



C.M.A.No.2808 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

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1.S.Jummakhan
2.Mrs.Jennathul Firthous
3.Syed Abuthahir.K.S.
4.Mrs.Mumtaj.S
5.Mrs.Savuriyath Beevi Mohamed
6.Mrs.Jasmin ... Appellants/ Proposed Petitioners

-VS-

1.Pavan Financiers
S/o.S.V.Prasad Rao,
No.166, Govindappa Naicken Street,
1st Floor, Chennai-600 001. ... 1st Respondent/Decree Holder
2.Mrs. V.Nithya ... 2nd Respondent/Judgement
Debtor

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of CPC against the Order passed in E.A.No.03 of 224 in E.P.No.3162 of 2021 on 04.08.2025 on the file of the X Assistant City Civil Court, Chennai.



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For Appellant : Mr.V.BalaSubramani

JUDGMENT

Challenge is made to the fair and decreetal order passed in E.A.No.3 of 2024 in E.P.No.3162 of 2021 in O.S.No.4869 of 2019 dated 04.08.2025 on the file of X Assistant Judge, City Civil Court, Chennai by the proposed parties.

2. Parties are indicated herein as per their litigative status and ranking before the Executing Court.

3. An execution application in E.A.No.3 of 2024 was taken out by the proposed petitioners No.1 to 6 under Order 21 Rule 58 and 97 of C.P.C, to permit the proposed petitioners to record the objection on the order of attachment passed in E.P.No.3162 of 2022.

4.Details of their affidavit filed in E.A.No.3 of 2024 is given in brief:

The petitioners are the purchasers of the attached property. The



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property was originally owned by Mr.Jayaraman Vijayakumar (borrower) who died intestate leaving behind the 2nd respondent V.Nithya as his legal heir. Mr.Jayaraman Vijayakumar (Borrower) approached M/s.ECL Finance Ltd. for availing housing loan. The said Finance Company sanctioned a sum of Rs.4,45,00,000/- as per sanction letter dated 28.02.2018. He availed the said sum as housing loan and executed loan agreement in Loan A/c.No.LCHELAP0000040957 dated 28.02.2018, agreeing to repay the loan in 180 EMIs each Rs.4,85,029/- per month and other relevant documents in favour of M/s.ECL Finance Ltd.

4.1. Wherein, under certain terms and conditions, upon which loan facility was sanctioned. The borrower defaulted in payment of installment. M/s.ECL Finance Ltd., classified the borrower account as Non-Performing Asset on 31.01.2019 within the meaning of Section 2(o) of the Act and issued statutory notice under Section 13(2) of SARFAESI Act, on 14.03.2019, calling upon the borrower to discharge their liabilities in full



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within 60 days from the date of receipt of the said notice.

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4.2. The borrower failed to discharge the liability within statutory period. The Finance Company being secured creditor upon deposit by the borrower after statutory notice issued under Section 13(2) of SARFAESI Act, 2002 in order to take possession of the secured asset, finance company issued possession notice on 13.06.2019 and other formalities were complied with.

4.3. The original lender M/s.ECL Finance Ltd., assigned the debt payable by the borrower vide deed of assignment dated 17.12.2020 in favour of M/s.Edelweiss Asset Reconstruction Co.Ltd., (in short, to be mentioned herein after as EARC Ltd.,) became full and absolute owner and the loans including the right to file a suit. EARC Ltd, filed the petition under Section 14 of SARFAESI Act before the Chief Metropolitan Magistrate Court, Egmore, Chennai in CrI.M.P.No.6108 of 2021 to take



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possession of the secured assets of the property of the borrower. The said M.P., was ordered on 22.12.2021 to take possession of the petition schedule mentioned property and Advocate Commissioner was appointed to take actual possession of the schedule mentioned property and the warrant was issued on 16.02.2022. EARC Ltd., took physical possession of the company on 22.06.2022 and sold the mortgaged property to the highest bidder in the public auction held on 19.09.2022 and sale certificate Doc.No.386/2023 was issued on 24.11.2022 in favour of the proposed petitioner/ successful bidder, for a sum of Rs.2,01,00,000/-. Electricity Charges and water tax charges are in the name of proposed petitioners. The sold property was attached by the decree holder in the E.P., filed by him before the X Assistant City Civil Court, Chennai and the Executing Court passed an order to sell the mortgage property. The proposed petitioner will be put to irreparable loss as he has purchased the property through auction for a sum of Rs.2,01,00,000/-.

5. On behalf of the decree holder, counter affidavit was filed and the



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details of the counter affidavit are stated in brief:

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The Executing Court ordered attachment of E.P. Schedule of property on 05.04.2022 and it was reflected in encumbrance certificate thereafter sale paper was filed on 07.12.2022. During pendency of Execution proceedings M/s.Edelweiss Asset Reconstruction Co.Ltd., filed E.A.No.1 of 2023 to implead itself in the execution petition in the month of December 2022 and counter was filed for the said application. On 11.06.2024, EARC Ltd., not pressed E.A.No.1 of 2023.

