



C.R.P.(MD)No.2825 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.11.2023

Delivered on : 02.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(MD)No.2825 of 2023

and

C.M.P(MD)Nos.14356 and 15543 of 2023

1.N.Sivasamy

2.S.Gomathi

: Petitioners/Petitioners/
Defendants

Vs.

M/s.Karur Balaji Finance,
Rep.by its Partner and General Power Agent,
Paramasivam

: Respondent/Respondent/
Plaintiff

Prayer : This Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order made in E.A.No.2 of 2023 in E.P.No.156 of 2012 in O.S.No.14 of 2005 on the file of the Principal District Munsif Court, Karur, dated 10.04.2023.



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For Petitioners : Mr.J.Barathan,
for Mr.S.Gokulraj

For Respondent : Mr.K.Suresh, for Caveator.

ORDER

The Civil Revision Petition is directed against the order passed in E.A.No.2 of 2023 in E.P.No.156 of 2012 in O.S.No.14 of 2005, dated 10.04.2023 on the file of the Principal District Munsif Court, Karur, dismissing the petition filed under Order XXI Rule 90 of the Code of Civil Procedure.

2. The revision petitioners/Defendants 2 and 3 have filed an application in E.A.No.2 of 2023 under Order 21 Rule 90 of C.P.C, for setting aside the Court auction sale held on 04.01.2023.

3. The facts not in dispute are as follows :

(i) The respondent/plaintiff has filed a suit for recovery of money on a mortgage in O.S.No.14 of 2005 and since the defendants including the revision petitioners/defendants 2 and 3 have remained ex-parte,



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preliminary decree came to be passed on 20.06.2006 and final decree came to be passed on 26.04.2007.

(ii) The defendants 1 and 2 have filed a petition to condone the delay of 309 days in representing the petition for setting aside the ex-parte preliminary decree, dated 20.06.2006 in I.A.No.97 of 2007 and another application in I.A.No.26 of 2008 under Section 5 of Limitation Act to condone the delay of 248 days in filing the petition for setting aside the ex-parte final decree, dated 26.04.2007. Both applications, after enquiry, were ordered to be dismissed on 17.12.2007 and 17.06.2008 respectively.

(iii) The defendants 1 and 2 have preferred revisions in CRP(MD)No.1569 and 1618 of 2008, challenging the orders passed in I.A.No.97 of 2007 and I.A.No.26 of 2008 before this Court and a common order came to be passed on 29.09.2008, allowing the revisions with a condition to deposit of 50% of the suit claim on or before 31.10.2008 to the credit of the suit in O.S.No.14 of 2005 on the file of the District Court, Karur.



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(iv) The third defendant, who is the second revision petitioner herein has filed similar petitions in I.A.No.27 and 59 of 2008 and the same were also dismissed by the District Court. The third defendant has preferred revisions in C.R.P(MD)Nos.127 and 128 of 2009 and this Court taking note of the earlier common order passed by the learned Judge on 29.09.2008, passed a conditional common order, directing the third defendant to deposit a sum of Rs.3,00,000/- within a period of six weeks from the date of receipt of copy of that order to the credit of the said suit. The defendants 1 to 3 including the revision petitioners have not complied with the directions of this Court and as per order of this Court, the orders passed by the trial Court in the above applications have become final.

(v) The respondent/decrece holder has laid the first execution petition in E.P.No.44 of 2007 on the file of the District Court, Karur. The first revision petitioner's son has filed a claim petition under Order XXI Rule 58 of C.P.C., in E.A.No.45 of 2009 and the said petition was dismissed for default on 19.07.2010.



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(vi) Meanwhile, notices in the execution petition were served on the revision petitioners and they have entered into appearance. After effecting paper publication, the first defendant firm was set ex-parte and thereafter, the revision petitioners have filed their counter to the execution petition. Subsequently, the revision petitioners remained ex-parte and hence, sale proclamation was ordered on 17.07.2014.

