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C.R.P.No.2927 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.2927 of 2024
and C.M.P.No.15629 of 2024

North Arcot District Vanniyakula Kshatriya Sangam,
Rep. by its present Secretary,
M.Subramaniam.

... Petitioner

Vs

1. M.Radhakrishnan

2. Aravindan

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to issue appropriate direction for early numbering of E.A.No....of 2023 in E.P.No.60 of 203 in V.S.C.O.S.No.136 of 2010 on the file of the Subordinate Court, Ranipet, Vellore District.

For Petitioner : Mr.T.R.Rajaraman

ORDER

This Civil Revision Petition has been filed seeking for a direction to the Subordinate Court, Ranipet, Vellore District, for early numbering of E.A.No.....of 2023 in E.P.No.60 of 203 in V.S.C.O.S.No.136 of 2010.



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2. It is the case of the petitioner that the petitioner had filed an application under Order 21 and Rule 90 of CPC, in E.P.No.60 of 2013 in V.S.C.O.S.No.136 of 2010 for setting aside the Court auction sale, whereas, the learned Judge without numbering the petition and hearing the case on merits had returned it on several occasions with an endorsement “how this petition is maintainable” and that despite complying with the returns, the learned Judge had not heard the case on merits. Thereby, the present civil revision petition has been filed.

3. Learned counsel for the petitioner submitted that when the Court chooses to return the petition after one return, the Court should post the matter in the open court and invite the arguments of the counsel on the question of maintainability and thereafter pass a judicial order, whereas, the learned trial Judge without passing a judicial order had been repeatedly returning the petition on the ground of maintainability, despite its compliance which is not a fair procedure. Thereby, the learned counsel for the petitioner seek that the learned Judge may be either directed to number the petition or hear the arguments of the counsel on the question of maintainability and thereafter, pass the judicial order. In support of his



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contention, he relied on the judgment passed in *Umasankar* vs.

R.Sankaranarayanan and others reported in (2023) 1 LW 90.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. On perusal of records, it is seen that the the petitioner has filed an application in E.A.No....of 2023 for setting aside the Court auction sale, in E.P.No.60 of 203 in V.S.C.O.S.No.136 of 2010 on the file of the Subordinate Court, Ranipet, Vellore District and it was returned on 15.09.2023 with an endorsement 'how this petition is maintainable to be explained' and subsequently, the counsel had represented the same with reasons, however, the learned trial Judge without hearing the matter with regard to the maintainability, had repeatedly return the papers with endorsement “how this petition is maintainable” on various dates. The returns and the representation made by the learned counsel for the petitioner before the execution Court are as follows :-



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IN THE COURT OF THE SUBORDINATE JUDGE AT RANIPET

E.A.NO. / 2023
E.P.NO. 60 / 2013
V.S.C.O.S 136 / 2010

Under Sec.47 and Order 21, R.90 CPC

* (1) Filed on 02/09/2023 (1) Returned on 15/09/2023
How this petition is maintainable to be explained

* (2) Represented on 29/09/23

1. It is submitted that the petitioner is affected by material irregularity and fraud in the proceedings in S.P.60 /2013, which resulted in substantial injury to the petitioner as there was no notice, under Order 21, Rule 22, Order 21, Rule 54, Order 21, Rule 54, 55, 59 etc. legally served on the person whose property is sold without following due to process of law. Hence the petitioner has filed the petition under Sec.47 and Order 21, Rule 90 CPC to set aside the sale held on 14/08/2023.

2. Attention of the court is invited to the decision of the Honorable Supreme Court reported in 1994(1) - L.W. 49 (S.C) which squarely appears to the facts of the case.

Also relied on
2019 (3) L.W.63

Represented
Advocate
27/09/2023

(2) Returned on 05/10/2023
How this petition is maintainable to be explained.
Hence returned.



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- (3) Represented on 13/10/2023
- Representation dated 27/09/2023 wherein it is submitted that the several deficiency in the execution proceedings are mentioned and also invited the attention of the court decision of the Honorable Supreme Court reported in 1994(1) - L.W. 49 (S.C) and also the decision in 2019(3) L.W. 63 which squarely applies to the facts in S.P. The decisions already submitted retained by the court.
- Advocate
15/11/2023
- (3) Returned on 06/11/2023
- SLP pending before the Honorable Supreme Court.
Hence returned.
- (4) Represented on 16/11/2023
- The petition under Sec.47, Sec.151 and Order 21, Rule 90 CPC was filed on 02/09/2023. Returned on 15/09/2023, Represented on 27/09/2023 along with the decisions in 1994(1) - L.W. 49 (S.C) and the decision in 2019(3) L.W. 63. Filing of SLP is not a prohibition to pass judicial orders in the view of the decisions in 2021(3) of L.W.677 and 2023(1) L.W.90, submitted on 16/10/2023 on the memo filed on behalf of the petitioner
- Represented
- (4) Returned on 22/11/2023
- How the petition is maintainable.
Hence Returned.
- (5) Represented on 04/12/2023
- Previous representations on 29/09/2023, 13/10/2023, 15/11/2023 and representation today 04/12/2023 may be considered along with the decisions submitted and judicial orders may be passed.
- Advocate
04/12/2023
- (5) Returned on 22/11/2023
- How the petition is maintainable.
Hence Returned.



