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CRP NPD.No.2824 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 10.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP [NPD] No.2824 of 2025 & CMP.No.15984 of 2025

1. S.Vijayalakshmi
2. M.Saruvamalai

. . . Petitioners

Versus

M/s.Margadarsi Chits Private Limited,
Rep. by its Foreman K.Sakthi Shanmugam,
No.352/788, 2nd Floor, Brough Road,
Erode.

. . . Respondent

PRAYER : Petition filed under Article 227 of the Constitution of India to set aside the Order dated 01.04.2025 passed in E.P.No.65 of 2023 in ARC.No.94 of 2019 on the file of the I Additional District and Sessions Judge at Tiruppur.

For petitioners : Mr.K.Myilsamy

For respondent : Mr.D.Shivakumaran



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ORDER

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Challenge has been made to the sale notice issued by the Executing Court in bringing the property of the revision petitioner for sale, in the present Civil Revision Petition.

2. The brief facts leading to filing of this revision petition are as follows:

The respondent has filed Arbitration Original Petition for recovery of sum of Rs.19,38,444/-. Though the petitioner has also executed a simple mortgage deed dated 07.05.2018, but arbitration proceedings has been initiated only for recovery of money. The learned Arbitrator in AOP.No.94 of 2019 has passed the award directing the borrower to pay a sum of Rs.19,38,444 with interest @ 24 p.a, from the date of claim till the date of realisation and also cost with Rs.98,764/-. To enforce the award, Execution Petition has been filed. In the Execution Petition, the respondent has sought sale of the property straight away. The Executing Court has ordered for sale on the ground that as the judgment debtor has already mortgaged the property in favour of the decree holder on 07.05.2018 directed the sale. Challenging the said order, this



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revision petition.

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3. The learned counsel for the petitioner would submit that without filing any suit for foreclosure under Order XXXIV of CPC, the sale cannot be executed straight away. The very order passed by the Executing Court is not valid in the eye of law. The learned counsel for the respondent fairly admitted the legal position.

4. Heard both sides and perused the materials placed on record.

5. The award has been passed directing the judgment debtor to return the amount based on the simple award for money. It is also well settled that as far as the enforcement of the mortgage is concerned, arbitral tribunal have no jurisdiction instead Civil Court has to decide the issue. It has been settled by the Hon'ble Apex Court in the case of *Booz Allen and Hamilton Inc vs. SBI Home Finance Limited and others* reported in (2011) 5 SCC 532, wherein, the Hon'ble Apex Court has held that the mortgage suit for sale of the mortgage property is an action in rem, for enforcement of right in rem. The suit on



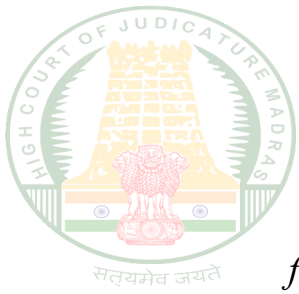
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mortgage is not a mere suit for money. A suit for enforcement of a mortgage being the enforcement of a right in rem, will have to be decided by the Courts of law and not by Arbitral Tribunal.

6. Rightly, the arbitrator has not decided any issue with regard to the mortgage. The award has been passed only for recovery of money, in other words, it is only recovery of money simplicitor. The so-called mortgagee has not filed any suit for foreclosure or the recovery of money based on the simple mortgage deed dated 28.12.2012. As long as there is no decree or final decree is passed for foreclosure of suit as per Order XXXIV of CPC, in the execution petition filed for executing the simple money decree or award, the mortgaged property cannot be brought for sale straight away.

7. In this regard, a learned judge of this Court in the case of the Indian Cements Ltd vs. Usha Devi made in CRP(MD).No.681 of 2014 dated 07.09.2023 has held as follows:

"20. In view of the fact that there is no final decree in a



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foreclosure suit and the award of the arbitrator is only a money decree simpliciter, the decree holder can proceed to execute the decree only after attachment of the property. However, the decree holder is at liberty to amend the execution petition to attach the property in order to proceed with the execution petition. Since it is a money decree, the release of the documents by the decree holder would not in any way be relevant for the purpose of executing the said money decree. Therefore, the finding of the Executing Court that in view of release of the documents, the decree stands discharged is not legally sustainable."

8. In such view of the matter, the impugned order has to be set aside. It is for the decree holder to amend the execution petition to bring the property for sale as per Order XXI of CPC. First, he will have to seek for attachment of the immovable property and thereafter, the property can be brought for sale under Order XXI Rule 64 of CPC.

9. With the above observations, this revision petition stands allowed and Order passed by the I Additional District and Sessions Judge in E.P.No.65 of 2023 in ARC.No.94 of 2019 is set aside. No costs. Consequently, connected miscellaneous petition stands closed.



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Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

The I Additional District and Sessions Judge,
Tiruppur.



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N. SATHISH KUMAR, J.

VTC

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