



C.R.P.(MD).No.122 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.03.2024

DELIVERED ON : 04.06.2024

CORAM

THE HON'BLE MR. JUSTICE G.ILANGO VAN

C.R.P.(MD).No.122 of 2023

and C.M.P.(MD).No.596 of 2023

Krishnammal (Deceased)

Perumal Naicker (Deceased)

Rukmani (Deceased)

Rajendran

... Petitioner/Petitioner/4th Respondent/

Legal heirs of Krishnammal (Defendant)

Vs.

Sakthivel

... Respondent/Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order and decree dated 22.11.2022 made in E.A.No.7 of 2022 in E.P.No.57 of 2012 in O.S.No.243 of 2008 on the file of the Sub Court, Vedasandur.

For Petitioner : Mr.G.Gomathisankar

For Respondent : Mr.M.Srichandran Rangarajan,
Senior counsel for Mr.S.Kumar



C.R.P.(MD).No.122 of 2023

WEB COPY

ORDER

This civil revision petition has been filed to set aside the order and decree dated 22.11.2022 made in E.A.No.7 of 2022 in E.P.No.57 of 2012 in O.S.No.243 of 2008 on the file of the Sub Court, Vendasandur.

2.The facts in brief:

Suit in O.S.No.243 of 2008 was filed by the respondent herein, seeking recovery of Rs.2,94,375/- with interest and cost before the Sub Court, Dindigul. The revision petitioner filed statement. Trial Court, after full contest, decreed the suit as prayed for with cost. To execute the decree, the decree holder filed E.P.No.57 of 2012. The property was brought for sale and sold. To set aside the sale, legal heirs of Judgment debtor filed a petition in E.A.No.7 of 2022. That was dismissed by the trial Court. Against which, this revision has been preferred.

3.In the affidavit filed in support of the petition, the following averments are made.



C.R.P.(MD).No.122 of 2023

WEB COPY

4.The total valuation of the property is more than Rs.40,00,000/-.

But the decree holder has wrongly mentioned the total valuation as Rs. 6,65,000/-. He also filed application under Order 21 Rule 64, 66, 67 & 68 CPC to grant permission to him to bid it in action. Without following proper procedure that application was allowed by the Execution Court. The revision petitioner filed E.A.No.6 of 2021 for adjournment of sale, with a request to grant time to pay the payment. But that application was dismissed. Against which C.R.P.(MD).No.507 of 2021 was filed. That also came to be dismissed stating that since auction process is over this petition has become infructuous and dismissed on 18.03.2021. Later, Covid 19 lockdown period came. So, the revision petitioner could not contact his Advocate. On 05.08.2021 after recovery, he contacted his Advocate. At that time, he was informed that sale was confirmed on 27.01.2021.

5.The revision petitioner deposited the entire decree amount with interest and sale consideration etc. As per the order of the Honourable Supreme Court in *suo motu* writ petition (Civil) No.3 of 2020, the limitation period got extended. So the petition is filed seeking order to



C.R.P.(MD).No.122 of 2023

set aside the sale effected in E.P.No.57 of 2012.

6.It was resisted by the respondent.

7.After hearing both sides, the Execution Court dismissed the petition. Against which this revision petitioner is preferred.

8.Heard both sides.

9.At the time of argument, the learned counsel for the revision petitioner has submitted that he has deposited the entire decree amount with cost, etc. On what ground deposit was made, there was no evidence on record. So report was called for from Execution Court namely Sub Court, Veda sandur. Report submitted by the letter dated 18.03.2024. The letter reads that the revision petitioner filed lodgment schedule on 23.04.2022. Challan was issued on 27.04.2022. A sum of Rs.5,66,421/- was deposited by the revision petitioner. Objection memo was filed by the respondent on 25.04.2022. It appears that no reasoned order was passed in that request. But, however, a cryptic order was passed by the



C.R.P.(MD).No.122 of 2023

trial Court namely Executing Court stating that the revision petitioner may be permitted to deposit the amount without prejudice to the rights available to the parties. That order was not challenged by either of the parties. The lodgment schedule was filed on 23.04.2022. As mentioned in the revision petition sale was confirmed on 12.11.2021. The order of dismissal was passed by the Execution Court on 22.11.2022 holding that the reason assigned by the revision petitioner is not acceptable, since the petition was filed beyond the period of limitation prescribed under Order 21 Rule 92 CPC. When that is being so, how the challan was issued permitting the revision petitioner to deposit the amount is not understandable. The cryptic order passed on the objection memo filed by the respondent by the Execution Court also appears to be not legal and proper. So leaving this point at this stage we will proceed to discuss the main issue.

10. Order 21 Rule 92 prescribes limitation period of 60 days to file an application to set aside the sale. Whether that can be extended is a point for consideration. The learned senior counsel appearing for the respondent would submit that no such power is available either to the



C.R.P.(MD).No.122 of 2023

Execution Court or to any other Court. The judgment of the Honourable Supreme Court in the case of ***Vaithegi Vs. Gurusamypillai*** and another reported in ***(2020) 19 SCC 369***.

