

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 25.07.2025

Order pronounced on : 01.08.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.422 of 2025
& CMP.No.2586 of 2025

M/s.S.K.V.Industries,
Rep. by its Managing Partner
E.Vivekananth,
1/2B, Periyathottam,
Rasipuram Main Road,
Vannanthur Village,
Nachipatti Post, Rasipuram Taluk,
Namakkal District.

..Petitioner

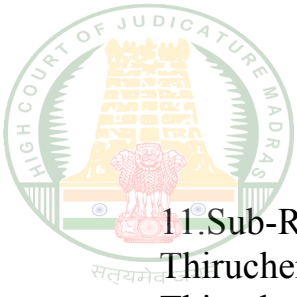
Vs.

1.Sivamalar
2.Minor Amiltha
3.Minor Annika
4.Durairaj
5.Malliga
6.Salai Sivaprakasam
7.Sivamathi

8.M/s.Indian Overseas Bank,
Rep. by Branch Manage, Fairlands,
Salem Town & Taluk & District.

9.P.Eswaramoorthy

10.Sub-Registrar,
Mallasamudram Registrar Office,
Mallasamudram Town and Post,
Namakkal District.



11.Sub-Registrar,
Thiruchengode Registrar Office,
Thiruchengode Town and Post,
Namakkal District.

12.The State Rep by District Collector,
District Collectorate, Thiruchengode Road,
Namakkal Town and Taluk and District.

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to strike off the plaint in O.S.No.222 of 2024 on the file of the II Additional District Judge, Thiruchengode.

For Petitioner : Mr.K.Shakespeare

For Respondents : Mr.A.V.Arun
for Mr.N.Kolandaivelu for RR1 to 3

Mr.J.Vinoth for RR4 to 6

Mr.M.L.Ganesh for R8

Mr.A.Anandan
Government Advocate for RR10 to 12

No appearance for RR7 & 9

ORDER

The revision petitioner is the 7th defendant in O.S.No.222 of 2024 before the II Additional District Judge, Thiruchengode. The revision petitioner seeks to strike off the plaint in O.S.No.222 of 2024.



2.I have heard Mr.K.Shakespeare, learned counsel for the revision petitioner, Mr.A.V.Arun for Mr.N.Kolandaivelu, learned counsel for respondents 1 to 3, Mr.J.Vinoth, learned counsel for respondents 4 to 6, and Mr.M.L.Ganesh, learned counsel for the 8th respondent and Mr.A.Anandan, learned Government Advocate the respondents 10 to 12.

3.Mr.K.Shakespeare, learned counsel for the revision petitioner, taking me through the plaint averments and the relief sought for therein, would state that the suit is a clear abuse of process and the 7th defendant is a bona fide purchaser for valuable consideration in an auction sale brought about by the bank, who has also been issued with a Sales Certificate, which has been duly registered as well. He would therefore state that the suit for partition is only to defeat the auction sale proceedings and there is no cause of action for filing the suit.

4.The learned counsel for the revision petitioner would further state that the plaintiffs have not disclosed material facts and circumstances in the plaint, which they are duty bound to disclose and in this regard, he has relied on the decision of the Honorable Supreme Court in *A.Shanmugam vs Ariya Kshatriya Rajakula Vamsathu Madalaya Nadhavana Paripalani Sangam and others*, reported in (2012) 6 SCC 430.



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5.The learned counsel would further state that the 1st plaintiff herself was a guarantor to the loan that was borrowed by the company and consequently, the properties that were offered as security were brought for sale and therefore, it is not open to the 1st plaintiff to file a suit, in order to get over the proceedings before the NCLT. He would also state that even with regard to two minor sons, they were only the children of the brother of the 1st plaintiff, who was also in the know of the proceedings before the NCLT and the suit itself is only an attempt to nullify the entire proceedings that have lawfully taken place before the NCLT. He would therefore pray for the plaint to be struck off under Article 227 of the Constitution of India.

6.Per contra, the learned counsel for the 8th respondent/bank, Mr.M.L. Ganesh would support and adopt the arguments of the learned counsel for the revision petitioner and would rely on the order of this Court in *State Bank of India v. Sub-Registrar, Joint I Tiruppur and others* in WP.No.10363 of 2025 dated 04.04.2025, where this Court held that the right of the bank cannot be defeated by collusive litigation and the bank has an absolute right under the SARFAESI Act to exercise all powers conferred under the Act.



