



C.R.P.(MD)No.1504 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.03.2024

PRONOUNCED ON: 06.06.2024

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**C.R.P.(MD)No.1504 of 2019**

**and**

**C.M.P.(MD)No.7936 of 2019**

S.N.Vinoji

represented by the Power Agent

M.Srinivasan.

: Petitioner/3<sup>rd</sup> Respondent/

3<sup>rd</sup> Party Claimant/3<sup>rd</sup> Party

Vs.

1.R.Parvathi

: 1<sup>st</sup> Respondent/Petitioner/Auction

Purchaser/

3<sup>rd</sup> Party

2.N.Venkatesh

: 2<sup>nd</sup> Respondent/1<sup>st</sup>

Respondent/Respondent/

Plaintiff

3.Subbaiah

: 3<sup>rd</sup> Respondent/2<sup>nd</sup>

Respondent/Respondent/

Defendant

(Memo dated 22.01.2024 in USR  
No.2551 is recorded to the effect  
that issuance of notice to the third  
respondent is dispensed with, as he



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was set exparte before the trial  
Court, vide Court order dated  
16.02.2024 made in C.R.P.(MD)  
No.1504 of 2019 and C.M.P.  
(MD)No.7936 of 2019)

**PRAYER:-** Civil Revision Petition is filed under Article 227 of the Constitution of India against the proceedings in E.A.NO.1 of 2019 in E.P.No.102 of 1999 in O.S.NO.40 of 1998, on the file of I Additional Subordinate Judge, Nagercoil.

For Petitioner : Mr.T.Antony Arulraj

For Respondents : Mr.R.J.Karthick  
for R.1

: No Appearance  
for R.2

: R.3 – dispensed with

### **ORDER**

The Civil Revision Petition has been filed, invoking Article 227 of the Constitution of India to call for the records in the petition in E.A.No.1 of 2019 in E.P.No.102 of 1999 in O.S.No.40 of 1998 on the file of I Additional Subordinate Court, Nagercoil and struck off the same.



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2. The second respondent filed a suit in O.S.No.40 of 1998 against the third respondent for recovery of Rs.1,07,500/- due on the cheque issued. Since the third respondent remained exparte, an exparte judgment and decree came to be passed on 23.12.1998. The second respondent/decree holder has laid the execution petition in E.P.No.102 of 1999 and in that proceedings, the first respondent has purchased the suit property in the Court auction held on 28.09.2000 and in pursuance of the same, the Court auction purchaser – first respondent herein has filed an application in E.A.No.32 of 2001 for possession.

3. It is not in dispute that the petitioner herein has filed a suit for specific performance of the sale agreement dated 18.08.1997 against the third respondent – Subbiah in O.S.No.188 of 1998 and the suit was decreed on 06.01.1999, that in pursuance of the said decree, the sale deed came to be executed by the Court on behalf of the third respondent on 28.04.2000 in the proceedings in E.P.No.66 of 1999.



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4. It is also not in dispute that one Sivakami and Kalarenjini have filed a suit in O.S.No.316 of 1999 against the New Saraswathy Bankers and its Partners Mohan Ram and Subbiah (third respondent herein) and the said suit was decreed on 25.02.2005 and the decree holders therein have laid an execution petition in E.P.No.84 of 2005 for sale of the suit property.

5. After coming to know about the pendency of the application in E.A.No.32 of 2001 filed by the Court auction purchaser for possession, the petitioner has filed a claim petition in E.A.No.186 of 2002 on the basis of the sale deed executed by the Court as early as on 28.04.2000. The decree holders in O.S.No.316 of 1999 Sivakami and Kalarenjini have also filed a claim petition in E.A.Nos.324 of 2007 and 325 of 2007 in E.A.No.32 of 2001 in E.P.NO.102 of 1999 in O.S.No.40 of 1998. In the present Civil Revision Petition, we are not concerned with the claim petitions filed by the said Sivakami and Kalarenjini.



