2) of the Industrial Disputes Act, 1947.

1.2 Broadly the issue is that, in the said E.P. Respondents 1 to 5 have taken out an application in E.A.52 of 2015, staking a claim to about 5.43 acres in SyNo:298 of Kuniyamuthur village, and it came to be allowed by the Execution Court. This block of 5.43 acres was part of a larger extent of 37.0 acres, spread over multiple survey numbers, and it was brought to court-auction-sale and was purchased by the appellant in CMA 460 of 2023. The sale in favour of the auction-purchaser is yet to be confirmed by the Execution Court in terms of Order XXI Rule 92 CPC. The decision of the Execution Court in allowing the claim of respondents 1 to 5 over 5.43 acres implies that the Execution Court



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may not now confirm the auction-sale as pertaining to this block of land.

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2. A brief narration of facts that led to the filing of these appeals may now be stated :

- (a) The workman here along with about 87 odd workmen was working in M/s Vijayalakshmi Mills. It had a textile unit. It defaulted in paying its dues to them. Subsequently, Vijayalakshmi Mills came to be demerged, whereupon M/s.RSL Industries Ltd., came into existence vide Ext.P18, dated 09.03.1983. There was a further demerger, owing to which M/s.RSL Textiles (India) Ltd., came to be registered vide Ext.P19 dated 03.09.1992. (Both these companies, namely RSL Industries and RSL Textiles would be jointly referred to as the **JD**)
- (b) Claiming the dues which M/s.Vijayalakshmi Mills had defaulted to pay, its workmen, which included the workman in this appeal, laid separate petitions against the JD under Sec. 33C(2) of the ID Act, before the Labour Court, Coimbatore. All these petitions came to be allowed and separate awards came to be passed. The one involved in this case is passed in favour of the workman in C.P.No.443 of 2006



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and the sum awarded was Rs.1,75,350/-.

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- (c) For realising the award sum of Rs.1,75,350/- the workman laid E.P. No.168 of 2013. It is in this petition, on 01.04.2013, the Execution Court (Labour Court) had attached the entire 37 acres of land referred to above. And, the property was eventually sold on 16.09.2019 to the auction-purchaser herein for a total consideration of Rs.9,60,80,000/-.
- (d) Be that as it may, about two years after the property was attached, a certain VSP Property Promoters, the first respondent (henceforth VSP Properties) along with its directors (respondents 2 to 5) had laid E.A.52 of 2015 under Order XXI Rule 58, staking exclusive title to properties in Sy.Nos.300, 301, 301(2), 266(3) and 298 and contended that these properties do not belong to the JD in the Execution Petition.
- (e) On 12.11.2018, the Execution Court dismissed E.A.52 of 2015. Challenging this Order, VSP Properties preferred W.P.32758 of 2019. On 14.02.2020, this petition was allowed by this Court, and E.A.52 of 2015 was remanded back to the Execution Court. However, and to remind, the court-auction sale of 37 acres had taken place on



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16.09.2019, a few months before this Court's order in W.P.32758 of 2019.

(f) After remand, on 05.12.2022, the Execution Court allowed E.A.52 of 2015.

This Order is now under challenge.

3. On the point of its exclusive title, VSP Properties contended :

(a) The property measuring 5.43 acres in Sy.No.298 of Kuniyamuthur Village originally belonged to one Indirani, and not to M/s.Vijayalakshmi Mills. On 19.05.1969, vide Ext.P4 sale deed, Indirani sold the property to one Suriyakumari. In 1997, Suriyakumari sold the properties to M/s RSL Properties under four sale deeds (Ext.P6 to Ext.P9). From RSL Properties, VSP Properties had purchased this block of 5.43 acres under two separate sale deeds: (i) Ext.P11, dated 10.04.2008, for 3.43 acres; and (ii) Ext.P13, dated 10.11.2011 for 2.0 acres.

