IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 06.10.2025	Order pronounced on : 07.11.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.3546 of 2022
& CMP.No.18865 of 2022

Manimaran ... Petitioner

Vs.

1.Selvaraj
2.N.Manickam ... Respondents

[R2 impleaded vide Court order dated 23.07.2024 made in CMP.No.18871 of 2023 in CRP.No.3546 of 2022]

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the order dated 01.09.2022 made in E.A.No.6 of 2022 in E.P.No.94 of 2018 in O.S.No.13 of 2015 on the file of the Principal District Judge, Perambalur.

For Petitioner : Mr.Usharamman

For Respondents : Dr.C.Ravichandran for R1
Mr.S.Kasirajan for R2

ORDER

The revision petitioner is the judgment debtor, who, aggrieved by the dismissal of his application under Order XXI Rule 90 of CPC, for setting aside the sale conducted by the Court, has preferred the present revision.

2.I have heard Mr.Usharamman, learned counsel for the petitioner/judgment debtor and Dr.C.Ravichandran, learned counsel for the 1st respondent/decree holder and Mr.S.Kasirajan, learned counsel for the 2nd respondent/Court auction purchaser.

3.Mr.Usharamman, learned counsel for the petitioner/judgment debtor would submit that the valuable property of the petitioner has been sold in public auction and the sale itself has been conducted irregularly. He would further contend that even pending the execution petition, the judgment debtor proposed an amicable settlement and has made substantial payments of Rs.3,00,000/- even in 2021 and Rs.16,73,977/- by April 2022. He would further contend that despite publication, the upset price itself was erroneously fixed on the lower side and the 2nd respondent was the only bidder who participated in the auction and consequently the valuable property of the petitioner has been knocked away for a throw away price of Rs.25,01,000/-. He would further state that taking advantage of being the only participant in the auction, the 2nd respondent had, in order to suit his convenience, bid Rs.25,01,000/-, which was only Rs.1,000/- over and above the upset price fixed for the property which is worth more than Rs.3 crores.

4.The learned counsel for the petitioner would further state that the first lot of property worth fetched more than Rs.2 crores and the second lot of property was worth more than Rs.1 crore and even if the second lot of property alone was brought for sale in publication, it would have been sufficient to meet the decree amount. The learned counsel for the petitioner would place reliance on the decision of this Court in *Kumar @ Kumaran Vs. Bose Ponnambalam and others, (CRP.(NPD).No.4092 & 4093 of 2023 dated 26.07.2024)*, where this Court held that the executing Courts are mandated to sell only the portion of the property which would be required for satisfaction of the decree where falling back on Order XXI Rules 64 and 66 of CPC, this Court held that the Court should come to the conclusion if the entire property is required to be sold prior ordering sale and if the said mandate is not followed, then the sale would have to necessarily go. He would therefore pray for the revision being allowed.

5.Per contra, Dr.C.Ravichandran, learned counsel for the 1st respondent/decree holder would submit that the proclamation of sale was on 10.11.2021 and on the said date, the petitioner paid a sum of Rs.3 lakhs and got the sale adjourned to 08.12.2021. On 08.12.2021, there was no payment forthcoming from the petitioner and hence, the Court went ahead with the proclamation of sale and the upset price was fixed at Rs.25 lakhs. On 23.01.2022, proclamation of sale was ordered. However, on that day, the sale did not take effect and a fresh proclamation of sale was ordered on 20.04.2022, on which date, the 2nd respondent successfully bid for purchase at 25,01,000/- over and above the upset price fixed by the Court and he has paid the entire amount and the sale was confirmed and even sale certificate was issued to the 2nd respondent as early as on 07.09.2022.

6.Dr.C.Ravichandran, learned counsel for the 1st respondent, placing reliance on Order XXI Rule 90(3) of CPC, contended that no application to set aside the sale can be entertained on any ground which was available to be taken by the applicant seeking the sale to be nullified on or before the date on which the proclamation of sale was drawn up. Referring to the dates set out herein above, the learned counsel for the 1st respondent would contend that the judgment debtor lost his right to challenge the sale deed. He would also state that though it is contended by the petitioner that the property is worth more than Rs.3 crores, no shred of evidence has been adduced to substantiate the self serving claim of the revision petitioner and at best, it is an argument in thin air which cannot be given any credence whatsoever.

7.Further, the learned counsel for the 1st respondent would contend that the petitioner has attempted to gain misplaced sympathy from the Court, by contending that he has already paid a sum of Rs.19 lakhs and above even by April 2022 and therefore, only a small amount of Rs.41,497/- remained to be paid, as on the date. Pointing to the incorrect methodology applied by the revision petitioner, the learned counsel for the 1st respondent would contend that the amounts that have been paid in 2021, namely Rs.3 lakhs, has been deducted from the principal amount, whereas it ought to have been adjusted only under the interest head and not principal amount.

He would therefore state that the very claim of the revision petitioner that only a sum of Rs.41,000/- odd was due in April 2022 is a farce and the sale having already been concluded and no objection being taken at the appropriate time, the petitioner is not entitled to seek orders to set aside the validly conducted public auction sale. He would therefore pray for dismissal of the revision.

