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C.R.P.(NPD) No.4515 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4515 of 2024
and C.M.P.No.25205 of 2024

1. Mr.Vivek Mathur
2. Mrs.Aseel Mathur

... Petitioners/Defendants

-VS-

M/s.Salem Stainless Steel Suppliers Pvt. Ltd.,
Having its registered Office at
No.33, Lawyer Chinnathambi Street,
Kondithope, Chennai-600 079
Rep. by its Authorised Representative
Mr.Hitesh M.Jain

... Respondent/Plaintiff

***(Cause Title accepted and Mrs.Aseel Mathur / 2nd petitioner recognized as
Power of Attorney to the 1st petitioner vide order dated 22.10.2024)***

Prayer: Civil Revision Petition filed under Section 115 of CPC to set aside
the impugned order dated 02.07.2024 passed in E.P.No.3847 of 2022 in
O.S.No.9221 of 2019 on the file of the Hon'ble IX Assistant City Civil
Court, Chennai.

For Petitioners : Mr.R.S.Diwaagar

For Respondent : Mr.T.Shrinikethan



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ORDER

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Challenging the impugned order dated 02.07.2024 passed by the Executing Court bringing the entire property for sale and fixing the upset price of Rs.50 Crores/- in execution of the decree for a sum of Rs.61,84,608/-, the present Civil Revision Petition has been filed.

Brief background of the case:

2. A suit had been filed for recovery of Rs.61,84,608/- as against the revision petitioners and the said suit had been decreed on 12.04.2022. Thereafter, an application had been taken out to execute the decree in E.P.No.3847 of 2022 and an immovable property to the extent of 7 ¼ grounds (17,400 sq.ft.) or thereabouts together with building in an extent of 2858 sq.ft. or thereabouts, ground floor and 896 sq.ft., 1st floor or thereabouts situate at Old R.S.No.4274/1 part and New R.S.No.4274/10, Old Door No.17, New Door No.67, Greenways Road, Raja Annamalaipuram, Chennai was brought for sale.

3. On 05.04.2024, the Executing Court fixed the upset price to the tune of Rs.50 Crores and ordered for proclamation of sale by 20.04.2023



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and adjourned the case to 02.07.2024. Thereafter, the proclamation of sale was issued, against which, the present petition has been filed.

4. Learned counsel for the petitioners submitted that for recovery of Rs.61,84,608/-, the property worth about Rs.50 Crores was brought for sale, which is totally against Order XXI Rule 64 of CPC and therefore, the approach of the Trial Court in bringing the entire property for sale is not sustained in law.

5. Learned counsel for the respondent contended that as the amount has not been paid, an Executing Petition has been filed, in which, the Trial Court fixed the upset price. He further contended that the revision petitioners have not filed objection before the Trial Court for proclamation of sale, instead they have filed revision before this Court and hence, opposed the revision petition.

6. I have perused the material documents available on record.



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7. The Executing Court brought the property worth about Rs.50

Crores for sale for recovery of Rs.61,84,608/-, which is totally against the procedures set out under Order XXI Rule 64, which reads as follows:

“64. Power to order property attached to be sold and proceeds to be paid to person entitled

Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may see necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.”

8. On a perusal of the above provision, it is specifically stipulated “or such portion thereof as may see necessary to satisfy the decree”, which means that no sale can be made beyond the decretal amount mentioned in the sale proclamation. As far as the sale of immovable property is concerned, the Court has to first decide whether it is necessary to bring the entire attached property for sale or such portion thereof, as may deem it necessary to satisfy the decree. If the value of the property is more than the decretal amount, the Court has to identify a small portion of the property and bring only such small portion for sale, which itself is sufficient to satisfy the decree.



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9. It is obligatory on the part of the Executing Court to fix the value for the small portion, which is necessary to satisfy the decree. Without invoking such exercise, the fixation of upset price to the tune of Rs.50 Crores in respect of the entire property and ordering sale proclamation, in my view, is nothing, but a clear violation of the mandatory provisions of Order XXI Rule 64. Hence, the order of the Executing Court in fixing the upset price of Rs.50 Crores for recovery of Rs.61,84,608/- and ordering sale proclamation is liable to be quashed.

10. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 02.07.2024 passed in E.P.No.3847 of 2022 in O.S.No.9221 of 2019 is hereby set aside. The Executing Court shall identify the small portion of the property and fix the upset price, which itself is sufficient to satisfy the decree and thereafter, proceed further for realizing the decree amount. No costs. Consequently, connected Miscellaneous Petition is closed.

16.12.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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N.SATHISH KUMAR,J.,
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To:

IX Assistant City Civil Judg,
Chennai.

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