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CMA.No.2116 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2116 of 2024 and
C.M.P.No.16180 of 2024

P.Moorthi

... Appellant

vs.

1. Shriram City Union Finance Ltd.,
Registered office at No.123,
Angappa Naicken Street,
Chennai, Branch Office at
No.5/1, Veterinary Hospital Road,
Erode.
Rep. by its Authorised Signatory

2. N.Palanisamy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(j)
Civil Procedure Code, against the decree and judgment, dated 05.04.2024
passed in E.A.No.9/2022 in E.P.No.29/2016 in ARC No.944/2014 by the
I Additional District Judge, Erode.

For Appellant : Mr.S.Kamadevan



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J U D G M E N T

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Challenging the orders, dated 05.04.2024 passed by the I Additional District Judge, Erode in E.A.No.9/2022 in E.P.No.29/2016 in ARC No.944/2014, the present appeal is filed by the petitioner.

2. The petitioner filed E.A.No.9/2022 under Order XXI Rule 90 (1) and Section 151 of C.P.C., praying to set aside the Court auction sale held on 20.10.2022. The petitioner is the Judgment Debtor in an Arbitration Award. The decree amount is Rs.23,00,000/-. According to the petitioner, the property sold in auction is worth about Rs.1,00,00,000/- and that the Executing Court without taking this aspect into consideration, had sold the same for a meagre sum of Rs.27,00,000/-. He, therefore prayed for setting aside the Court auction sale held on 20.10.2022.

3. E.A.No.9/2022, the decree holder / respondent filed a counter denying all the allegations of the Judgment Debtor and the Court after analysing the evidence on record concluded that there are no material irregularities in conducting the court auction sale. Aggrieved over the said orders passed by the Executing Court, the present appeal is filed.



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4. It is pertinent to extract Order XXI Rule 90 (1) C.P.C., which

reads as under:

90. Application to set aside sale on ground of irregularity or fraud:

(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conduction it.

5. On an earlier occasion, E.A.No.1/2019 was filed by the very same petitioner stating that the value of the property is worth Rs.1,00,00,000/- and the said petition was dismissed by the Court on merits. The Judgment Debtor did not prefer any revision or appeal against the said order passed by the Executing Court. However, he filed two adjournment applications in E.A.No.2/2021 and E.A.No.4/2021, questioning the sale price fixed by the Executing Court once again. In the petition in E.A.No.9/2022, the only contention raised by the petitioner was that the value of the property has not been fixed properly. The Execution petition was of the year 2016 and the first sale date was fixed on



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17.03.2017. The present petitioner filed his objections and based on merits, the value of the property was fixed at Rs.27,00,000/- by the Court.

6. It is settled law that the twin conditions of material irregularity or fraud and substantial injury has to be satisfied before an auction sale can be set aside under Order XXI Rule 90 (3) C.P.C. No sale could be set aside unless the Court is satisfied that the applicant has sustained substantial injury by reason of material irregularity or fraud in completing and concluding the sale. In the instant case, the sale proclamation was settled after notice to the parties. The petitioner / Judgment Debtor adopted dilatory tactics to obstruct the sale. The Court, on merits fixed the valuation of the property of the Judgment Debtor. Therefore, it cannot be stated that the Executing Court conducted the sale mechanically not bothering to see that the offer is too low and the better price could have been obtained. In fact, if the price is substantially inadequate, there is both irregularity and injury. At the same time, the Court should not go on adjourning the sale till a good price is got as otherwise the decree holder would never get the property of the Judgment debtor sold. It is also pertinent to point out that there is always



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considerable difference between the Court sale price and the market price.

This is because the Court sale is a forced sale, notwithstanding the competitive element of a public auction, the best price is not always forthcoming. Mere inadequacy of price cannot demolish a Court sale. In the present case, the Court had considered fair value of the property after giving sufficient opportunity to the judgment debtor. The Judgment Debtor in the instant case is attempting to protract the proceedings as far as possible and the Executing Court by its well reasoned order dismissed E.A.No.9/2022 filed by the present petitioner. Moreover, the sale has also been confirmed. Therefore, I do not see any reason to interfere with the same.

7. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral citation : Yes / No
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To



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R.HEMALATHA, J.

vum

- 1.The I Additional District Judge, Erode.
2. The Authorised Signatory,
Shriram City Union Finance Ltd.,
Registered office at No.123,
Angappa Naicken Street,
Chennai, Branch Office at
No.5/1, Veterinary Hospital Road,
Erode.
3. The Section Officer, VR Section,
Madras High Court, Chennai.

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