7.Mr.A.V.Arun, learned counsel for the respondent 1 to 3/plaintiffs would first and foremost submit that admittedly, the plaintiffs do not have any stake in the company and they were also not parties to the writ petition which is referred to by the learned counsel for the revision petitioner, namely WP.No.3011 of 2017. In the said order dated 07.02.2017, it is seen that the Division Bench of this Court has recorded, in a writ petition filed by the borrower/company, the bank has sent copies of Section 13(2) notice under the SARFAESI Act to the guarantors of the loan account, which included the 1st plaintiff and the father of plaintiffs 2 and 3. Referring to the said order of the Division Bench of this Court, the learned counsel would contend that since the plaintiffs/respondents 1 to 3 were not parties to the said writ petition, any observations made in the said order cannot bind them.

8.Further, he would also state that there is only a reference regarding notices being sent and it has to be established that notices were duly served on the plaintiffs, before presuming that they had knowledge of the proceedings under the SARFASI Act. He would further state that the relief sought for in the suit cannot be adjudicated under the provisions of the Debt Recovery Laws or the Insolvency and Bankruptcy Code and therefore, the suit is very well maintainable and cannot be sought to be struck off, exercising the extraordinary

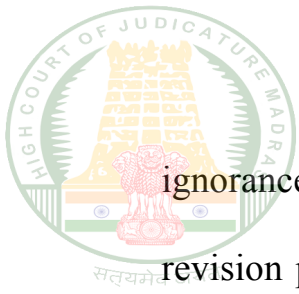


powers under Article 227 of the Constitution of India. He would also rely on the decision of the Honourable Supreme Court in *K.Valaramathi and others vs Kumaresan* reported in 2025 SCC online SC 985, in support of his contentions.

9.I have carefully considered the submissions advanced by the counsel on either side.

10.The suit in O.S.No.222 of 2024, the plaint in which is now sought to be struck off under Article 227 of the Constitution of India has been filed for the following reliefs, namely partition of various properties including the properties which were purchased by the revision petitioner/7th defendant in an e-auction and also for declaration that the Sales Certificate issued in favor of the 7th defendant/revision petitioner is null and void, besides a relief of permanent injunction.

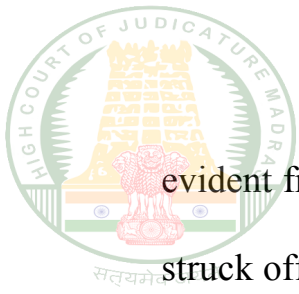
11.It is the case of the revision petitioner that he is a bonafide purchaser for value and the suit is barred by the provisions of Section 63 of the Insolvency and Bankruptcy Code. It is also the case of the revision petitioner that the first plaintiff was a guarantor to the loan and therefore, she cannot feign



ignorance of the transactions leading to the purchase of the property by the revision petitioner and even in so far as the minors, it is the contention of the revision petitioner that the father of the minors was also a guarantor and therefore the suit is only a gross abuse of process.

12.It has also been brought to my notice by Mr.A.V.Arun that the revision petitioner had earlier moved an application in IA.SR.No. 2704 of 2024 dated 25.09.2024 seeking to reject the plaint under Order VII Rule 11(d) of CPC. The said application was returned and not pursued by the revision petitioner. Therefore, it is the contention of Mr.A.V.Arun learned counsel to the respondents 1 to 3 that even according to the revision petitioner, his remedy is only to seek rejection of the plaint by invoking Order VII Rule 11(d) of CPC and not straight away approach this Court and seek to strike off the plaint.

13.No doubt, this Court has powers to strike off a plaint which is found to be a gross abuse of process of law. The Honourable Supreme Court in *T.Arivandandam vs. T.V.Satyapal's case* reported in (1977) 4 SCC 467, as well as in *K.K.Modi vs K.N.Modi's case*, reinforced such powers available to this Court. However, it is to be borne in mind that such powers have to be exercised very sparingly and only when there is a glaring instance of abuse which is



evident from documents on record. In the instant case, the plaint is sought to be struck off on multiple grounds. One of the grounds is that it is barred under law, namely the provisions of the Insolvency and Bankruptcy Code. Yet another ground is that the plaintiffs had knowledge of the proceedings under the SARFAESI Act and the 1st plaintiff was in fact, a guarantor and therefore, the 1st plaintiff cannot approach the Civil Court and seek any relief. It is also contended that the minors, second and third plaintiffs' interest was also taken care of by their father, who was in fact one of the guarantors.

