



C.R.P.(MD).No.1425 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.04.2024

DELIVERED ON: 17 .04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.1425 of 2019

and

CMP(MD).No.7579 of 2019

R.Viswanathan

...Petitioner

Vs

A.P.Viswanathan

...Respondent

PRAYER: The Civil Revision Petition has been filed under Section 115 of C.P.C, to set aside the fair and decreetal order dated 26.07.2019 made in E.P.No.38 of 2010 passed by the II Additional District Court, Trichy in O.S.No.5 of 2002 on the file of the I Additional District Court (FTC 1) Trichy and allow the revision petition.

For Petitioner : Mr.M.V.Venkataseshan
Senior Counsel
For Mr.S.Vellaichamy

For Respondent : Mr.M.Saravanan



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ORDER

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The revision petition has been filed by the Judgment Debtor in O.S.No.5 of 2022, challenging the order passed by the Execution Court wherein the Court has directed the issuance of sale certificate in favour of the auction purchaser.

2.The revision petitioner herein had suffered a final decree in a suit for recovery of money based upon a mortgage in I.A.No.67 of 2003 in O.S.No.5 of 2002 on the file of the I Additional District Court, Trichy by a judgement and decree dated 23.12.2003. Based upon the said final decree proceedings, the decree holder had filed E.P.No.15 of 2004 to bring the property for sale and the property was sold in Court auction on 26.10.2005. Thereafter, the Judgement Debtor had filed E.A.No.23 of 2005 to set aside the sale. However, the said application was dismissed on 25.09.2009. Challenging the same, the Judgement Debtor had filed CMA. (MD)No.510 of 2010. This Court by an order dated 31.07.2015 had dismissed the appeal and confirmed the sale in favour of the auction purchaser. The said order was challenged by the Judgement Debtor in Civil Appeal Nos.7231-7232 of 2016. The Hon'ble Supreme Court by an order dated 30.08.2017 had disposed of the appeal. The operative portion of the



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order is extracted as follows:

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“In view of order 34 Rule 5 of C.P.C, as interpreted by this Court in U.Nilan v. Kannayyan (Dead) Thr.Lrs., (1999) 8 SCC. 511, the said application is granted subject to the condition that the appellant will deposit the decretal amount along with interest at the rate of 12% per annum with the executing court, after adjusting the amount already paid within three months from today.....”

3.In compliance with the order of the Hon'ble Supreme Court, the Judgment Debtor had deposited a sum of Rs.14.00 lakhs on 13.11.2017 within the time frame fixed by the Hon'ble Supreme Court and sought to set aside the sale. However, the auction purchaser had filed another calculation memo pointing out, a further sum of Rs.8,79,856/- has to be deposited. After considering both the applications, the trial Court arrived at a finding that the Judgment Debtor has not deposited the entire amount as directed by the Hon'ble Supreme Court and proceeded to direct the issuance of sale certificate in favour of the auction purchaser. Challenging the said order, the present revision petition has been filed.

4.According to the learned Senior Counsel appearing for the revision petitioner, the Judgment Debtor has to pay a sum of



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Rs.11,73,321.85 on or before 31.12.2002 as per preliminary decree. In case if he does not deposit the said amount, it will carry an interest of 6% till the date of realization. Therefore, the order passed by the Hon'ble Supreme Court could only be interpreted in such a way that 12% should be calculated on the principal amount and not on the decretal amount. If an interpretation of 12% interest on the decretal amount is given, it amounts to charging interest on interest. Hence, the Judgment Debtor has rightly calculated the balance amount and deposited the same within the time frame fixed by the Court. Therefore, the Executing Court ought not to have issued a direction for issuance on sale certificate.

5.The learned Senior Counsel had further contended that when the revision petition was admitted, the Judgment Debtor was directed to deposit the deficit amount as alleged by the auction purchaser. That order has already been complied with. Therefore, considering the above said fact as on today, there is no due to the decree holder. Hence, he prayed for allowing the revision petition and to set aside the sale certificate.

6.Per contra, the learned counsel appearing for the respondent/auction purchaser had contended that the Hon'ble Supreme Court has specifically held that 12% interest should be calculated only on



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the decretal amount and not on the principal amount. It is an admitted fact that the Judgment Debtor has deposited the amount calculating the interest at the rate of 12% only on the principal amount and not as per the orders of the Hon'ble Supreme Court. Therefore, the Judgement Debtor, having failed to deposit as directed by the Hon'ble Supreme Court, is not entitled to further relief by this Court. Any amount deposited beyond the time fixed by the Hon'ble Supreme Court, cannot be taken into consideration. Hence, he prayed for sustaining the order passed by the Executing Court.

7.I have carefully considered the submissions made on either side and perused the material records.

8.A careful perusal of the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.7231-7232 of 2016 dated 30.08.2017 reveals that the Supreme Court has directed the Judgment Debtor to deposit the decretal amount along with interest at the rate of 12% p.a. before the Executing Court after adjusting the amount already paid within a period of three months from today. Further held that on such deposit the sale will stand set aside and the Executing Court will disburse the amount to the auction purchaser. If the amount as directed has not been deposited, it will be treated to have been dismissed. Therefore, it is clear that the Hon'ble



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Supreme Court has categorically held that interest at the rate of 12% per annum, only on the decretal amount and not on the principal. In case if the Judgment Debtor has any doubt over the said issue, he should have been immediately approached the Hon'ble Supreme Court seeking clarification.

9.The calculation memo has been filed by the auction purchaser indicating the said fact that even in the year 2017. The petitioner has not chosen to seek any clarification from the Hon'ble Supreme Court. Therefore, this Court is not empowered to interpret the order of the Hon'ble Supreme Court. In such circumstances, the order of the Hon'ble Supreme Court have to be complied with in letter and spirit taking literal meaning. Therefore, the calculation memo of the Judgment Debtor, calculating interest at the rate of 12% on the principal amount is not in compliance with the order of the Hon'ble Supreme Court. Any payment made after time limit fixed by the Hon'ble Supreme Court cannot be taken into consideration for adjudication of this dispute. Only the Hon'ble Supreme Court is empowered to consider extension of time to the Judgment Debtor for compliance.



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10.In the result, there are no merits in this Civil Revision Petition and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The I Additional District Judge (FTC-1)
Trichy
- 2.The II Additional District Judge,
Trichy
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
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