

C.M.A.(MD) No.1706 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.1706 of 2024
and
C.M.P.(MD)No.18371 of 2024

M.K.Muthukumaran

... Appellant/Petitioner/
Respondent/Defendant

vs.

1.S.Muthupandi

... 1st respondent/1st respondent/
Petitioner/Plaintiff

2.G.Palanikumar.

... 2nd respondent/2nd respondent/
Auction purchaser

PRAYER: Civil Miscellaneous Appeal is filed under Order 43, Rule 1(J) of the C.P.C. against judgment and decree dated 21.09.2024 made in E.A.No.6 of 2023 in E.P.No.86 of 2022 in O.S.No.298 of 2018 on the file of the VI Additional District Court/Fast Track Court, Madurai.



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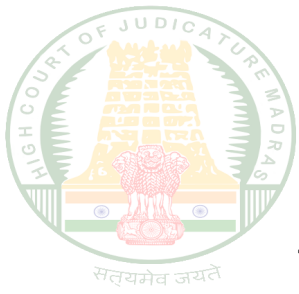
For appellant : Mr.P.Murugesan
For Respondents : Mr.C.Mayilvahana Rajendran
For R1 : No appearance
For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the defendant/judgment debtor against the fair and decreetal order dated 21.09.2024 passed in E.A.No.6 of 2023 in E.P.No.86 of 2022 in O.S.No.298 of 2018 by the VI Additional District Judge, Madurai, against the order of dismissal.

2. Heard the arguments of the learned counsel for the appellant and the learned counsel for the first respondent.

3. In the E.P. Proceedings, the judgment debtor Muthukumaran/appellant herein moved an application under Order XXI Rule 90 and Section 151 of C.P.C. to set aside the auction sale in respect of the first item of suit property purchased by the second respondent in the auction held on 08.01.2024.



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4. The details of the petition are stated in brief:

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a. The petitioner is the defendant in the original suit and respondent in the execution petition. The plaintiff had filed the suit in O.S.No.298 of 2018 for recovery of money and the suit was decreed *ex parte*. The appellant/defendant filed a petition to set aside the *ex parte* decree in the suit and the same is pending. The first respondent/plaintiff initiated execution proceedings in E.P.No. 86 of 2022 for sale of petition mentioned property. Even without proper notice to the petitioner (appellant) and without proper proclamation, the auction was conducted in respect of two items of suit properties worth about nearly four crores and the lowest amount was fixed as upset price. In the auction, the second respondent, who is the benami of the first respondent, purchased the second item of the property for a sum of Rs.45,05,000/- on 08.01.2024 for a very lesser amount.

b. The petitioner took out a petition on 03.11.2023 to stay the auction proceedings, due to the pendency of the petition to set aside the *ex parte* decree. Against the order passed by this Court in C.R.P.(MD)No.370 of 2023 dated 15.02.2023, Review Application

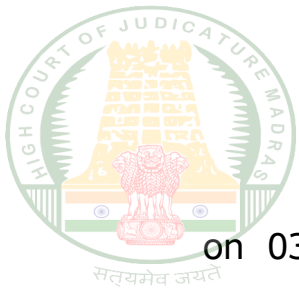


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(MD) No.82120 of 2023 was filed, which was pending before this Court. The petitioner has got good chance to get favourable order in the suit. The auction held on 08.01.2024 is irregular one. Therefore, the application was filed to set aside the auction sale in respect of the first item of property held on 08.01.2024.

5. Per contra, it was contended by the first respondent/plaintiff that the petitioner/defendant filed the counter in E.P.NO.86 of 2022 on 20.04.2023 and the Execution Proceedings was posted for enquiry on 06.06.2023. On the said date, the decree holder was present and the respondent was not present. For hearing the respondent, the matter was posted on 07.06.2023. On that day also, since there was no representation, it was posted on 08.06.2023. On 08.06.2023 also, as there was no representation for the judgment debtor, the Court passed the order to submit the sale paper on 12.06.2023.

6. The petitioner/judgment debtor filed E.A.No.1 of 2023 to reopen the case and E.A.No.2 of 2023 to stay the execution petition and both the petitions were dismissed on 17.07.2023 and



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on 03.11.2023, respectively. The judgment debtor filed various applications in order to delay the execution of the decree. The application taken out by the petitioner is not at all maintainable at this stage and the sale cannot be set aside, merely on the ground that the upset rate price fixed is inadequate.

7. On 08.01.2024, auction was held in respect of the second item of property and it was sold for a sum of Rs.47,05,000/- and the auction purchaser (second respondent) paid the entire sale amount. This petition is filed to deny the decree holder to get the fruits of the decree and to delay the execution process.