14. With regard to the reference made insofar as the order passed in the writ petition by the Division Bench of this Court, it is seen that the Division Bench has only recorded the stand of the bank that Section 13(2) notice under the SARFAESI Act has been sent to the guarantors, who included the 1st plaintiff and the father of plaintiffs 2 and 3. The Division Bench has not recorded that the said notice was served on the guarantors. All these are disputed questions of fact which can be adjudicated only upon parties leading oral and documentary evidence.

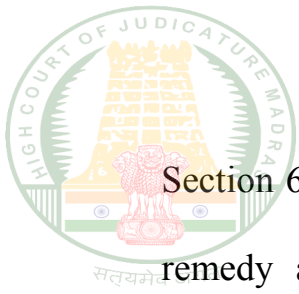
15. Be that as it may, when the relief sought for is for partition and separate possession, alleging that the properties are ancestral properties and the



plaintiffs being the daughter and grandchildren are entitled to share in the same, the plaintiff cannot be struck off, exercising power under Article 227 of the constitution of India.

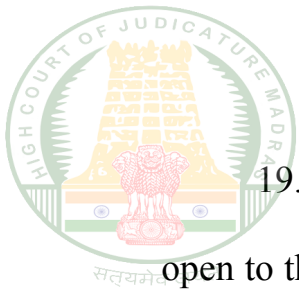
16.The Honourable Supreme Court in *Central Bank of India vs Prabha Jain and others* reported in (2025) 4 SCC 38, has held that a Civil Court jurisdiction is ousted only in respect of matters which the DRT or DRAT is empowered by or under the SARFAESI Act to determine and being a creature of statute the Tribunal cannot go beyond the four corners of the SARFAESI Act. In view of the above, the relief pertaining to suit for partition cannot be decided before the Tribunal, constituted under the Act and has to be adjudicated only by way of a Civil Suit.

17.Further, as pointed out by the learned counsel for the respondents 1 to 3, the 7th defendant has filed an application for rejection of plaint under Order VII Rule 11(d), contending that the suit is barred by law. However, the revision petitioner has not chosen to pursue the said application which was returned for certain compliances. When the revision petitioner himself chose to move an application for rejection of plaint on the ground that the suit was barred by law for rejection of plaint under Order VII Rule 11(d), more specifically under



Section 63 of the IBC, it is proper for the revision petitioner to pursue the said remedy and not approach this Court, that too under Article 227 of the Constitution of India to strike off the plaint.

18. In *K.Valaramathi's case*, the Honourable Supreme Court cautioned the High Courts with regard to exercise of powers under Article 227 of Constitution of India to reject the plaint. The Honourable Supreme Court observed that rejection of a plaint would amount to a decree which is appealable under the provisions of the Code of Civil Procedure and if the High Court exercises the power under Article 227 of Constitution of India and rejects the plaint, then the aggrieved party would be deprived of an appeal remedy. Though the revision petitioner does not seek for rejection of the plaint in the present revision, however, having approached the Trial Court seeking rejection of the plaint under Order VII Rule 11(d) of CPC, it is not proper on the part of the revision petitioner to abandon the said application and instead approach this Court and seek for striking off the plaint. In view of the above and considering the nature of the relief sought for in the suit, I am not inclined to strike off the plaint as prayed for by the revision petitioner.



19. In fine, the Civil Revision Petition is dismissed. However, it shall be open to the revision petitioner to pursue his rights, if any, under Order VII Rule 11 of the CPC and seek rejection of the plaint in a manner known to law. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

01.08.2025

Speaking/Non-speaking order
Index : Yes/No
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To

1. The II Additional District Judge, Thiruchengode.

2. Sub-Registrar,
Mallasamudram Registrar Office,
Mallasamudram Town and Post,
Namakkal District.

3. Sub-Registrar,
Thiruchengode Registrar Office,
Thiruchengode Town and Post,
Namakkal District.

4. The State Rep by District Collector,
District Collectorate, Thiruchengode Road,
Namakkal Town and Taluk and District.



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P.B.BALAJI.J.

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Pre-delivery order made in
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