“6.Having heard the learned counsel for both the parties, we are of the view that neither the principal amount can be said to have been paid within 60 days nor 5%. It is clear that Order 21 Rule 89 is a provision which is to be strictly construed in view of the fact that it is a last opportunity to a judgment-debtor to clear his dues after default has been made. That this is the law stated by this Court is clear from the decision in Ram Gupta Vs. J.S.Exim Ltd., This Judgment states: (SCC.P.579, para 23)

“23.We have already indicated that the rule is in the nature of a concession shown to the judgment-debtor, so he has to strictly comply with the requirements thereof and a sale will not be set aside unless the entire amount specified in sub-rule(1) is deposited within 60 days from the date of the sale and if it is beyond 60 days, the Court cannot allow the application. We have already found that the appellant judgment-debtor did not pay the



WEB COPY



C.R.P.(MD).No.122 of 2023

amount within the stipulated time and he only made an application on 01.12.2010 without depositing the amount and hence, the Court cannot entertain such an application and bound to confirm the sale which, in this case, the Court did on 23.10.2010.”

7.The learned counsel for the respondents cited a decision of this Court in Solana Ramchandra Rao, for the proposition that where the decree has been satisfied or adjusted already, deposit of any money for payment to the decree holder is not called for. We are afraid that the ratio of this judgment would not help in the facts of the present case inasmuch as the High Court has missed the vital fact that the only document evidencing the payment of Rs. 7,00,000 directly to the judgment-debtor is a receipt, which is Ext.P-1, which bears nodate. This being the case, it cannot be said, merely on a reading of the judgment-debtor's application, that Rs.7,00,000 has been paid directly to the creditor within a period of 60 days. Also, the High Court is not correct in stating that the ratio of the decision of this Court in Challamane Huchha Gowda would come to the rescue of the respondents. There is no court order directing the respondents to pay the



WEB COPY



C.R.P.(MD).No.122 of 2023

sum of 5%. That apart, it is clear that this sum was deposited only on 3-4-2012, which on the facts of the present case, is way beyond 60 days. In this view of the matter, we set aside the impugned judgment dated 9-7-2015 and restore the order of the Subordinate Judge, Srivilliputhur, dated 18.11.2014.”

11. Reading of the judgment of the Honourable Supreme Court shows that the limitation period of 60 days cannot be extended on any ground. On sole ground 60 days automatically become absolute. And petition to set aside the sale will not lie. Now the learned counsel for the petitioner would rely upon various judgments. The first one is the *suo motu* writ petition in (Civil) No.3 of 2020. That order was passed by the Honourable Supreme Court, in view of the pandemic situation that existed. para No.3 of the order reads as under:

“3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No.665 of 2021, seeking restoration of the order, dated 23.03.2020, relaxing



C.R.P.(MD).No.122 of 2023

limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein, this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f. 15.03.2020 till 02.10.2021.”

12.One of the main conditions is that the period of limitation ought to have expired between 15.03.2020 and 28.02.2022. As mentioned above the sale was confirmed on 12.01.2021. So from 12.01.2021 till 28.02.2022 time shall be excluded. From 01.03.2022, 90 days time was extended. So the application ought to have been filed before 01.06.2022. But, here E.A.No.7 of 2022 was filed during the pandemic period. The date of presentation of the petition is mentioned as 10.02.2022 and that was represented on 01.03.2022. So the period of extension is not available. The contention on the part of the revision petitioner is that limitation period stands extended for 90 days may not be available.

13.The next contention on the part of the revision petitioner is that



C.R.P.(MD).No.122 of 2023

the property is worth more than 40 Crore. But, it was brought for sale only for meagre amount. But remedy was available to the petitioner, he ought to have appeared before the Execution court and filed the objection at the time of settlement of proclamation. So that ground cannot be raised now. So the ground of fraud is not available. In another judgment reported in *Akilandam Ammal (Deceased) And others Vs. S.Varadarajan and others* reported in **2018 (5) LW 638**, the amount was deposited after the sale. But, here no such deposit was made. The deposit was made as mentioned above only after much time of dismissal. So this judgment may not help the case of the revision petitioner. So for all the reasons, I find that the revision is not maintainable and accordingly, liable to be dismissed confirming the order passed by the Execution Court.

14. Accordingly, this civil revision petition stands dismissed. The order passed by the trial Court is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

04.06.2024



C.R.P.(MD).No.122 of 2023

Index : Yes/No
Internet : Yes/No
TM

To

- 1.The Subordinate Judge, Veda sandur.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P.(MD).No.122 of 2023

G.ILANGOVAN,J.

TM

PRE-DEIVERY ORDER MADE IN

C.R.P.(MD).No.122 of 2023

04.06.2024