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C.R.P (NPD) No.767 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P (NPD) No.767 of 2023
and C.M.P.No.5915 of 2023

A.Subramani

.. Petitioner

vs.

1. M/s.Sri Vijiyaram Chit Funds Pvt. Ltd.,
Attur Town, Salem District,
Joint Partner, A.Kannan,
S/o.Arunachalam,
D.No.26, Thayumanavar Street,
Attur Taluk, Salem District.

2. K.Chandrasekaran (Died)
3. Karuppu Udayar
4. Sandhiya Lakshmi
5. Minor Sai Ashwin
6. Minor Karmuhil

..Respondents

[Respondents 3 to 6 are brought on record as Lrs of the deceased R2 viz., K.Chandrasekaran vide Court order dated 20.10.2023 made in C.M.P.No.24504 of 2023 in CRP.No.767 of 2023 by TVTSJ]

PRAYER: Civil Revision Petition filed under Article 115 of Civil Procedure Code, 1908, to set aside the order of Sale Proclamation dated 15.02.2023 in R.E.P.No.178 of 2018 in A.O.P.No.8 of 2018 on the file of II Additional District Judge, Salem.



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For Petitioner : Mr.S.Saravanan
for Mr.D.Balachandran

For Respondents : Mr.G.Radhakrishnan [R1]

R2- Died

R3 & R4 – Not ready in notice

R5 & R6 – Minors.

ORDER

The judgment debtor is the civil revision petitioner. He challenges the order of sale proclamation made in R.E.P.No.178 of 2018 in A.O.P.No.8 of 2018.

2. There is no dispute in the relationship between the parties. The first respondent before me is the Chit Fund. The deceased second respondent, whose legal representatives have been brought on record as respondents 3 to 6, entered into a chit transaction with the first respondent. Under the chit agreement No.144 of 2015, he agreed to subscribe the chit for a sum of Rs.20,00,000/-. In the fifth installment auction, he received a sum of Rs.17,50,000/-. To that end, he also executed a promissory note on 19.12.2015. The Civil Revision Petitioner stood as guarantor for the said amount. It is conceded in the affidavit that the deceased second respondent was a close friend and associate of the



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civil revision petitioner. Since there was a default, the chit fund initiated proceedings for arbitration. An arbitral award was passed in terms of the Chit Fund Act on 19.07.2018. As the award was not satisfied by the Civil Revision Petitioner-guarantor or by the principle debtor viz., second respondent, proceedings were initiated for putting the award into execution. This execution petition was numbered as R.E.P.No.178 of 2018.

3. Pending the proceedings, the guarantor is also said to have made a payment of Rs.4,00,000/-. As the amount was not to the satisfaction of the decree holder, he proceed further and has issued an auction notification in terms of Rule 28 of the Civil Rules of Practice. Challenging the sale proclamation, the present civil revision petition.

4. Learned counsel for the civil revision petitioner would submit that challenging the award, he has preferred an appeal before the Government, which is the Appellate Authority as against the order of Registrar of Chit Funds. Therefore, he would submit that the execution proceedings would have to be kept in abeyance. Secondly, he would state that the property, which is the subject matter of attachment and sale is



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worth more than Rs.1 Crore and bringing it to auction for a paltry sum of Rs.20,84,348.50/- is in excessive execution.

5. I have carefully considered the arguments.

6. Insofar as the first point is concerned, if the appeal is allowed, the award of the Registrar would automatically stand set aside. That is to say there would be no award to put into execution. As long as, the award has not been kept in abeyance by any interim order of the Appellate Authority, the judgment creditor is entitled to put the decree into execution and realize the fruits thereof. Therefore, the first point fails.

7. Insofar as the second point is concerned, though an averment has been made in the affidavit before this Court, no evidence was let in before the learned II Additional District Judge, Salem to substantiate the allegation that the property is worth about Rs. 1 Crore.

8. I went through the sale proclamation. I find that the property has been described in detail, the value of the property has been stated. The amin value has also been received and the Court has fixed the value at Rs.23,00,000/-.



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9. Taking into consideration the value given by the first respondent as well as the value that has been given by the amin, the requirements of the Code of Civil Procedure and the Civil Rules of Practice have been complied with. Furthermore, the encumbrance that is attached to the sale proclamation also matches with the encumbrance that existed prior to the sale proclamation. The primary requirements having been satisfied, the valuation given by the judgment debtor not having been substantiated, I do not find any reason to interfere the sale proclamation. Accordingly, this Civil Revision Petition is dismissed. No costs. Connected miscellaneous petition is closed.

18.06.2024

Index: Yes/No

Neutral Citation: Yes/No

mp

To

1. II Additional District Judge,
Salem.

2. The Section Officer
VR Section
Madras High Court



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V. LAKSHMINARAYANAN, J.

mp

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