IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE AT SALEM
PRESENT: Thiru. A. M. Ravi, B.A., B.L.,
II Additional District Judge, Salem.

Tuesday, the 26th day of July 2022

R.E.P.No. 26 /2011
in
O.S. 53 /2004

The Fedaral Bank Limited,
Salem.
Rep by its. Branch Manager,
Salem. … Petitioner/ Decree Holder

/Vs/

1. Ashtalakshmi
2. Arunagiri
3. Anandayee
4. Kannammal
5. Gnanavalli
6. Jayakumar
7. Mageshkumar Forwal . . . Respondents/ Judgment Debtors

This petition came up before me on 12.07.2022 for final hearing in the presence of Thiru. S. Balasubramanian, Advocate for Petitioner, of Thiru. J. Ferozz Advocate for the Respondents No. 1, 2, 4, 5, 6 and 7 and the petition against R3 dismissed as abated. On hearing both side arguments, and upon perusing the entire records and matter having stood over for considering till this day, this Court delivered the following :

ORDER

The Petitioner / Decree Holder filed the Execution Petition under Order XXI Rule 11 of C.P.C. to sell the petition mentioned immovable property of the Respondents / Judgment Debtors.

2. The Summary of the averments in the petition filed by the Petitioner / Decree holder is as follows:-

The Petitioner / Decree holder obtained the decree before this Court. The Preliminary decree passed on 16.08.2006 and final decree passed on 03.07.2006. There is no appeal against the said decree. After the decree the Respondents / Judgment Debtor not come forward to pay the award amount with interest. Hence the Petitioner / Decree holder filed this petition to attach and sell the petition mentioned property of the Respondents / Judgment Debtors for the purpose of realization of the award amount with interest.

3. The Summary of the averments in the counter statements filed by the 3rd Respondent adopted by the other Respondents is as follows:-

The Respondent submit that the Petitioner / Decree holder kept silent from 16.08.2004 and he filed the present E.P. by giving the false statement of accounts and charged the interest very high. 15 days before this filing of counter the Decree holder called the Respondents to come to an amicable settlement and the Respondent also went to the Petitioner's bank and there was a negotiation between them and the Respondent / Judgment Debtor have asked the Petitioner / Decree holder bank to waive the interest and also to deduct the loan amount and the Petitioner / Decree holder told that he will have the discussions with their higher officials and asked to meet him by 2nd week of March. There are possibility for the settlement of the entire proceedings. Therefore the Respondents prayed for dismiss the petition.

4. Pending the E.P. the 3rd Respondent died. Steps not taken. Hence the E.P. against the 3rd Respondent was dismissed as default. Other Respondents 4 and 5 are adopted the counter filed by the 2nd Respondent.

5. Both side no oral and documentary evidence produced.

6. Both sides arguments heard.

7. The Point for consideration in this petition is that Whether this petition is deserved to be allowed or not?

8. The Petitioner / Decree Holder submitted that they obtained the Preliminary decree in O.S.53/2004 in his favour on 16.08.2004 and subsequently a final Decree passed on 03.07.2006 and there is no appeal is pending against the final decree as on date. As per the final decree to realize the decree amount with cost the Petitioner filed this application to sell the immovable property of the Respondents / Judgment Debtors for the purpose of realization of the decree amount with cost. The Judgment Debtors objection in their counter is that in the execution application giving the false statement of accounts and charged the interest very high and they are not come forward to amicable settlement and pray for dismiss the E.P.

9. Considering the objection raised by the Respondent / Judgment Debtor they have not specifically stated that how the decree holder filed a false statement of accounts what are the actual statement are not mentioned / stated by the Respondents / Judgment Debtors. The Respondents / Judgment Debtor side neither adduced any oral evidence or produce any document to prove their contention. Further more the Petitioner / Decree holder is a bank and they charged very high interest is not accepted, since as per the RBI rules the Banks are claiming interest. Considering the facts and circumstances this Court comes to the conclusion is that to enjoy the fruits of the decree and interest of justice this petition is allowed.

10. In the result:-

This petition is allowed. Sale papers by 07.09.2022.

The order dictated to Steno-typist, transcribed by her, corrected and pronounced by me in the open Court, the 26th day of July 2022.

A M RAVI

Digitally signed by A M RAVI
Date: 2022.07.28 15:35:04 +0530

II Additional District Judge,
Salem.

APPENDIX :

List of Petitioner side witnesses : NIL

List of Petitioner side Documents : NIL

List of Respondent side witnesses : NIL

List of Respondent side Documents : NIL

A M RAVI
Digitally signed by A M RAVI
Date: 2022.07.28 15:34:41 +0530

II Additional District Judge,
Salem.

II ADJ. COURT, SALEM

FAIR ORDER
in
R.E.P.No. 26 / 2011

DATED : 26.07.2022