(b) RSL Properties is a public limited company, and it has little to do with the JD companies, viz., RSL Industries Limited and M/s.RSL Textiles (India) Ltd., except perhaps certain similarities in their names.



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Inasmuch as the 5.43 acres in question was the exclusive property of RSL Properties, and since the workman was never its workman, this block of property cannot be proceeded against.

4. As stated above, E.A.52 of 2015 was first dismissed by the Labour Court, and later vide the order of this Court in W.P.No.32758 of 2019 dated 14.02.2020, the E.A. was again heard by the Execution Court pursuant to the remand by this court. It may have to be said, before hearing, VSP Properties have amended their affidavit in E.A.52 of 2015. On 05.12.2022 the Execution Court allowed the Claim of respondents 1 to 5. Its line of reasoning is:

- (a) The title of the first respondent to the property which it traces to Exts.P11 and P13 show that it was the exclusive property of M/s.RSL Property Development Limited;
- (b) That Ext.P17, the bank statement produced by the Claim petitioner indicates that it had paid the entire sale consideration to its vendor;
- (c) That failure to produce the resolution of the vendor company of the claim petitioner, (which was one of the grounds of defence taken by the workman while resisting the claim) is of the least consequence, since it is internal to the vendor company.



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(d) On an earlier occasion, to be precise on 14.03.2008, the ESI Corporation had attached the entire 37 acres, including the 5.43 acres now in question owing to the failure of the JD to remit their contribution as per the ESI Act. However, the entire amount payable to the ESI Corporation was subsequently paid, not by the first respondent's vendor (RSL Properties) but by the JD themselves.

5. It is this order which is now under challenge in these twin appeals, one at the instance of the auction-purchaser (CMA 460 of 2023) and the other at the instance of the workman-Execution Petitioner (CMA 944 of 2023).

6. Heard Thiru. S. Parthasarathy for the appellant (Auction purchaser) in C.M.A. No. 460 of 2023, Thiru. T. Mohan for the appellant (workman) in C.M.A. No.944 of 2023 and Thiru R. Sankaranarayanan, for the respondents 1 to 5 (the claimants before the Execution Court) in both the appeals. The learned counsel for the appellants substantially adopted the same line of arguments and hence they are summed up as below:

a) On 01.04.2013, the 5.43 acres in Sy.No:298 along with the other properties of the JD in E.P.168 of 2013 were attached by the



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Execution Court. And, in the averments in the affidavit filed in support of E.A.52 of 2015, respondents 1 to 5 admit that they came to know about this Order of attachment even on 24.05.2013. But the respondent took another two years and filed its E.A.52 of 2015 only on 09.02.2015. In terms of Proviso (b) to Order XXI Rule 58, the Execution Court was in error in entertaining the Claim as the VSP Properties had spent nearly two full years in absolute inaction since the date of its knowledge of the Order of attachment. Reliance was placed on the ratio in *Barnes Investments and others Vs Raj K. Gupta and others* [(2001) 7 SCC 94].

- b) On 05.12.2022, when the Execution Court allowed E.A.52 of 2015, the auction-sale had already taken place. In terms of Proviso (a) to Order XXI Rule 58, the Execution Court ought not to have entertained E.A.52 of 2015 after the sale.
- c) For establishing the independent title, R1 to R5 have not chosen to produce the original title deeds before the court.
- d) Indeed, the 5.43 acres now in question was attached not only in this case, (E.P.168 of 2013) but in as many as 80 odd Execution Petitions which were all laid by the erstwhile workmen of the JD. Whereas the



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properties have been attached in multiple execution petitions, the petitioner has chosen to file only one claim petition, only in E.P. No.168/2013.

