

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 6146 OF 2019****PAUL****....APPELLANT****VERSUS****T. MOHAN AND ANOTHER****....RESPONDENT(S)****J U D G M E N T****Vineet Saran, J.**

The appellant herein is the auction purchaser of the scheduled property measuring 2 acres 43 cents in Village Managiri, Madurai District, Tamil Nadu, which auction has been quashed by the High Court, and hence, this appeal.

2. The brief facts of this case are that the respondent No. 1 – T. Mohan was a guarantor of one Rajendran (who was his son's friend). The said Rajendran had taken a chit for a

sum of Rs. 5,00,000/- (Rupees five lakhs only) from respondent No. 2- Shriram Chits Tamil Nadu Ltd. (for short "Chits Company") for a period of 40 months and had executed a pro-note dated 18.01.2000 for a sum of Rs. 3,37,500/- (Rupees three Lakhs thirty seven thousand five hundred only), for which the respondent No. 1 and his son stood as guarantors, and for that, a collateral security of the scheduled property had been executed. The said Rajendran had paid the first 25 installments out of 40 and thereafter failed to pay the remaining installments. A notice was issued to the said Rajendran requiring him to pay the remaining amount of Rs. 1,84,840/- (Rupees one lakh eighty four thousand eight hundred forty only) along with interest @ 24%, which he failed to pay. The respondent No. 2 -Chits Company, thus filed a petition under Section 64 (1)(A) of Indian Chit Funds Act, 1982 before the Deputy Registrar of Chits, Madurai South, in which an ex-parte Award dated 21.1.2002 was passed and the respondent No. 1 was directed to pay a sum of Rs. 1,95,631/- (Rupees one lakh ninety five thousand six hundred thirty one only) to the

respondent No. 2-Chits Company. Respondent No. 1 claimed that he was not aware of the ex-parte award.

3. The respondent No. 2 -Chits Company filed Execution Petition No. 21 of 2003 before the Ist Additional Subordinate Judge, Madurai for execution of the ex-parte Award.

4. On receipt of the notice of the execution proceedings, the son of respondent No. 1 started to repay the due amount in instalments. However, in the meantime, the suit property was auctioned on 01.03.2010, in which the appellant was the highest bidder, for an amount of Rs. 1,77,000/- (rupees one lakh seventy seven thousand only) and the same was confirmed on 04.03.2010, after the appellant had deposited the said amount. On coming to know of the said facts, the son of respondent No. 1 approached the respondent No. 2-Chits Company and repaid the entire amount. On 10.3.2010, respondent No. 1 preferred Revision being Executing Application No. 208 of 2010 under Order XXI Rule 89 and Section 151 of Code of Civil Procedure, 1908 (CPC) for setting-aside the auction of the suit property. It is note-worthy that during the

pendency of the said application, respondent No. 2- Chits Company had issued a no-dues certificate, as the entire dues had been cleared by the respondent No. 1, which facts was brought to the knowledge of the Executing Court.

5. The matter was kept pending, without any progress, for nearly four years and in the meantime, respondent No. 1 had sold the suit property to a third party on 12.09.2011. It was, thereafter that on 01.04.2014, the Revision filed by the respondent No. 1 was dismissed and sale certificate was issued in the name of auction purchaser – appellant on 21.7.2014. Based on the same, the appellant-auction purchaser made an attempt to take the possession of the property, which was objected to by the third party purchaser and on the complaint of the third party purchaser, the respondent No. 1 and his family members were arrested and later released on bail. The respondent No. 1 contends that it was only after he was released on bail that he came to know of the dismissal of his Revision and after obtaining the certified copy of the order, he preferred Civil Revision Petition before the High Court,

which has been allowed by a detailed judgment dated 02.08.2018, the operative portion of which is extracted hereinbelow:

“In the Result:

- (a) This Civil Revision Petition is allowed and the impugned order in EA No. 208 of 2010 in E.P. No. 21 of 2003 dated 1.3.2014, on the file of the learned Ist Additional Subordinate Judge, Madurai is set-aside and the auction sale dated 04.03.2010 is also set-aside.
- (b) The revision petitioner/guarantor is hereby directed to deposit the entire auction sale amount of Rs. 1,77,000/- along with the interest at the rate of 9% per annum from the date of auction i.e. on 04.03.2010 till the date of deposit, before the Executing Court namely; the learned Ist Additional Subordinate Judge, Madurai, within a period of two weeks from the date of receipt of a copy of this order;
- (c) The 2nd respondent/auction purchaser shall be entitled to claim the amount by making necessary application before the Executing Court;
- (d) The Executing Court namely; the learned Ist Additional Subordinate Court, Madurai is directed to pass orders for proclamation informing the concerned Registrar of Registration Department for making necessary entry to this effect and further cancel the entry regarding the sale certificate dated 21.7.2014 issued in favour of 2nd respondent/auction purchaser;