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6. It is evident from the records that the claim petition filed by the petitioner herein in E.A.No.186 of 2002 was ordered to be dismissed for default on 25.03.2008. The petitioner has then filed a petition in E.A.No.173 of 2008 to restore the petition in E.A.No. 186 of 2002, which was dismissed for default and that the Executing Court has passed a conditional order dated 25.04.2008 allowing the restoration petition with a condition to deposit the decretal amount of Rs.1,25,000/- on or before 02.06.2008. The petitioner, challenging the said conditional order, has preferred a revision in C.R.P.(MD)No.1044 of 2008. But admittedly, no interim order was granted. During pendency of the revision in C.R.P.(MD)No.1044 of 2008, the petitioner has deposited the amount of Rs.1,25,000/- in compliance to the order passed in E.A.No.173 of 2008, dated 25.04.2008 and since the petitioner has complied with the said order, the claim petition in E.A.No.186 of 2002 was restored to file.

7. After enquiry in all the claim petitions including the present claim in E.A.No.186 of 2002, the Executing Court has passed a common order dated 24.10.2013, allowing the claim



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petitions in E.A.No.186 of 2002 and E.A.Nos.324 and 325 of 2007 setting aside the Court auction sale dated 28.09.2000 and dismissing the application in E.A.No.32 of 2001 for possession. Subsequently, the revision in C.R.P.(MD)No.1044 of 2008 was taken up for hearing and after hearing both side Advocates, this Court has passed an order dated 07.11.2016, allowing the same by directing the petitioner to pay costs of Rs.5,000/- within a period of two weeks, failing which the said order shall stand vacated automatically and a further direction was issued to dispose of the application in E.A.No.186 of 2002 within a period of eight weeks. Three years thereafter, the Court auction purchaser – the first respondent herein, has filed the application in I.A.No.1 of 2019 now under challenge seeking orders to reopen the application in E.A.No.32 of 2001 and to punish the petitioner in E.A.No.186 of 2002 for his fraudulent abuse of process of law.

8. The case of the first respondent – Court auction purchaser in the petition filed in E.A.No.1 of 2019 is that she has purchased the property in the Court auction, that she had remitted the entire amount and the sale certificate was issued in her favour,



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that the petitioner, by suppressing the pendency of the revision, has fraudulently proceeded with the petition in E.A.No173 of 2008 and consequently, the claim petition in E.A.No.186 of 2002, that the said order is not executable, but erroneous one, that the petitioner has played a fraud and manage to get common order only with calculated ideas to obstruct the Court auction purchaser from getting delivery order, that the act of the petitioner in filing E.A.No.186 of 2002 amount to abuse of process of law and is liable for punishment, that the petitioner in C.R.P.(MD)No.1044 of 2008 has deliberately, wilfully, intentionally not complied with the above order and consequently restoration petition filed in E.A.NO.173 of 2008 became ineffective and automatically dismissed and that since the revision petitioner did not comply with the conditions, there is no impediment in passing orders to take possession of the property.

9. It is pertinent to mention that in pursuance of the decree for specific performance granted on 06.01.1999 in the suit filed in O.S.NO.188 of 1998 against the third respondent, the Principal Subordinate Court, Nagercoil has executed a sale deed on



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28.04.2000 in favour of the petitioner on behalf of the third respondent and from that day onwards, he has become the owner of the suit property. As already pointed out, in the present suit in O.S.No.40 of 1998 filed by the second respondent against the third respondent, the property was brought for Court auction sale on 28.09.2000 in E.P.No.102 of 1999 and the first respondent Parvathy has become the successful bidder. As rightly contended by the learned Counsel for the petitioner, the petitioner's purchase ie., on 28.04.2000 was earlier to the purchase made by the first respondent in the Court auction sale held on 28.09.2000.