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Represented on 22/01/2024

It is submitted that the petition under Order 21, Rule 90, Sec.47 and Sec.151 CPC was represented on 13/10/2023, drawing the attention of the court about the decision reported in 1994(1) L.W.49 (S.C.). After the petition was returned on 06/11/2023, the same was represented on 16/11/2023, again drawing the attention of the court to the decisions mentioning for maintainability of the petition. Hence the petition is represented with a request for passing the Judicial order in the petition.

- Represented

Advocate
19/01/2024

(6) Returned on 22/01/2024

- (1) How the set aside sale petition is maintainable to be stated.
- (2) Page number to be mentioned.
- (3) Corrections to be carried out.
- (4) Blanks to be filled up.

(7) Represented on 24/01/2024

(7) Returned on 01/02/2024

- (1) Previous return to be complied with.
- (2) Representation endorsement to be mentioned.
- (3) Fresh docket sheet to be enclosed.

Hence Returned Time 15 days

(8) Represented with petition to excuse delay of 12 days on 28/02/2024.

All the returns are answered in the previous representations.

Advocate
28/02/2024

(8) Returned on 25/04/2024

How the petition is maintainable. Hence Returned. Time one month.



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(8) Represented on 06/06/2024 with petition to excuse delay of 3 days - represented.
It is submitted that the petition is represented with a request to consider the written argument submitted on 02/04/2024 and pass such other orders as may deem fit and proper - Represented on 06/06/2024

(9) Returned on 18/06/2024
Previous return not yet complied.
Hence returned. Time one month.

6. In the decision relied on by the petitioner, it has been held that after one return, the Court should post the matter in the open Court and invite the arguments of the counsel on the question of maintainability and thereafter, pass a judicial order. The relevant paragraph is extracted hereunder :-

*“ 7. In the decision relied upon by the learned Counsel for the petitioner in **Selvaraj's** case (supra), this Court, following the decision in **S.Parameswari v. Denis Lourdusamy [(2011) 5 CTC 742]**, held that after one return, the Court should post the matter in the open Court and invite the arguments of the Counsel on the question of maintainability and thereafter, pass a judicial order. The duty to hear before a decision is made constitutes the soul of procedural fairness inbuilt in the Civil Procedure Code and cannot be compromised. The relevant portion from the said decision is extracted as follows:-*

*“30. In **S. Parameswari v. Denis Lourdusamy, [(2011) 5 CTC***



742], this Court had held that after one return, the Court should post the matter in open Court, and invited arguments of the counsel on the question of maintainability and pass a judicial order. If the objection is upheld, the aggrieved party could work out his/her rights. In *Muthuganesah v. Thillaimani*, [2016- 2- LW 340], this Court had pointed out:

“3.The court, while admitting the plaint, can scrutinise the other aspects, namely the cause of action, valuation, payment of court fee, jurisdiction and limitation. The court can also verify whether the plaint has been filed in the proper form and whether the necessary requirements of plaint have been complied with. The question as to whether any other person should have been made a party is outside the purview of the scrutiny of the trial court at the time of admitting the plaint. The above said aspects are with reference to the merits of the return made by the trial court.

4. Once certain defects are pointed out by the court and the plaint is returned and the plaintiff or plaintiffs, re-present the same stating that the plaint has been properly prepared and filed and asking the court to hear regarding the necessity to comply with the returns made by the court, the court can return the plaint provided its view that the compliance with the returns are mandatory and it is conceded by the plaintiff. If the plaintiff makes it clear that he is not prepared to comply with the returns and the plaint as filed by him should be taken on file, the trial court should reject the plaint rather than returning the plaint stating the very same reason.”

*This Court only adds a rider to it: In all cases where the Court chooses to reject the plaint for not curing the defects mentioned (which may include the issue on exclusion of jurisdiction) it is necessary for the Court to follow the dictum in *S. Parameswari v. Denis Lourdusamy*, [(2011) 5 CTC 742] and post the matter before Court, with or without the request of the plaintiff or the counsel concerned, and hear them. The duty to hear before a decision is*



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made constitutes the soul of procedural fairness inbuilt in the Civil Procedure Code, and cannot be compromised.”

Therefore, the Execution Court ought to have listed the matter in the Open Court and heard the arguments of the petitioner's Counsel on the question of maintainability.”

7. In view of the above, the learned trial Judge is directed to post the matter before the Court and hear the arguments of the petitioner's counsel on the question of maintainability and pass orders on merits within a period of **two weeks** from the date of making such arguments.

8. With the above direction, the Civil Revision Petition stands ordered. Consequently, connected miscellaneous petition is also closed. No costs.

06.08.2024

Index : Yes / No

Neutral Citation : Yes / No

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Note : Registry is directed to return the original papers to the counsel for the petitioner forthwith to enable him to represent before the trial Court.

To

The Subordinate Court, Ranipet,
Vellore District.



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A.D.JAGADISH CHANDIRA, J.

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