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CRP.No.2154 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.2154 of 2024
and C.M.P.No.11428 of 2024

Rajammal

.. Petitioner

Versus

M/s.Shriram City Union Finance Ltd
Registered office at No.123
Angappa Naicken Street
Chennai having
their recovery office at 464,
J.R.Complex, Gugai, Salem
Rep by its representative

.. Respondent

Prayer:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, 1908, to set aside the sale notice dated 01.03.2024 and received by the petitioner on 13.03.2024, issued in REP.No.165/2018 in AOP.No.54/2018 on the file of the I Additional District Judge, Namakkal.

For Petitioner : Mr.S.Sheik Ismail
For Respondents : Mr.A.Swaminathan

ORDER

Challenge has been made to the sale notice issued by the Executing Court in bringing the property of the revision petitioner for sale.



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2. The brief facts leading to filing of this revision petition are as follows:

2.a. The respondent has filed Arbitration Original Petition for recovery of sum of Rs.10,71,129/-. Though the petitioner has also executed a simple mortgage deed dated 28.12.2022, but arbitration proceedings has been initiated only for recovery of money. The learned Arbitrator in AOP.No.54 of 2018 has passed the award directing the borrower to pay a sum of Rs.10,74,129 with interest @ 18 p.a, from the date of claim till the date of realisation and also cost with Rs.1000/-. To enforce that, EP has been filed. In Execution Petition, the respondent has sought sale of the property straight away. The Executing Court has ordered for sale on the ground that as the judgment debtor has already mortgaged the property in favour of the decree holder on 28.12.2012 directed the sale. Challenging the said order, this revision petition.

3. The learned counsel for the petitioner would submit that without filing any suit for foreclosure under Order XXXIV of CPC, the sale cannot be executed straight away. The very order passed by the Executing Court is not valid in the eye of law. The learned counsel for the respondent fairly



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admitted the legal position.

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4. Heard both sides and perused the materials placed on record.

5. The award has been passed directed the judgment debtor to return the amount based on the simple award for money. It is also well settled that as far as the enforcement of the mortgage is concerned, arbitral tribunal have no jurisdiction instead Civil Court has to decide the issue. It has been settled by the Hon'ble Apex Court in the case of *Booz Allen and Hamilton Inc vs. SBI Home Finance Limited and others* reported in (2011) 5 SCC 532, wherein, the Hon'ble Apex Court has held that the mortgage suit for sale of the mortgage property is an action in rem, for enforcement of right in rem. The suit on mortgage is not a mere suit for money. A suit for enforcement of a mortgage being the enforcement of a right in rem, will have to be decided by the Courts of law and not by Arbitral Tribunal.

6. Rightly, the arbitrator has not decided any issue with regard to the mortgage. The award has been passed only for recovery of money, in other words, it is only recovery of money simplicitor. The so-called mortgagee



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has not filed any suit for foreclosure or the recovery of money based on the simple mortgage deed dated 28.12.2012. As long as there is no decree or final decree is passed for foreclosure of suit as per Order XXXIV of CPC, in the execution petition filed for executing the simple money decree or award, the mortgaged property cannot be brought for sale straight away.

7. In this regard, a learned judge of this Court in the case of the Indian Cements Ltd vs. Usha Devi made in CRP(MD).No.681 of 2014 dated 07.09.2023 has held as follows:

"20. In view of the fact that there is no final decree in a foreclosure suit and the award of the arbitrator is only a money decree simpliciter, the decree holder can proceed to execute the decree only after attachment of the property. However, the decree holder is at liberty to amend the execution petition to attach the property in order to proceed with the execution petition. Since it is a money decree, the release of the documents by the decree holder would not in any way be relevant for the purpose of executing the said money decree. Therefore, the finding of the Executing Court that in view of release of the documents, the decree stands discharged is not legally sustainable."

8. Such view of the matter, the impugned order is set aside. It is for the decree holder to amend the execution petition to bring the property for sale as per Order XXI of CPC. First, he will have to seek for attachment of



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the immovable property and thereafter, the property can be brought for sale under Order XXI Rule 64 of CPC.

9. Accordingly, this revision petition stands allowed. No costs.
Consequently, connected miscellaneous petition stands closed.

21.11.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

To,

1.The I Additional District Judge
I Additional District Court, Namakkal



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N.SATHISH KUMAR, J.,

dhk

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