- e) Dehors the above submission, even if the Execution Court had chosen to consider the claim of the VSP Properties, it ought to have tried the claim as if it is a suit for title. The Execution Court had given a convenient go-by to this procedure.
- f) While VSP Properties claim title to 5.43 acres vide Exts.P11 and P13 sale deeds, Ext.P21 patta to the said property shows that it stands in the name of RSL Properties, the vendor of VSP Properties.
- g) So far as RSL Properties is concerned, it is a sister concern of the JD. Indeed, a certain Ramasamy, who was the promoter of the JD companies was also the promoter of RSL Properties, and hence if the corporate veil is lifted, it could be seen that the controlling arm of both the JD and the RSL Properties is the same. Therefore, notwithstanding the fact that 5.43 acres was purchased in the name of RSL Properties, it is still liable vis-a-vis the liability of the JD companies.



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7. Per contra, Thiru. R. Sankaranarayanan, the learned senior counsel appearing for the respondents 1 to 5 submitted that:

- a) When a property is not shown to belong to the JD before the Execution Court, it is impermissible for the workman to lay his hands on the properties of a stranger. Neither the workman, nor the auction purchaser can question these respondents' title to 5.43 acres in Sy.No:298. Now unless it is demonstrated that the parent company namely Vijayalakshmi Mills ever owned and possessed this block of 5.43 acres of land at any point of time, it cannot be attached in a proceedings to execute the award passed against those who are unconnected to the said property.
- b) For paying a meagre Rs.1.75 lakhs to the workman, the property worth Rs.8.90 crores, should not have been sold, which unfortunately included the property not owned by the JD, but by the first respondent or its vendor as the case may be. And with the value of all the property excepting 5.43 acres will still be with the Execution Court, and hence the workman's claim of Rs.1,75,350/- could still be



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paid. Here, the workman before this court is not canvassing an industrial dispute on behalf of other workmen, but is merely executing an award, which is personal to him.

- c) Vis-a-vis the alleged corporate liability of RSL Properties, vendor of the VSP Properties (the claim petitioner) is concerned, RSL Properties is not the holding company of any of the JD companies. The only thing which appears to be common in both the JD and RSL Properties is that one Ramasamy is a shareholder in all the three companies, and there the commonality stops. And his shareholding in RSL Properties is no more than 16.66%, and hence it cannot be considered that he has a controlling power over the affairs of RSL Properties. This apart, the JD companies are listed companies, whereas the claim petitioner's vendor is an unlisted Public Limited Company. When the petitioner's vendor is not the holding company of the JD, and when its directors do not constitute the Board of Directors of the JD companies, it cannot be possible to bring in the group companies theory to fasten the liability of JD on the respondents 1 to 5. Reliance was placed on the ratio of the Hon'ble Supreme Court in



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Balwant Rai Saluja and another Vs AIR India Limited and others

[(2014) 9 SCC 407] .

Discussion & Decision

8. Interesting questions are at hand:

- a) Whether the decision of the Execution Court in allowing the claim of the respondents 1 to 5 in E.A.52 of 2015 is sustainable in view of the Proviso (a) to Order XXI Rule 58 CPC, inasmuch as the sale of the property through court-auction had been concluded by then?
- b) Should the delay of two years in filing E.A.52 of 2015 since the date of attachment of the property on 01.04.2013, has any relevance for its investigation under Proviso (b) to Order XXI Rule 58?
- c) When this Court vide its Order dated 14.02.2020 in W.P. No.32758 of 2019, remanded E.A.52 of 2015 back to the Execution Court, has the Execution Court any power not to entertain the claim under Order XXI Rule 58, citing that the sale has concluded by then? In other words, was there a procedural space available to the Execution Court to refuse hearing E.A.52 of 2015 under Proviso (a) after remand?