- (e) The Executing Court is directed to complete the said exercise within a period of two weeks from the date of deposit of the amount by revision petitioner as directed in clause (b);
- (f) The revision petitioner is entitled to make necessary application before the executing court seeking refund of the amount deposited by the 2nd respondent/auction purchaser, pursuant to the auction held on 04.03.2010, which application shall be decided by the Executing Court after giving notice and sufficient opportunity to the 1st respondent chits, which exercise shall be completed within a period of two months from the date of such application. No costs. Consequently, connected miscellaneous petition is closed.”

6. The specific case of respondent No. 1 before the High Court was that the petition filed by the respondent No. 2- Chits Company before the Deputy Registrar of Chits, Madurai South was itself not maintainable, as no prior notice was issued to the respondent No. 1. It was also contended that straightaway upset price fixed as Rs. 1,77,000/- was very much lower than the guidelines contemplated under CPC and those issued by this Court. It was further contended that respondent No. 1 was merely the guarantor of one Rajendran and the Deputy Registrar of

Chits should have first considered recovering the amount from the said Rajendran before proceeding against the respondent No. 1. The specific case of respondent No. 1 was that he had paid the entire amount within a week of the auction and obtained the no-due certificate from respondent No. 2 -Chits Company, of which the Executing Court did not take notice and the matter was kept pending for nearly four years. With regard to dismissal of his Revision by the Ist Additional Subordinate Judge on the ground that the provisions of Order XXI Rule 89 CPC were not complied with, it was contended that the application preferred by respondent No. 1 to set-aside the auction was also filed under Section 151 CPC and since the entire amount had already been paid by the respondent No. 1 to the respondent No. 2-Chits Company, which had also issued a no-due certificate, there was no necessity to deposit the auction amount along with 5% interest as required under Order XXI Rule 89 CPC.

7. The main contention of the appellant before the High Court was that the Revision of respondent No. 1 was rightly

dismissed by the Revisional Court for non-compliance of the provisions of Order XXI Rule 89 CPC and as such, the auction was rightly held and confirmed.

8. The High Court took notice of the said contentions of both the parties and was of the opinion that *“before applying the legal provisions and testing their applicability, the Court has to look into the facts and circumstances of that particular case”*. The High Court noted that the respondent No. 1 was merely a guarantor and not a borrower and that the entire due amount was deposited by respondent No. 1 with the respondent No. 2 – Chits Company, for which no-dues certificate was also issued, of which due information was given to the Execution Court, which had not been considered. Thus, since the Revision had been filed within less than a week of the auction and entire dues had been settled, the confirmation of the auction was not justified.

The High Court further held that the application had been filed also under Section 151 CPC and the inherent powers ought to have been invoked in the facts of

the present case, as the entire amount due had been paid and the respondent No. 1 was merely a guarantor, and not the borrower. After noticing that the right to property is a constitutional right, which could not be infringed in the manner as has been done in the present case, the High Court allowed the Civil Revision Petition. The High Court further held that the present case was that of a real fraud committed by the borrower, and the guarantor had lost his property and was knocking the doors of the High Court to save his right to hold the suit property. The High Court noticed that there would be substantial injury caused to the respondent No. 1-guarantor, if his property was allowed to be taken away. It was, in such facts and circumstances of this case, that the Civil Revision Petition was allowed with the directions, as have been quoted hereinabove.

9. The submission of the appellant herein is primarily based on the Revision of respondent No. 1 having been dismissed by the Revisional Court on the ground of non-compliance of Order XXI Rule 89 CPC. In our view, the said question has been dealt with by the High Court in detail and

in the peculiar facts and circumstances of this case, we are of the opinion that the view taken by the High Court is not such, which would call for interference under Article 136 of the Constitution of India, as in our view, substantial justice between the parties has already been done. Without laying down any law with regard to the issue relating to the application or non-compliance of Rule XXI Order 89 CPC, in the peculiar facts and circumstances of this case, we are not inclined to interfere with the view taken by the High Court. Accordingly, this Civil Appeal stands dismissed. The question of law is kept open.

No order as to costs.

.....**J.**
[UDAY UMESH LALIT]

.....**J.**
[VINEET SARAN]

NEW DELHI;
APRIL 24, 2020.