10. It is pertinent to note that as already pointed out, the petitioner has challenged the dismissal of the restoration petition filed in E.A.No.173 of 2008 for restoring the claim petition in E.A.No.186 of 2002 which was dismissed for default, wherein the petitioner was directed to deposit the decretal amount of Rs. 1,25,000/- on or before 02.06.2008 as a condition for allowing the restoration petition in E.A.No.173 of 2008. The petitioner, mainly by alleging that the petitioner's Counsel has not made any endorsement that they are ready to deposit the decretal amount,



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but the Executing Court has passed the conditional order, on the basis of the endorsement made on behalf of the petitioner and that he is ready to deposit the decretal amount, has preferred the revision and since there was no interim order, according to the learned Counsel for the petitioner, the petitioner has complied with the conditions imposed in I.A.No.173 of 2008 by depositing the decretal amount of Rs.1,25,000/- and the Executing Court, after recording the compliance, has allowed the said restoration petition and consequently, the claim petition in E.A.No.186 of 2002 was ordered to be restored to file.

11. It is pertinent to mention that in the claim petition in E.A.No.186 of 2002, the other claim petitions filed by Sivakami and Kalarenjini were also taken up and common order came to be passed on 24.10.2013 allowing the claim petitions and thereby setting aside the Court auction sale held on 28.09.2000. It is necessary to refer the final portion of the common order dated 24.10.2013, which is extracted as follows:



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*“ In the result, E.A.No.186 of 2002, E.A.No.324 of 2007 E.A.No.325 of 2007 are allowed;*

*Court auction sale dated 28.09.2000 is set aside;*

*E.A.No.32 of 2001 for possession is dismissed;*

*Since, E.A.No.32 of 2001 is dismissed, the stay application in E.A.No.326 of 2007 is also dismissed as infructuous;*

*The counsels for Venkatesh, Parvathy, G.Sivakami and N.Kalarenjini are hereby directed to submit their respective dues by way of memo of calculation into the court within a week from this order after serving a copy to the counsel for S.N.Vinoji, who is also entitled to file objections to the said memo of calculations;*

*After considering the said memo of calculations, S.N.Vinoji is hereby directed to deposit the amount due as per decree in O.S.No. 40 of 1988 and O.S.No.316 of 1999 into the court separately within one month from the date of this order, failing which, the said decree holders are entitled to bring the dispute property for sale in respect of their respective dues;*



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*Out of the said deposit, Venkatesh, Parvathy, G.Sivakami and N.Kalarenjini are entitled to withdraw their respective due amounts as per law;*

*Till such time, E.P.No.84 of 2005 shall be kept pending; and*

*No order as to costs. Call on 31.10.2013.”*

12. In the meanwhile, the revision petition in C.R.P. (MD)No.1044 of 2000 was taken up for hearing and the Counsel on either side without informing or intimating the proceedings held in the Executing Court mainly about the orders passed in E.A.No.173 of 2008 and the consequent restoration of the claim petition in E.A.NO.186 of 2002 in file of the said Court, has proceeded with the arguments and this Court, by holding that there is no material to show that the endorsement was made by the petitioner before the Executing Court, has proceeded to allow the revision and the conditional order passed is extracted hereunder for better appreciation:



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*“In the absence of any material to show that there is endorsement made by the petitioner for depositing the said amount and also considering the fact that, this court is inclined to modify the order passed by the court below, as follows:*

*(I) The order passed by the Principal Subordinate Judge, Nagercoil in E.A.No.173 of 2008 in E.A.No. 186 of 2002 in E.P.No.102 of 1999 in O.S.No.40 of 1998, insofar as the portion of the order relates to deposit of a sum of Rs.1,25,000/- by the petitioner is concerned, is set aside and the petitioner is directed to pay a cost of Rs.5,000/-(Rupees Five Thousand only) to the third respondent, within a period of two weeks from the date of receipt of a copy of this order, failing which, this order shall stand automatically vacated.*

*(ii) On compliance of the said order, the trial Court is directed to dispose of E.A.No.186 of 2002 in E.P.No.102 of 1999 in O.S.No.40 of 1998, within a period of eight weeks thereafter.*

*8. This Civil Revision Petition is allowed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.”*