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9. Before discussing the issues raised, this Court has reasons to hold that neither of the appellants – the auction purchaser (the appellant in CMA 460 of 2023) and the workman (the appellant in CMA 944 of 2023) may have the requisite *locus standi* to maintain their appeals. So far as the auction purchaser is concerned, the discussion in paragraphs 17 to 19 explains how fragile and inchoate is the nature of the right that he now has – he is merely an auction purchaser of an unconfirmed sale. More about it later. Turning to the workman's appeal, the award in his favour was around Rs.1.75 lakhs, for realising which the Execution Court has sold 37 acres for about Rs.9.61 crores. An Execution Court will be justified in ordering attachment and sale of only so much of property as would be sufficient to satisfy the decree and no more, even if the property belonged to the JD. The JD companies however, do not really seem to have any qualms about it, but it has to be recorded that what the Execution Court has done is *prima facie* bad in law. Otherwise, it should have consolidated all the execution petitions filed by all the workmen, evaluated the total sum and should have ordered sale, and should have distributed the sum realised, among all the execution-petitioners in terms of Sec.73 CPC. As



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rightly argued by the learned counsel for the respondents 1 to 5, in instituting E.P.168 of 2013, the workman here has neither raised an industrial dispute (nor can he) for and on behalf of other similarly placed workmen of the JD, nor his action can be termed as a class action for all the other workmen. It is merely a personal action, and hence E.P.168 of 2013 must also be considered only as a proceeding to execute an award which is personal to the workman here. He is entitled to the sum awarded, which can still be paid out of the sale price that would be available even if the value of 5.43 acres is reduced from the sale price fetched in the auction-sale. Therefore, why should the workman shed tears for the auction-purchaser now, when he is neither a person aggrieved, nor can he ever be a person aggrieved. Therefore, the workman does not even have the *locus standi* to maintain his CMA 944 of 2023.

10. Notwithstanding the above opinion of this court, this Court still proceeds to discuss the core contentions of the appellants since their contentions are common.

11.1 Turning to the first issue raised, whether the alleged two years delay in filing E.A.52 of 2015 from the date of knowledge of the order of attachment,



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invite the application of Proviso (b) to Order XXI Rule 58? Proviso (b) reads that the Execution Court shall not entertain any claim or objection “*where the Court considers that the claim or objection was designedly or unnecessarily delayed.*” Is there a design to delay a claim or objection unnecessarily is essentially an aspect of fact, and the Code has not stipulated the time which may be construed as constituting delay. It is case-specific, and it is left to the Execution Court to assess whether the delay in preferring a claim or objection is designed deliberately. And unless substantial prejudice is established, there cannot be an *expost facto* scrutiny on the same. Ordinarily, it is not even justiciable.

11.2 It has to be stated that Proviso to Order XXI Rule 58 CPC had come into existence about 42 years before the Constitution, and therefore, in giving effect to this provision, it is necessary for the Execution Court to remind itself of the importance which right to property enjoys under the Constitution. Despite losing its status as a fundamental right vis-a-vis the authority of the State to interfere with it, right to property has neither lost its sheen nor significance in defining the quality of life which the owner of the property will be entitled to under Article 21 of the Constitution. See: ***Lalaram and Others Vs Jaipur***



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Development Authority & another [(2016) 11 SCC 31]. Every claim petition has its foundation in an independent title to the property attached, and signifies a right to property under the Constitution. Therefore, while navigating through the procedural provision in Proviso (b) to Order XXI Rule 58, no Execution Court can ill afford to ignore the Constitutional relevance of right to property. Therefore, this Court does not find that the objection invoking Proviso (b) to Rule 58 is sustainable. Necessarily it fails.

12. Over to the next issue. Here the point is that the Execution Court ought not to have allowed E.A.52 of 2015 because at that time when it allowed the Claim, the sale itself had been concluded, and Proviso (a) to Order XXI Rule 58 CPC bars a court from entertaining a claim or objection to attachment of a property made in execution of a decree after its sale. The contextual tenability or sustainability of this argument is now required to be appreciated.