(vii) The first revision petitioner's son and father filed a petition in E.A.No.48 of 2014 to condone the delay in filing the petition for restoring the petition in E.A.No.45 of 2009, which was dismissed for default on 19.07.2010 and after enquiry, the said petition in E.A.No.48 of 2014 was dismissed. Thereafter, the first petitioner's son and father filed another claim petition under Order XXI Rule 58 of C.P.C., in E.A.No.65 of 2005, raising the very same grounds, which was raised in E.A.No.45 of 2009 and the petition in E.A.No.65 of 2005 was also dismissed for default on 26.02.2016.

(viii) They have filed an application in E.A.No.15 of 2016 to restore E.A.No.65 of 2015 and the same was also dismissed on 10.01.2017.



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Challenging the dismissal, they have preferred an appeal in CMA(MD) No.441 of 2017 and this Court vide judgment, dated 07.06.2017, dismissed the appeal.

(ix) The revision petitioners, after the receipt of sale notices have again remained ex-parte on 20.07.2017, that sale notices were again ordered to be issued and since they have remained ex-parte, upset price for the first item of the property was fixed at Rs.13 lakhs and that the property was sold in the Court auction for Rs.13,02,000/-. But the auction purchaser, by alleging that the said property was already under attachment in O.S.No.708 of 2003, has not paid the remaining sale consideration and as such, the sale was not confirmed.

(x) Thereafter, sale notices were again served on the revision petitioners and they have entered into appearance through their counsel on 29.03.2021 and subsequently, the said counsel has reported no instructions for the revision petitioners on 24.11.2021 and hence, the matter was adjourned to 30.11.2021. Since the revision petitioners have not turned up, they were set ex-parte and test of the properties was ordered.



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(xi) After testing of the properties by the Court Amin, upset price for the first item of the property was fixed at Rs.14,00,000/- and for the second item of the suit property at Rs.4,00,000/- and after the receipt of sale notices, the revision petitioners have again not turned up and hence they were set ex-parte. In the Court auction in respect of the first item of the property, three persons have participated and one Palanichamy has been declared as the successful bidder at Rs.62,50,000/-. The Court auction purchaser deposited a sum of Rs.15,62,500/- on the date of Court auction sale and the remaining sale amount of Rs.46,87,500/- on 19.02.2023. Challenging the Court auction sale held on 04.01.2023, the revision petitioners have filed the present application in E.A.No.2 of 2023 under Order 21 Rule 90 of C.P.C.

4. The main reasons or grounds raised for attacking the Court auction sale are :

(i) The revision petitioners were not served with any notice with regard to the Court auction and they were not aware of the Court auction.

(ii) The petition mentioned properties were valued at low price and the upset price was fixed at lower rate. Though the market value of the



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first item of the property is to the tune of Rs.2 Crores, the said property was valued at Rs.14,00,000/- only and was auctioned for a lesser amount of Rs.62,50,000/-.

(iii) The Executing Court had not considered the superstructure found in the petition mentioned property worth about Rs.60,00,000/- and Rs.10,00,000/- worth about water tank for commercial purpose and Rs.7,00,000/- worth about solar shed and the above were not included in the petition mentioned property.

5. The respondent has filed the counter statement raising serious objections, whereunder he has narrated the entire sequence of events and stated that the Court auction sale was conducted properly and as such, the same cannot be questioned.

6. During enquiry, the revision petitioners as well as the respondent have adduced neither oral nor documentary evidence. The three sale notices served on the respondents 1 to 3 were marked as Court documents Ex.C1 to Ex.C3.



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7. The learned District Judge, upon considering the pleadings and the records, has passed the impugned order, dated 10.04.2023 by holding that the revision petitioners have not made out any ground for setting aside the sale and that the above petition came to be filed only to drag on the proceedings and thereby preventing the decree holder from realizing the fruits of the decree, dismissed the petition. Aggrieved by the dismissal of the petition filed under Order XXI Rule 90 C.P.C., the present revision came to be filed.

8. A cursory perusal of the entire records would go to show that the revision petitioners are fully aware of the entire execution proceedings, including the Court auction sale, now under challenge.

9. As already pointed out, the revision petitioners, after receiving the execution notices, have entered into appearance on 06.02.2013 through their counsel Thiru.R.Sathasivam and after taking part in the execution proceedings, they remained ex-parte on 17.07.2014. It is evident from the records that the sale notices were served on the revision petitioners and since they have not turned up, they were set ex-parte on 20.07.2017 and



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that again after receiving the sale notices, they have not turned up and hence, they were set ex-parte on 19.01.2018.

