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C.R.P. No.4050 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 14.06.2024

CORAM

**THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI**

C.R.P.No.4050 of 2023

1. St. Paul's Education and Charitable  
Trust,  
rep. by its Managing Trustee and  
Chairman D.Victor Rajapandian

2. G.Rubella

3. V.Arul Daniel

... Petitioners

versus

Nil

... Respondent

**PRAYER :** Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the docket order dated 09.10.2023 passed in Trust O.P. No. 96 of 2023 on the file of Principal District and Sessions Judge, Erode as illegal and incompetent.

For Petitioners

: Mr.V.Raghavachari,  
Senior Advocate for  
Mrs.V.Srimathi



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## **ORDER**

**WEB COPY** Challenging the impugned docket order passed in Trust O.P. No. 96 of 2023 on the file of Principal District and Sessions Judge, Erode, the Revision Petitioners have preferred this Civil Revision Petition.

2. The learned counsel for Revision Petitioners would submit that the trial court erroneously returned the Trust Original Petition as if they have requested to return the above petition in order to present the same before the D.R.T.III, New Delhi. The learned counsel would submit that they have only insisted to pass an order in the Trust O.P.No.96 of 2023, which was filed by them on 12.04.2023 and after due publication, the case was posted for enquiry on 04.08.2023 and on that day, Ex.P1 to P3 was marked. Thereafter, the arguments also advanced on their side on 24.08.2023, but subsequently it was reopened for clarification and the case was adjourned to 22.09.2023. On that day, suo motu query was raised as to how Trust O.P. could be filed before the court. The 2<sup>nd</sup> petitioner clarified the maintainability of the Trust O.P., but the trial court returned the papers directing them to secure proper remedy before D.R.T.-III, New Delhi. An observation was made as if a request was made on their side. The learned counsel would submit that D.R.T.-III, New Delhi is not



entitled to sanction any permission to alienate the property, only the civil court is empowered to grant permission to the petitioner's trust to sell the property.

Accordingly, the Trust O.P.No. 96 of 2023 was filed before the Principal District Judge, Erode as such is maintainable one, but the Principal District Judge erroneously returned the Trust O.P. to present before the D.R.T., as such is illegal and the same is liable to be set aside. In support of his contentions, the learned counsel relied on the authority reported in **2015 (1) L.W. 229** in the case of **K.Deenadayalan vs. N.Sathish Kumar**, wherein this Court held as follows :-

*“Suit for declaration that sale of suit properties, in public auction by the sixth defendant to fourth defendant as null and void – Plea of fraud, mala fide, suppression of material fact – Application to reject plaint whether maintainable – application by person not a party to DRT Proceedings, scope of, against a dead person, plea of.”*

Accordingly, they prayed to set aside the docket order by allowing this Civil Revision Petition.

3. On perusal of records, it reveals that the revision petitioners claimed themselves as a trustee of 1<sup>st</sup> petitioner viz., St. Paul's Education and Charitable Trust and a trust O.P. was filed before the Principal District Judge, Erode



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seeking permission to the 1<sup>st</sup> petitioner's trust to sell the trust property. The petition was taken on file in O.P.No.96 of 2023 and paper publication was also ordered. When there was no objection, the case was posted for recording evidence and after receiving the documents, the trial court suo motu reopened the petition for clarification for the maintainability of Trust O.P. and directed the revision petitioners to present the same before the D.R.T. - III, New Delhi.

4. On perusal of reasons assigned by the trial judge, it reveals that there was a SARFAESI proceedings initiated against the property belongs to the trust. After issuance of possession notice under Sec. 13(4) of SARFAESI Act, the revision petitioners challenged the said notice under Sec.17 of SARFAESI Act before the D.R.T. III, New Delhi in S.A.No.30 of 2021. Therefore, the court found that Original Petition presented before the D.R.T. - III, New Delhi for proper adjudication. Even in the cause of action stated in the Trust Original Petition, the petitioners stated that SARFAESI proceedings were initiated by M/s.Religare Finvest Limited. Therefore, the trust properties were now under SARFAESI proceedings. At this stage, the trust filed the above petition seeking permission from the court to sell the trust property. But, while numbering the petition itself the District Judge ought to apply his mind, since because the



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revision petitioners themselves admit that in respect of trust property, there is a SARFAESI proceedings is pending, but however no order was passed in favour of petitioner. Therefore, the docket order passed by the trial judge directing the petitioner to present the petition before the D.R.T.-III, New Delhi subject to laws/rules applicable to D.R.T., which needs no interference. If at all, any proceedings initiated in respect of property under the SARFAESI Act, the person who is claiming right over the property is entitled to challenge the said proceedings under SARFAESI Act only before the D.R.T., not separately by approaching the civil forum. Therefore, the order passed by the trial judge is maintainable. The authority relied on by the Revision Petitioner reported in **2015 (1) L.W. 229** in the case of **K.Deenadayalan vs. N.Sathish Kumar** is not applicable to the facts of the present case. Accordingly, this Civil Revision Petition is dismissed as no merit. No costs.

**14.06.2024**

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To

Principal District Judge, Erode.

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**T.V.THAMILSELVI, J.**

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