13.1 Where a decree for money is unsecured, the law's intent is that the decretal sum be paid. While dealing with the powers of the Execution Court, Sec.47 says that it has powers to decide all issues that relate to execution, discharge or satisfaction of the decree. However, in understanding them, it may have to be



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read in the reverse order. Voluntary satisfaction of the decree by the judgment-debtor is the first expectation of the law. Discharge of the liability under the money decree, wherever it happens is a lottery in law, which a judgment-debtor is blessed to obtain. For example, if the decree is for delivery of a land, and if the judgment -debtor hands over the property to the decree-holder it amounts to satisfaction of the decree. Suppose, if the land to be delivered gets irretrievably submerged under water and is lost permanently even to the JD, making it impossible for him to satisfy the decree, the liability under the decree gets discharged. Therefore, execution of a decree will become necessary only where the decree is neither satisfied nor discharged.

13.2 Accordingly, when a decree is for realising an unsecured debt, and when it is neither satisfied nor discharged, then the Execution Court may choose to execute the said decree through attachment and sale of the property of the judgment-debtor. An attachment, it is often said, is the first step towards sale. By ordering attachment, the Execution Court freezes the power of alienation of the judgement-debtor over the property-attached, and takes control over it. This gets manifested in Sec.64 CPC, which declares that any sale of the property attached is void. Once the power of alienation of the judgment-debtor over his



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property is taken over by the Court, it is now in a position to deal with the property. Then comes the sale. And after sale, it is the court which vests the title in the property in the auction purchaser, and not the judgment-debtor. Set in the context, an attachment of a property may have to be understood as an intermediary mechanism, statutorily devised, to enable the Executing Court to negotiate the jurisprudential contours involved in transferring right of ownership from the judgment-debtor to the auction purchaser, in its endeavour to satisfy the decree-holder of his claim in terms of the decree. And, it is because the Court transfers title and not the judgment debtor, there is no warranty of title in a court auction sale, which is ordinarily available to any purchaser under a transfer *inter vivos* under Sec.55 of the Transfer of Property Act.

14. Now, how to position a claim or an objection to attachment? The need for it arises when the Execution Court has attached the property of the one who is under no legal obligation to comply with the dictate of the decree. It must therefore, be emphasised that Order XXI Rule 58 CPC must be construed not just as a procedural opportunity made available to a third-party claimant to free his property from the prospects of it being wrongly sold in the execution of a



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decree, but must also be understood as an opportunity to the Court to correct its own mistake in attaching the property of the one who is a stranger to a decree. After all *actus curiae neminem gravabit*. Indeed, in most such cases, the Court itself becomes the victim of a wrong statement of the decree-holder, even if it is made bonafide, that the property attached belongs to the judgment debtor, when in fact it does not.

15. Now comes the next situation, which is more relevant to the present case. Can the Court entertain a claim or objection after the property is sold? When once the title to the property sold in auction-sale is vested in the auction-purchaser, it signifies the cessation of the control which the Execution Court had over the power of alienation concerning the property. (It is therefore, Order XXI Rule 58(5) CPC provides that post sale, anyone who is aggrieved by a wrong sale of a property may institute an independent suit to secure his title).

16.1 Now, unlike a sale *inter vivos* under the Transfer of Property Act, an auction sale does not vest title to the property purchased immediately in the auction-purchaser, and the vestiture of title in the property takes place only when it is confirmed in terms of Order XXI Rule 92 CPC.



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16.2 Between the date of the auction sale and its confirmation, the Code provides at least three provisions which the Execution Court might have to negotiate. Two out of these three are the most common: Rule 89 and Rule 90. Under Rule 89, the Code grants the judgement debtor a last opportunity before it becomes too late for him to save his property when it requires him to pay the decree-debt even after the auction-sale, but within 60 days (the period of limitation prescribed under Article 124 of the Limitation Act) from the date of sale. (To digress a bit here, Rule 89 exemplifies the anxiety of the Code and the respect it holds for preserving the right to property of the judgment-debtor even prior to Government of India Act of 1919, and some four decades before we gave unto ourselves our Constitution. There is considerable nobility and fairness in the Code which hesitates to economically hamstring the judgement-debtor by depriving him of his property. For the Code that should be the last option). Therefore, when Rule 89 is invoked, the auction-purchaser cannot even have a legitimate expectation to secure the title to the property he had purchased in the court-auction. Hopes he surely can have, but law does not promise him anything.