10. As already pointed out, though the first item was sold in the Court auction held on 20.06.2018, the sale was not confirmed and again sale notices were ordered to be sent and the same were served on the revision petitioners. It is pertinent to note that after receiving the sale notices, they have entered into appearance through their counsel Thiru.R.Venkatapathy, on 29.03.2021 and after taking part in the proceedings for some months, the counsel reported no instructions on 24.11.2021 and since there was no representation and the revision petitioners were called absent, they were set ex-parte on 30.11.2021 and testing of properties was ordered on 04.03.2022. It is evident from Ex.C1 to Ex.C3 that the sale notices were served on the defendants 1 to 3 including the revision petitioners.

11. Considering the above, the very contention of the revision petitioners that the sale notices were not served on them and they were not aware of the Court auction sale proceedings, is patently false and are made only to make a ground for the above petition.



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12. The learned counsel for the revision petitioners would submit that the mortgaged properties consisting two items and the first item consisting two portions; that in the first portion, the first item is undivided 39 ½ cents in middle 79 cents out of 1.78 ¼ cents out of 6.98 acres in S.No.193, Karuppampalayam Village, Karur District; that the second portion in the first item is undivided 41-1/8 cents in middle 82 ¼ cents out of 1.78 ¼ cents out of 6.98 acres in S.No.193, Karuppampalayam Village, Karur District with borewell and 10 HP compressor pump set; that undivided right in mortgaged property was brought for auction sale for realizing of the decretal amount of Rs.9,04,403/- with further interest at 6% per annum; that though the value of the first item of the property is more than Rs.2 Crores; upset price fixed by the Executing Court for the first item at Rs.14,00,000/- is erroneous, arbitrary and incorrect; that the same would only show the non application of mind by the executing Court and that therefore, on the said ground itself, the sale is liable to be set aside.



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13. At the outset, it is pertinent to note that though the revision petitioners have claimed that the value of the first item of the properties is more than Rs.2 Crores, they have not produced any iota of evidence to substantiate the same.

14. As already pointed out, the revision petitioners have not adduced any evidence before the Executing Court. Moreover, as rightly pointed out by the learned counsel for the respondent, the upset price was fixed at Rs.14,00,000/- for the first item of the properties, but the same was sold at Rs.62,50,000/- 4 times more than the upset price and that by itself would go to show that the Court auction sale was conducted fairly and properly.

15. Even assuming for arguments sake that the upset price fixed at Rs.14,00,000/- is low, in the absence of any evidence to show that the said property would fetch much more value and also taking note of the fact that the property was sold at Rs.62,50,000/- ; the fixation of the upset price at Rs.14,00,000/- by itself is not a ground for setting aside the sale.



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16. The learned counsel for the revision petitioners would contend that the Executing Court ought to have valued two portions in the first item separately and that since the entire first item of the property consisting two portions was valued at Rs.14,00,000/- and the same was sold, the same would amount to excessive execution and that the Executing Court under Order XXI Rule 64 C.P.C., has a mandatory duty to enquire and auction only the portion of the property sufficient to satisfy the decree. No doubt, the excessive execution is a valid and good ground for challenging the Court auction sale, but the above aspects now canvassed were not at all raised by the revision petitioners in their petition filed under Order XXI Rule 90 of C.P.C.

17. As rightly contended by the learned counsel for the respondent, for the plea of excessive execution, there is neither pleadings nor evidence on the side of the revision petitioners.

18. The learned counsel for the revision petitioners have relied on the following decisions in support of his contentions :



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(i) ***M/s.Shalimar Cinema Vs. Bhasin Film Corporation and another*** reported in ***1987 4 SCC 717***.

“ Civil Procedure Code, 1908 – Order 21 Rule 66 – Where valuable property is to be sold by public auction Court should itself make valuation of the property and enter it in sale proclamation.