8. Further more, in I.A.No.1158 of 2016 in O.S.No.298 of 2018 (petition for attachment before judgment), the properties were ordered to be attached on 26.02.2019. As the appellant/defendant did not file any written statement for a long time, the Trial Court passed an *ex parte* decree on 16.10.2019. I.A.No.1 of 2023 in O.S.No.298 of 2018 was filed after lapse of 3 years and 10 months, on 15.09.2023 with an ulterior motive to drag on the entire execution proceedings. The appellant/defendant, without taking any



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legal steps from the year 2019-2023 to defend the case, now he tries to disturb the decree holder from enjoying the fruits of the decree. Meanwhile, this Court has passed an order in C.R.P. (MD)No.370 of 2023, dated 15.02.2023 to expedite the disposal of E.P.No.86 of 2022 and to dispose of the same on or before 30.11.2023.

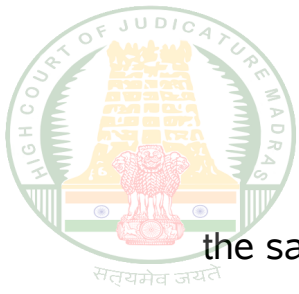
9. On behalf of the auction purchaser/second respondent, it was stated that on 08.01.2024, the auction in respect of the second item was held and among the three persons participated in the auction, as he was the higher bidder for a sum of Rs.47,05,000/-, the auction was confirmed in favour of him. Hence, he deposited $\frac{1}{4}^{\text{th}}$ of sale amount of Rs.11,76,250/- including poundage charge into the Court. $\frac{3}{4}^{\text{th}}$ of the sale amount of Rs.35,28,750/- was deposited by him in the Court on 19.01.2024. A sum of Rs. 3,29,400/- was deposited for purchase of Non-Judicial Stamp Paper. The sale was confirmed on 02.04.2024. There is no material irregularity in conducting the auction sale on 08.01.2024 in E.P.No. 86 of 2022. The second respondent has got absolute right and title over the auction purchased property. This application is vexatious



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and it is abuse of process of law. In O.S.No.298 of 2018, an *ex parte* decree was passed on 16.10.2019. After three years, the decree holder filed the execution proceedings in E.P.No.86 of 2022 on 06.04.2022. On notice, the appellant/defendant/judgment debtor filed his counter on 20.04.2023, after five months. On 15.09.2023, the appellant/defendant/judgment debtor moved an application to set aside the *ex parte* decree, after a period of 3 years 10 months and 27 days to drag the E.P. proceedings.

10. On thorough perusal of the auction proceedings, it is pellucid that after hearing, it was posted for filing of sale paper. The upset price was fixed based upon the market value fixed by the Nazarat section. It also appears that on the date of auction sale, among three persons, it was concluded in favour of the second respondent, who quoted higher sale price. After the auction sale, the second respondent has deposited the amount as per law. As per Section 101 of Indian Evidence Act, 1872, one who pleads to prove. Though the judgment debtor contends that as regards the property worth about Rupees four crores, the price fixed by the Court is so less, no guideline value details are filed to substantiate



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the same.

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11. The application was filed under Section 5 of the Limitation Act, 1963, to condone the delay in filing the petition to set aside the *ex parte* decree, which was dismissed by the Trial Court. Against the said order, the judgment debtor preferred Revision before this Court in C.R.P.(MD) No.771 of 2024. Thereafter, this Court dismissed the said C.R.P. Against which, SLP No.12186 of 2024 was preferred before the Hon'ble Supreme Court, was also dismissed. In view of the same, the judgment and decree passed in O.S.No.298 of 2018 has reached finality. Without substantiate the allegations as mentioned *supra*, mere filing of the petition and raising allegation that the auction sale conducted by the Executing Court is not proper, and the petition details deserves no merits.

12. The abovesaid nature of the petitions and the long time taken by the judgment debtor for filing the applications one after another, would depict the fact that he has intended to protract the execution proceedings and he lacks total *bona fides* and filing of E.A. is sheer abuse of process of law and the appeal is liable to be



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dismissed.

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13. Hon'ble Apex Court, in ***Saheb khan vs. Mohammed Yousufuddin & others*** reported in ***2006 (4) SCC 476 (480)***, as regards the conduction of the auction sale, has held that even if the applicant (judgment debtor) has suffered substantial injury by reason of the sale, that is not sufficient, unless it must have been occasioned by material irregularity or fraud in publishing or conducting the sale.

14. In ***Rajender Singh vs. Ramdhar Singh and others*** reported in ***AIR 2001 SC 2220***, the Hon'ble Supreme Court has held that in the absence of allegation of material irregularity in the conduct of Court auction sale, mere inadequacy of price is not a ground for setting aside the sale.

15. In this case, when the terms of sale proclamation was settled, the judgment debtor has not raised his little finger and he has not raised objection regarding the material irregularity. In the absence of breach of defined rule of law, the appellant/judgment



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debtor cannot maintain the petition.

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16. Hence, this Court is of the opinion that the orders passed by the Executing Court does not suffer from any perversity or infirmity. Hence, this Court does not find any good reason to disturb the finding of the Executing Court.

17. Based on the abovesaid observations and discussions, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.02.2025
(2/2)

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The VI Additional District Judge,
The VI Additional District Court,
Fast Track Court,
Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J

apd

Pre-delivery order made in
C.M.A.(MD) No.1706 of 2024

26.02.2025
(2/2)