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C.R.P.No.4406 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22..01..2025

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.4406 of 2024

and

C.M.P.No.24501 of 2024

Thiruvalluvar Textiles Private Limited,
Rep.by its Managing Director,
No.7, (Old No.5), Sir Thyagaraya Road,
T.Nagar, Chennai 600 017.

..... Petitioner

-Versus-

Kesari Punna Reddy,
S/o Hanumantha Reddy,
Proprietor of Sravani Traders,
R/o 765/A, Anikireddypalem,
Guntur.

..... Respondent

Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the order and decretal order dated 30.08.2024 passed by the learned Additional District Judge, Salem in R.E.P.No.162 of 2018 in O.S.No.82 of 2013 and dismiss the said R.E.P.



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For Petitioner : Mr.T.M.Hariharan

For Respondent : Mr.V.B.Gowtham Thilak

ORDER

Challenging the order dated 30.03.2024 passed by the learned Additional District Judge (Executing Court) at Salem, in R.E.P.No.162 of 2018 in O.S.No.82 of 2013, directing the respondent-decree holder to pay test batta to ascertain the value of the attached properties, the judgement-debtor has come forward with the present revision petition. The respondent is the decree holder.

2. On 15.02.2013, the respondent filed a suit in O.S.No.82 of 2013 on the file of the learned IV Additional District Court, Guntur, Andhra Pradesh, for recovery of a sum of Rs.47,09,938/- with future interest @ 18% p.a. with monthly rests from the date of plaint till the date of realisation of Rs.47,09,938/-. The said suit was decreed on 03.08.2018 as prayed for, for recovery of a sum of Rs.47,09,938/- together with interest @ 6% p.a. from the date of plaint till the date of realisation of the principal amount. The petitioner/judgement-debtor was also directed to pay a sum of Rs. 192,501/- to the plaintiff towards the cost of the suit. As the petitioner/judgement-debtor did not pay the decree amount, the



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respondent/decreed-holder filed an application seeking to transfer the decree to the file of the learned I Additional District Judge, Salem, as the properties belonging to the petitioner/judgement-debtor are situated within the jurisdiction of the learned I Additional District Judge, Salem. Accordingly, the decree was transferred to the file of the learned I Additional District Judge, Salem. The subject immovable property of the petitioner/judgement-debtor was already attached before the judgement and also in E.P.No.162 of 2018 by order dated 11.10.2018. The sale papers were also filed.

3. While so, an objection was taken by the petitioner/judgement-debtor that the value of the property is more than Rs.21.00 crore, and the court amn has valued the property at Rs.10.00 crore; however, the respondent/decreed-holder fixed the value of the property at Rs.3.00 crore. As against the judgement and decree passed by the IV Additional District Court, Guntur, Andhra Pradesh, the petitioner/judgement-debtor preferred an appeal in A.S.No.1444 of 2018 on the file of the High Court of Hyderabad along with an application in I.A.No.1 of 2018 for stay of operation of the decree, and the High Court of Andhra Pradesh had, by order dated 26.11.2018, granted an order of interim stay subject to deposit of 50% of the decree amount. However, it appears that the amount as directed by the court



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was not deposited by the judgement-debtor. Having taken note of the fact that on the failure of the petitioner/judgement-debtor in depositing 50% of the decree amount together with costs as directed by the High Court of Andhra Pradesh within the time frame, the order of interim stay granted on 26.11.2018 stood automatically vacated, the executing court disallowed the objection, and allowed the application and posted the matter for testing the property. Challenging the said order, the judgement-debtor is before this court with the present revision petition.

4. Heard Mr.T.M.Hariharan, learned counsel for the petitioner/judgment-debtor and Mr.V.B.Gowtham Thilak, learned counsel for the respondent/decree-holder.

5. The learned counsel for the petitioner/judgment-debtor would mainly submit that the properties sought to be auctioned are valued at approximately Rs. 21.00 crore. In order to recover barely less than Rs. 1.00 crore, the entire property has been attached, which is illegal.

6. The learned counsel for the respondent/decree-holder, on the other hand, vehemently opposed the revision, stating that in order to drag on the execution proceedings, the petitioner has come forward with the present revision.



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7. I have considered the rival submissions and perused the entire materials
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availed on record carefully.

8. The court has tested the value of the property sought to be sold at Rs.10.00 crore, whereas the amount sought to be realised by the sale is barely a sum of Rs.83,00,000/-, including a principal sum of Rs.47,09,938/-. This fact is not disputed by the respondent/decree-holder. Thus, this court finds justification in the contention of the learned counsel for the petitioner/judgement-debtor that for recovery of barely a sum of less than one crore, directing the sale of the entire property worth more than Rs. 10.00 crore as tested by the court cannot be allowed to be sold through court auction. As envisaged under Order XXI, Rule 64 of CPC, it is the primary duty of the executing court to decide as to whether it is necessary to bring the entire property for sale or only a portion thereof would be sufficient to satisfy the decree amount. If the sale proclamation is not yet issued, the executing court must first decide whether a small portion of the property would be sufficient to satisfy the decree, and the proclamation can be issued only in respect of a portion of the property that would be sufficient to satisfy the decree. Such exercise must be done by the executing court before taking any decision for the sale of the entire property and proceeding further in the matter.



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9. At this stage, the learned counsel for the respondent/deGREE holder submitted that pursuant to the conditional order of interim stay granted by this court dated 04.11.2024, the petitioner/judgement-debtor deposited a sum of Rs.25,00,000/- to the credit of the execution petition, and therefore, he prayed to permit the respondent/deGREE holder to withdraw the deposited amount.

10. Accordingly, the respondent/deGREE-holder is permitted to withdraw the amount deposited pursuant to the orders of this court on furnishing necessary security before the executing court.

In the result, the civil revision petition is disposed of with the above directions. No costs. Consequently, connected CMP is closed.

Index : yes / no

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Neutral Citation : yes / no

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Note: Issue order copy on 07.02.2025.

To

1.The I Additional District Judge, Salem, Salem District.



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N.SATHISH KUMAR.J.,

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