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13. The first respondent – Court auction purchaser now complaining that the petitioner has not complied with the conditional order passed by this Court in C.R.P.(MD)No.1044 of 2008, has filed the present application in E.A.No.1 of 2019 to reopen his application in E.A.No.32 of 2001 filed for restoration. As rightly contended by the learned Counsel for the petitioner, when the revision in C.R.P.(MD)No.1044 of 2008 was taken up for hearing, there was nothing to be adjudicated, since the impugned order in E.A.No.173 of 2008, dated 24.04.2008 had already been complied with and on that basis, the claim petition in E.A.No.186 of 2002 was restored to file and as such, the revision should have been dismissed as infructuous. But since the Counsels on record were not aware of the proceedings held before the Executing Court, they have proceeded with the revision and on that basis, the conditional order came to be passed by this Court. In the absence of any order staying the further proceedings, there is absolutely no bar or prohibition for Executing Court to proceed further and as such, the proceedings of the Executing Court in recording the compliance to the order passed in E.A.No.173 of 2008 and the consequent restoration of



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the petition in E.A.No.186 of 2002 and conducting of enquiry and passing of orders therein cannot be found fault with. Since the petitioner has already complied with the conditional order passed in E.A.No.173 of 2008 and had taken part in the enquiry conducted in the claim petition in E.A.No.186 of 2002, the question of complying with the conditional order passed in C.R.P. (MD)No.1044 of 2008, dated 07.11.2016 does not arise at all.

14. As already pointed out, though the Executing Court in the common order has directed some of the parties to file their calculation memos and directed the petitioner to file objections and directing the Executing Court to decide the other aspects involved, admittedly, the parties have not filed memo of calculations. Though the Court auction purchaser has already filed calculation memo along with an application to condone the delay on 09.01.2014, the same was not taken on file, but the first respondent has not elaborated anything further. It is not in dispute that the Court auction purchaser has deposited the entire amount and the decree holder had withdrawn some of the amount. Considering the submissions made on either side, this Court has



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directed the Registry to call for a report from the Principal Subordinate Court, Nagercoil, as to when the revision petitioner has deposited Rs.1,25,000/- to comply with the conditional order passed by the Executing Court in E.A.No.173 of 2008, dated 24.04.2008 and the consequential order if any passed subsequent to the common order dated 24.10.2013, on the file of I Additional Subordinate Court, Nagercoil and the amount lying in the Court deposit with regard to the above execution petition. In pursuance of the same, the learned Principal Subordinate Judge has submitted a report stating that a sum of Rs.1,25,000/- came to be deposited on 30.04.2008, that the petitioner has submitted a challan into the Court on 31.07.2008 and the same was recorded, that the amounts deposited is still available as Fixed Deposit and that a sum of Rs.9,01,409/- is available in O.S.No.40 of 1998.

15. Considering the above facts and circumstances and also the fact that the claim petition in E.A.No.186 of 2008 itself was disposed of, after enquiry, there is absolutely no need or necessity to comply with the conditional order passed in C.R.P.(MD)No. 1044 of 2008, as the revision petition itself has become



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infructuous. This Court has no hesitation to hold that the first respondent – Court auction purchaser, without any basis, has filed the above application in E.A.No.1 of 2019 to reopen his application in E.A.No.32 of 2001, which was filed for possession and the same would amount to abuse of process of Court and law and as such, the same is liable to be quashed.

16. It is pertinent to note that all the respondents have not complied with the directions of the Executing Court passed in the common order dated 24.10.2013. Whatever it is, the fact remains that the first respondent – Court auction purchaser is at liberty to approach the Executing Court and the Executing Court is directed to issue notice to all the concerned, hear the parties and dispose of her petition at an early date.

17. In the result, the Civil Revision Petition is allowed and the impugned proceedings in E.A.NO.1 of 2019 in E.P.No.102 of 1999 in O.S.NO.40 of 1998, on the file of I Additional Subordinate Judge, Nagercoil, is quashed. The first respondent is at liberty to approach the Executing Court and the Executing



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Court is directed to issue notice to all the concerned, hear the parties and pass orders on merits and in accordance with law.

Consequently, the connected Miscellaneous Petition is closed.

There shall be no order as to costs.

**06.06.2024**

NCC : Yes : No

Index : Yes : No

Internet : Yes : No

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To

1. The I Additional Subordinate Court, Nagercoil.

2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

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PRE-DELIVERY JUDGMENT MADE IN

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