5.1. Loan amount of Rs.4,45,00,000/- was attached by Jayaraman Vijayakumar, husband of judgment debtor. The sale certificate reflects the fact that purchaser was admitted with due diligence in respect of known and unknown liabilities. Value of the property is not less than Rs.6 to 8 crores but the appellants have purchased for 1/3rd of value knowing fully well, admitting the liability they have to meet out on purchase of the Execution Petition mentioned property.



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6. Suit property is land and building bearing Door No.19, (Old No.85), New No.37/2019, Pidariyar Koil Street, George Town, Chennai-1, (formally known as VOC Nagar, George Town, Chennai) land measuring 2200 sq.ft., comprised in R.S.No.2262.

7. Upon consideration of entire case records and after hearing the arguments advanced by both sides, the Executing Court concluded that the petitioners have purchased the encumbered property are bound by the earlier attachment made by the Executing Court and this petition is filed to delay the execution proceedings and dismissed the petition.

8. The judgment debtor and his family members mortgaged the execution petition mentioned property in favour of M/s.ECL Finance Ltd., in Doc.No.399/18, dated 10.04.2018 on the file of Sub-Registrar Office, Sowcarpet, Chennai and availed housing loan of Rs.4,45,00,000/- agreeing to repay the loan in 180 EMIs., each of Rs.4,85,029/- per month.



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As the judgment debtor/ borrower defaulted payment of installments, the creditor classified the borrower's account as Non-Performing Asset on 30.01.2019. Then SARFAESI proceedings were initiated against the borrower and order of attachment was passed by the SARFAESI Court on 05.04.2022 which was reflected in the Encumbrance Certificate.

9. It appears that the original lender M/s.ECL Finance Ltd., assigned the loan vide deed of assignment dated 17.12.2020 in favour of M/s.Edelwiss Asset Reconstruction Co.Ltd., [EARC Ltd.,].

10. From a careful perusal of entire case records, it appears that ECL Finance Ltd., filed petition under Section 14 of SARFAESI Act, 2002, to take physical possession of the secured asset before the Chief Metropolitan Magistrate Court, Egmore in CrI.M.P.No.6108 of 2021 dated 22.06.2022. Thereafter, property was brought on public auction on 19.09.2022 and it was knocked down by the highest bidder–proposed



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purchasers and sale certificate was issued on 24.11.2022. The purchase price is Rs.2,01,00,000/-. Ex.P4 is dated 10.04.2018 is Memorandum of Deposit of title deeds executed by the borrower Jayaraman Vijayakumar. Ex.P5 is copy of Encumbrance Certificate.

11. The proposed petitioners have knowledge about the mortgage deed dated 10.04.2018 and the order of attachment dated 05.04.2022 by purchasing the encumbered property, the proposed petitioners have entered into the shoes of the borrower.

12. For recovery of the said amount, Creditor filed Suit in O.S.No.4861 of 2019 before the First Additional City Civil Court, Chennai and obtained a decree on 17.12.2019 and decree for Rs.1,12,300/- for the principal amount of Rs.1,00,000/- interest at the rate of 6% till the date of realization. As the judgment debtor failed to satisfy the decree, then the decree holder filed Execution Petition on 03.08.2021, and order of



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attachment of the schedule mentioned property was ordered on

05.04.2022 and the matter is posted for filing of sale papers. In case of

borrowers, *caveat emptor – qui ignorare debuit quod jus alienum emit*

which means, “let the purchaser beware who ought not to be ignorant that

he is purchasing the rights of another.” If a person intend to purchase a

immovable property, he is expected to view, to enquire, to inspect the

relevant documents including Encumbrance Certificate and Revenue

Records. The buyer must take care about the encumbrances that is

reflected in the Encumbrance Certificate. The above said encumbrance

details are dated before the auction date which would definitely reflect in

the Encumbrance Certificate. Therefore, auction purchasers have full

knowledge about the encumbrance attached to the property. The effect is

the purchasers are responsible for the known and unknown

encumbrances over the property and having purchased the encumbered

property, they have confirmed the encumbrances attached to the property.

It should not lie in the mouth of the petitioners that they do not have any



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knowledge about the encumbrance attached to the purchased property.

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13. In such circumstances, the Executing Court has rightly dismissed the application as not maintainable in law in the right perspective. This Court does not find any infirmity or perversity in the order of the Executing Court. This Court also does not find any good reason to upset the findings of the Execution Court.

14. In view of the above narrative, this Civil Miscellaneous Appeal is liable to be dismissed and thereby dismissed. Sequel to this, the fair and decreetal order passed in E.A.No.3 of 2024 in E.P.No.3162 of 2021 in O.S.No.4869 of 2019 on the file of the X Assistant City Civil Court, Chennai stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition if any stands closed.

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NCC:Yes/No
Index:Yes/No
Internet:Yes/No
ssn

To

1. X Assistant City Civil Court,
Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI ,J.

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