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C.R.P.[NPD].No.4389 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date 04.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4389 of 2024 & CMP.No.24422 of 2024

M.Sundaravadanam

. . . Petitioner

Versus

1. M/s.Margadarsi Chits Private Limited,
Rep. by its Foreman – R.Venkatesh,
7/54, 34d Floor, Ideal Garden Complex,
Junction Main Road, Salem – 636 004.
2. P.Shanmuasundaram
3. R.Anbalagan
4. P.Rajagobal
Proprietor of Universal Blue Matel,
Residing at Door No.5/131, Mettupatty Nadar Colony,
Mettupatty [PO], Vazhapady Taluk,
Salem District – 636 114.

5. S.Mahalingam

. . . Respondents



C.R.P.[NPD].No.4389 of 2024

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the docket order dated 10.09.2024 passed in R.E.P.No.122 of 2013 in A.O.P.No.73 of 2011 passed by the I Additional District and Sessions Judge of Salem.

For petitioner : Mr.J.Rajmohan

For respondents : --

ORDER

Challenging the impugned Order dated 10.09.20204 passed by the I Additional District Judge in E.P.No.122 of 2013, the present Civil Revision Petition has been filed.

2. The contention of the revision petitioner is that the revision petitioner is only a guarantor for the chit joined by the second respondent in the first respondent Chit Fund Company. The grievance of the revision petitioner is that the arbitration award has been passed only against the borrower and the total award amount is Rs.23,39,900/- and an Execution Petition has been filed to execute the said award. According to the revision petitioner, Item No.2 of the



C.R.P.[NPD].No.4389 of 2024

property belongs to the original borrower and he is residing in the said property.

However, during the execution proceedings, the said property has been conveniently omitted and not tested for want of town surveyor help. The property of the petitioner alone is sought to be proceeded. Hence, challenging the same, the present revision has been filed.

3. I have perused entire records. No doubt, the decree can be proceeded against both the principal as well as the guarantor and the guarantor cannot contend that only the property of the principal has to be proceeded first. However, the property of the principal has not been valued and the reason given for not valuing the property of the principal is that the Town Surveyor is not available and the value of the property in respect of the petitioner has been fixed as Rs.72,20,000/- based on the Amin report. This aspect create some anomaly. When the property of the principal is very much available and the same has been omitted in the execution proceedings, citing that the Town Surveyor help is not available, such an approach cannot be acceptable. The trial Court ought to have ensured that the property of the principal has to be tested first and only in the event the sum is not enough to realize the decree amount, then the property of the



C.R.P.[NPD].No.4389 of 2024

guarantor could be proceeded. Without following such a procedure, without even valuing the property of the principal, the execution proceedings cannot be proceeded against the property of the guarantor. In such view of the matter, the Order of the trial Court has to be set aside. The trial Court is directed to fix the value of the property of the principal first and proceed and in the event that property is not enough to realize the decree amount, then the trial Court can proceed against the property of the petitioner.

4. With the above observation, this Civil Revision Petition is allowed and the docket Order of the I Additional District Judge, Salem passed in E.P.No.122 of 2013 dated 10.09.2024 is set aside. Consequently, connected miscellaneous petition is closed.

04.11.2024

Index : Yes / No
Internet: Yes
Speaking/non speaking order

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Page 4 / 5



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C.R.P.[NPD].No.4389 of 2024

N. SATHISH KUMAR, J.

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order in:

C.R.P.[NPD].No.4389 of 2024

04.11.2024