8.Mr.S.Kasirajan, learned counsel for the 2nd respondent would state that the 2nd respondent has participated in the bid and being the successful bidder, the 2nd respondent was called upon to deposit 25% of the upset price on the date of auction, namely 20.04.2022 itself and thereafter, he has also deposited the balance 75% on 27.04.2022. He would therefore contend that any subsequent payment by the judgment debtor cannot give him any rights, especially after a right has validly accrued in favour of the 2nd respondent/auction purchaser and the same cannot be lightly disturbed.

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

10.The revision petitioner suffered a decree way back in the year 2018, more specifically, 17.02.2018. The revision petitioner did not choose to challenge the decree and when execution proceedings were laid for Rs.19,98,241/-, the judgment debtor paid Rs.3 lakhs on 10.11.2021 and further Rs.1 lakh on 20.04.2022. Apart from these payments, the revision petitioner has not made any payments right from the date of decree i.e 17.02.2018 and a substantial sum of Rs.15,73,977/- came to be deposited only on 29.04.2022 and a further sum of Rs.43,000/- was deposited on 16.06.2022. Both the learned counsel for the petitioner and the 1st respondent have filed memos of calculation. According to the revision petitioner, he has paid excess amount of Rs.98,829/-, whereas according to the 1st respondent/decree holder, the petitioner, despite all the above payments, is still due Rs.60,234.29/- as on 06.10.2025.

11.Though I am not obligated to go into these calculations, it would suffice to note that the revision petitioner's calculation is factually incorrect since the payments that have been made by the revision petitioner have been conveniently adjusted towards principal, when it ought to have been adjusted only towards the interest component. In any event, in an application under Order XXI Rule 90 of CPC, I only need to see if there has been any material irregularly in conducting the sale or whether there is any fraud committed in such process.

12.No doubt, the rights of the third party purchaser is not relevant in an application under Order XXI Rule 90 of CPC. Firstly, though the revision petitioner contends that the value of the property is more than Rs.3 crores and that sale of the second lot alone would have been sufficient to satisfy the decree, I find that, before the executing Court it was only contended by the revision petitioner that the property is worth more than Rs.50 lakhs and it has been sold for one year Rs.25,01,000/-. However, the petitioner has not been able to substantiate his claim that the market value of the property was even Rs.50 lakhs. When he did not take the objection at the relevant point of time, namely before the settlement of proclamation, it is not open to the petitioner to agitate it at a belated stage.

13.It is also seen that the revision petitioner did not object to the upset price being fixed at Rs.25 lakhs and all these factors were rightly considered by the Principal District Judge in holding that there is no material irregularity in conducting the auction sale and the petitioner having failed to contest the execution proceedings properly and not raising his objections in a timely manner, he is not entitled to seek setting aside the sale and he can only seek for refund of the amounts deposited by him in the Court, pending the execution proceedings.

14.Though the revision petitioner has borrowed the money way back in 2014 and also suffered a decree in February 2018 and was due and payable an amount approximately Rs.20 lakhs in November 2021, he has successfully protracted the proceedings under the guise of settlement and as against Rs.20 lakhs or thereabouts merely due and payable in 2018, the revision petitioner deposited only Rs.3 lakhs in November 2021 and another Rs.1 lakh in April 2022. Even these payments are sought to be adjusted by the revision petitioner towards principal, thereby attempting to gain clear undue advantage in his favour.

15.Further, as rightly pointed by the executing Court, the petitioner has participated in the execution proceedings from day one and has not objected to the entire property being brought for sale in public auction and has also not objected to the upset price being fixed at Rs.25 lakhs. All these objections ought to have been taken by the revision petitioner, before the proclamation of sale and as rightly contended by the learned counsel for the 1st respondent, the mandate of Order XXI Rule 90(3) of CPC would squarely apply to the facts of the present case and the revision petitioner, who could have taken the objection on or before the proclamation of sale being drawn up, cannot thereafter seek to set aside the auction sale.

16.Insofar as the decision of this Court in Kumar @ Kumaran's case, that was a case where the decree amount was only a sum of Rs.6 lakhs and the property, even according to the valuation of the Court was more than Rs.26 lakhs and in such circumstances, this Court had held that the sale was amounting to an excessive execution, without following the mandate of Order XXI Rules 64 and 66 of CPC and in such circumstances, this Court held that the sale has to be set aside. However, in the present case, there is no evidence adduced on the side of the petitioner to substantiate any of his contentions and therefore, there was no material available before the executing Court to hold that the sale was liable to be set aside on the ground of material irregularity.

17.Further, the revision petitioner's conduct has also not been bonafide. He has paid only a sum of Rs.4 lakhs by April 2022, after suffering a decree in 2018, in respect of the borrowing made in the year 2014 and after the sale alone, the petitioner has hurriedly proceeded to deposit Rs.15,73,977/- and claiming that he has substantially paid and in fact over paid the decree holder's claim, the petitioner seeks indulgence of the Court.

18.I have already pointed out that the petitioner arrives at his self serving statement and figures by wrong application of settled principles of law that mandate any payments made would have to be first adjusted as against the interest and only thereafter, towards principal. Therefore, I do not see any bonafides on the part of the revision petitioner as well, in order to get any sympathy or to be shown indulgence by this Court. In any event, the petitioner has not been able to substantiate his allegations of material irregularity in the auction sale being conducted and I do not find any infirmity in the findings of the executing Court, warranting interference in this revision.

19.In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

.07.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
ata

To

Principal District Judge, Perambalur.

P.B. BALAJI,J.

ata

Pre-delivery order made in

CRP.No.3546 of 2022

& CMP.No.18865 of 2022

17.11.2025