



C.R.P.(NPD)No.1838 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.1838 of 2023

and

C.M.P.No.11793 of 2023

S.Balachandar

.. Petitioner

Vs.

N.Palanisamy

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 20.02.2023, passed in R.E.A.No.10 of 2022 in R.E.P.No.40 of 2018 in O.S.No.232 of 2004 on the file of the Sessions Court (Fast Track Mahila) at Namakkal.

For Petitioner : Mr.E.K.Kumaresan

For Respondent : Ms.R.A.Monalisha
for Mr.R.Marudhachalamurthy

ORDER



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The present Civil Revision Petition arises against an order passed by the learned District and Sessions Judge - cum - Fast Track Mahila Judge at Namakkal in R.E.A.No.10 of 2022 in R.E.P.No.40 of 2018 in O.S.No.232 of 2004.

2. O.S.No.232 of 2004 is a suit for recovery of money filed by the respondent herein as against the civil revision petitioner.

3. The claim was to pay a sum of Rs.17,78,000/- together with an interest at the rate of 9 % per annum. The civil revision petitioner had taken a loan for a sum of Rs.14,00,000/- from the respondent and as he failed to repay the same, the respondent was constrained to approach the Court for the aforesaid relief. The suit came to be decreed on 30.06.2011 against which a regular appeal was preferred before this Court in A.S.No.594 of 2011. The said appeal was dismissed confirming the judgment and decree passed by the trial Court on 06.01.2021.



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4. In order to execute the decree passed by the learned Principal District and Sessions Judge at Namakkal, the respondent herein has initiated R.E.P.No.40 of 2018 for attachment and sale of the immovable property of the civil revision petitioner. The said execution petition was ordered.

5. In the meantime, an application came to be filed in E.A.No.10 of 2022 under Section 47 of the Code of Civil Procedure seeking an order that the civil revision petitioner is liable to pay only a sum of Rs.75,399/- in order to discharge the debt involved. The said application was dismissed as per the order dated 20.02.2023. Challenging the same, the present Civil Revision Petition has been presented before this Court.

6. Heard Mr.E.K.Kumaresan, appearing on behalf of the petitioner and Ms.R.A.Monalisha, for Mr.R.Marudhachalamurthy, appearing on behalf of the respondent.

7. Mr.E.K.Kumaresan would submit that when the appeal came up before this Court, he had paid a sum of Rs.14,00,000/- directly to the respondent and instead of adjusting this amount towards the principal and



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thereby reducing the interest component, the decree holder had adjusted the amount towards cost and interest, and thereafter, he claimed a further sum of Rs.10,55,270/-. According to Mr.E.K.Kumaresan, he had been paying the amounts pending the execution petition, and all that he is liable to pay today is only a sum of Rs.75,399/-.

8. Ms.R.A.Monalisha representing the decree holder would state that unless and until the decree states otherwise or where there is a contract to the contrary, the decree holder is entitled to adjust the amounts towards the cost first followed by the interest and then, towards the principal. She would state that there is no illegality committed by the learned Judge in dismissing the petition under Section 47 of the Code of Civil Procedure, and would therefore seeks confirmation of the order of the executing Court.

9. The position of law has been settled by the Constitution Bench of the Supreme Court in ***Gurpreet Singh vs. Union of India [(2006) 8 SCC 457]***. Interpreting Order XXI Rule 1 of the Code of Civil Procedure, the Court had held, in case, there is any short fall in the payment of the decree amount, the decree holder is entitled to adjust the said amount towards the



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cost of the litigation first followed by the interest and only thereafter, towards the principal. This view taken by the Constitution Bench has been followed in ***V.Kala Bharathi and Others vs. Oriental Insurance Company Limited, Branch Chittoor [(2014) 5 SCC 577]***.

10. Therefore, the position of law having been declared clearly by the Constitution Bench and affirmed subsequently, I necessarily have to hold that the plea of the judgment debtor is untenable. The amounts paid by him directly pursuant to the order of this Court in A.S.No.594 of 2011 should be adjusted towards the cost and interest first and only thereafter, if both the components have been exhausted, it can be adjusted towards the principal.

11. Having come to this conclusion, I cannot take any exception to the order passed by the learned trial Judge. Accordingly, the Civil Revision Petition stands dismissed.

12. At this stage, Mr.E.K.Kumaresan would submit that the trial



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Court has proceeded with the execution, and today, it is at the stage of sale proclamation of immovable property that the judgment debtor had purchased from the decree holder. He would state that his client will discharge the entire liability on or before 31.10.2024, and would seek appropriate directions.

13. This submission of Mr.E.K.Kumareasan was vehemently objected to by Ms.R.A.Monalisha who would state that the suit is of the year 2005, and that her client has been litigating for more than two decades in order to realize the amounts paid by him.

14. Taking into consideration the fact that the judgment debtor has come forward with an expression of interest to settle the entire matter within a short period of time, I am inclined to grant time for him to pay the amount, and save his property.

15. Accordingly, the judgment debtor shall clear the entire decree amount of Rs.10,55,270/- together with interest till the date of payment by 31.10.2024. The executing Court is requested to adjourn the proceedings to



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enable the judgment debtor to clear the entire amount. In case, the judgment debtor does not pay the said amount on or before 31.10.2024, the decree holder is free to proceed with the execution. In such an eventuality, the executing Court shall give due consideration to the time granted by this Court as well as the fact that despite an opportunity granted to the judgment debtor, he has not cleared the amount and to the fact that the proceedings are pending for more than two decades, and it shall proceed with execution with all expedition as the case would require.

16. Accordingly, the Civil Revision Petition stands dismissed with the above observation. The connected Civil Miscellaneous Petition is closed.

01.07.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.



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To

The Sessions Court (Fast Track Mahila),
Namakkal



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