Court has a duty to see that the requirements of Order 21 Rule 66 are properly complied with. It is desirable at least in cases of sale of valuable property that the Court make its valuation and enter it in the sale proclamation, though it may not be necessary for the Court to do so in every case. The sale proclamation should not be prepared in a routine fashion. No action of the Court or its officers should be such as to give rise to the criticism that it was done in an indifferent or casual way.”

(ii) ***Ambati Narasayya Vs. M.Subba Rao and another*** reported in ***1989 Supp (2) SCC 693***.

“Order XXI Rule 6 C.P.C., enjoins that in all execution proceedings, the Court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the Court must bring only such portion of the property, the proceeds



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of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This, is no just a discretion, but an obligation imposed on the Court. The sale held without examining this aspect and not in conformity with this mandatory requirement would be illegal and without jurisdiction.”

19. No doubt, the Hon'ble Supreme Court has reiterated the settled legal position that the Executing Court has to decide whether it is necessary to bring the entire property to sale or such portion thereof as may seem necessary to satisfy the decree.

20. In the case on hand, as already pointed out, though the two items of mortgaged property were sought to be sold, the Executing Court taking note of the decretal amount and the value of the properties, has rightly decided to proceed only against the first item of the property and as such, the complaint of excessive execution does not arise at all.



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21. The next contention of the revision petitioners is that there were superstructure in the first item of the property worth about Rs.60,00,000/-, water tank worth about Rs.10,00,000/- and solar shed worth about Rs.7,00,000/- and the above were not included. As rightly observed by the learned District Judge, the alleged constructions, water tank and solar shed were not shown in the mortgaged properties and the petition mentioned properties alone were referred as the mortgaged properties.

22. It is not the specific case of the revision petitioners that those constructions, water tank and solar shed were very much available even on the date of mortgage. Section 70 of the Transfer of Property Act contemplates that if, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

23. Even assuming that superstructure, water tank and solar shed were made subsequently, the learned District Judge taking note of the Section 70 of the Transfer of Property Act has held that the same would be



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subject to the mortgaged security. Moreover, as rightly contended by the learned counsel for the respondent, the revision petitioners have not produced any evidence to prove the availability of the alleged superstructure, water tank and solar shed in the first item of the property.

24. As rightly contended by the learned counsel for the respondent, though this Court has granted sufficient opportunity to contest the main suit by depositing 50% of the suit claim by the defendants 1 and 2 and Rs.3,00,000/- by the third defendant, they have not utilized the opportunity and failed to comply with the directions of this Court.

25. As already pointed out, the suit was filed in the year 2005 and that preliminary and final decree came to be passed as early as on 20.06.2006 and 26.04.2007 respectively. When the above revision was posted for hearing finally, the revision petitioners have filed an application under Order I Rule 10(2) C.P.C., seeking orders to implead the Court auction purchaser as the second respondent in the above revision.



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26. In the affidavit filed in support of the impleadment petition, it has been stated that the proposed respondent is a Court auction purchaser and due to inadvertent, he was not added as a party in E.A.No.2 of 2023; that the revision petitioners are ready to deposit the entire sale amount before the Executing Court and as such, the auction purchaser is a necessary party to the present revision.

27. The revision petitioners, who are challenging the sale, ought to have impleaded the Court auction purchaser in the petition filed under Order XXI Rule 90 of C.P.C, but they have not chosen to implead the Court auction purchaser at that time. When the case was posted for finally, as rightly contended by the learned counsel for the respondent, the impleading petition came to be filed with sole intention to drag on the proceedings further.

28. As rightly contended by the learned counsel for the respondent, the revision petitioners were at fault in not impleading the Court auction purchaser in the petition filed under Order XXI Rule 90 C.P.C and in the present revision, they cannot take advantage of their own mistake and



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sought for impleading the Court auction purchaser. Hence, this Court is not inclined to entertain the impleadment petition and as such, the same is liable to be dismissed.

29. Considering the entire facts and circumstances of the case, the impugned order, dismissing the petition for setting aside the sale, cannot be found fault with and this Court concludes that the civil revision is devoid of merits and the same is liable to be dismissed.

30. In the result, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous petitions are closed. No costs.

02.02.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The Principal District Munsif, Karur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.R.P(MD)No.2825 of 2023
and
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Dated : 02.02.2024