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17. In the present case, the court auction sale in favour of the appellant in CMA 460 of 2023 is not yet confirmed. What is the extent of interest the auction-purchaser (the appellant in CMA 460 of 2023) can then have? Very fortunately the judgment-debtor has not approached the Execution court with any application under Order XXI Rule 89 or 90, and hence, to that extent he may feel relieved. It is here that the auction purchaser is required to negotiate the claim for 5.43 acres in Sy.No:298 which the respondents 1 to 5 have made based on their independent title. He is seen banking heavily on Proviso (a) to Rule 58. It reads:

58. Adjudication of claims to or objections to attachment of, property.—(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such, claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold;



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In no uncomplicated language this proviso says that the Execution Court cannot entertain a claim against attachment after the sale. Has the Execution Court acted without jurisdiction? This is where the appellants pitch their arguments, but have stopped there.

18. The answer lies in Proviso to Order XXI Rule 92(1) CPC, and this court therefore has to continue its enquiry beyond the point where the appellants have stopped. The provision reads:

92. Sale when to become absolute or be set aside.—(1)

Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:

Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.

(2) to (5)

It could therefore, be concluded that when an auction sale takes place in execution of a decree, the court has merely identified the purchaser in whom the title to the auctioned-property may vest to the exclusion of all others. As



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stated earlier, the auction purchaser may have to wait till the court confirms the sale. And, before confirmation the Code mandates that the Execution Court decides on any pending Claim under Rule 58, or any application under Rule 89 or Rule 90. Here comes into play the proviso to Order XXI Rule 92(1) CPC. Its implication is that while a pendency of a claim under Order XXI Rule 58 CPC may not halt a sale, still a sale cannot be confirmed till the claim is decided.

19. Let the facts be carefully spread on the plane of law hereinabove discussed. When the Execution Court conducted the auction-sale, W.P. No. 32758 of 2019 was still pending. And, the appellants herein were parties to the said writ-petition. And when this court remanded E.A.52 of 2015 back to the Execution Court Vide its order in W.P.32758 of 2019, it necessarily binds the appellants. And these appellants had allowed the said order to attain finality. Consequently, the Execution Court came under a procedural duty to re-hear E.A.52 of 2015 in terms of the Order of remand. If the facts have to be reconciled with law, then it logically forces this court to hold that the auction sale held on 16.09.2019, must have to be understood as one made pending adjudication of the claim in E.A.52 of 2015 within the meaning of Proviso to



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Order XXI Rule 92(1) CPC, for the challenge to the dismissal of the claim was still pending before this court at that point of time. If so understood, then there will be little difficulty in holding that the Execution Court was well within its jurisdiction to decide E.A.52 of 2015 after the court auction sale but before its confirmation. Turning to the appellants' contention founded on Proviso (a) to Order XXI Rule 58, it only bars the Execution Court from entertaining a claim or objection against attachment after the sale, but does not bar the Court from deciding a pending Claim after the sale. This ground too fails.

20.1 The next argument has been that the Execution Court must have tried the Claim as a title-suit, but it has acted on affidavits and the documents produced in aid of the same. Whether a matter should go for trial depends on the nature of the pleadings. In the present case, VSP Properties assert exclusive title in itself based on Exts.P11 and P13, and it does not stop there. It proceeds to trace the title of the property to a certain Indirani and her sale to Suriyakumari in 1969, and Suriyakumari's sale to RSL Properties, the vendor of the first respondent VSP Properties. Not one transaction is denied, or even could be denied. Without challenging the title of VSP Properties pointedly, the appellants go for the group-companies doctrine, but this strategy indicates that



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the appellants are keen to make the property of a third party liable, not on title, but through the application of certain legal principles.

20.2 Can the property of RSL Properties at all be made liable to pay for the liability of the JD? For the appellants to succeed in this argument, it must at least be established beforehand that the JD and the RSL Properties are part of the same group of companies. The respondents deny it and claim that the promotor of its vendor has only 16.66% shareholding in the vendor company, and he does not have any controlling power over it. The appellants necessarily have to negotiate this argument with such materials which may establish that RSL Properties and the JD are but different tentacles of the same octopus with a common soul. Except making a statement that all the three companies including the judgment -debtors have 'RSL' in their respective names, and that certain Ramasamy was the shareholder in all the three companies, there is nothing on record to show that all the three share a common corporate soul. See: ***Delhi Development Authority Vs Skipper Construction Co. (P) Ltd.*** [(1996) 4 SCC 622] and ***MTNL Vs Canara Bank*** [(2020) 12 SCC 767]. The appellant has not been able to demonstrate that the said Ramasamy ever had the



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requisite corporate strength to define or dictate the affairs of RSL Properties.

Therefore, beyond suggesting a similarity of the acronym 'RSL' in the names of the companies, the workman has nothing to sell. So, what is in a name, when the search is for identifying the corporate soul. Therefore, if the appellants' argument founded on group company doctrine has to find acceptance with this Court, then the appellants' efforts should have to be far beyond its kindergarten efforts of matching the names.

21. From whichever angle the contentions of the appellants are appreciated, it supports the conclusion that neither the group company theory can be applied, nor the property which the first respondent had purchased can be made liable.

22. The workman (appellant in C.M.A. No. 944 of 2023) had contended that while the properties under the claim petition had been attached in 80 odd Execution Petitions filed by the workmen of Vijayalakshmi Mills, the respondents 1 to 5 have preferred a claim under Order XXI Rule 58 only in this case, and the attachment of the properties continues in other cases. This literally begs the question. When this Court has found that the property of RSL Properties which the first respondent has purchased under Ext.P11 and P13



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cannot be made liable to answer the liability of the JD, then, inasmuch as all the workmen who have succeeded in sustaining their claim under Sec.33C(2) of the ID Act are identically placed, the Execution Court cannot proceed against the property covered under Ext.P11 and P13 in any of the other cases. Indeed, except the statement of the workman here, there is nothing on record to indicate that the Execution Court had attached the 5.43 acres in Sy.No:298 in other execution petitions. And, if however, this property had been attached in other execution petitions as well, then such attachment cannot be sustained in law. This Court therefore, invokes its jurisdiction under Article 227 of the Constitution and directs the Execution Court to ascertain if it had attached 5.43 acres in Sy.No:298 of Kuniyamuthur village in any of the other pending Execution Petitions filed by any other workman, and if it is found that the property has been so attached, then it is required to raise the attachment in all those cases. If it is not so raised, then it is bound create unnecessary complications in law, and may even lead to avoidable litigations. The Courts in this country do not have time for inviting a litigation which can be avoided, and preserving a litigation which deserves to be jettisoned.

23. After substantial preparation of this order, the appellants herein have filed a



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memo to which a counter too has been filed by respondents 1 to 5. In that memo, they have sought for a confirmation of 14.39 acres. This is the job principally of the Execution Court. The respondents however, resist it. This Court merely directs the parties to agitate it before the Execution Court.

24. To conclude, both the appeals are dismissed and the fair and decretal order dated 05.12.2022 made in E.A.No.52 of 2015 in E.P.No.168 of 2013 on the file of the Additional Labour Court at Coimbatore, is hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

08.11.2024

Index : Yes / No
Neutral Citation : Yes / No
ds

To:

1.The Judge
Additional Labour Court
Coimbatore.

2.The Section Officer
VR Section
High Court, Madras.



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N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
C.M.A.Nos.460 & 944 of 2023

08.11.2024