BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.07.2018

Pronounced on : 24.07.2018

CORAM
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN
C.R.P.(PD)(MD)No.84 of 2018
and
CMP(MD)No.356 of 2018

G.V.Krishnan .. Petitioner

vs.

1.Indian Overseas Bank,
Represented by its Senior Regional Manager,
Regional Office,
131, East Car Street,
Tirunelveli.

2.The General Manager (Administration),
Indian Overseas Bank,
No.763, Anna Salai,
Chennai - 600 002.

3.The Executive Director,
Indian Overseas Bank,
No.763, Anna Salai,
Chennai - 600 002. ... Respondents

(Respondents 2 and 3 are suo motu impleaded
as party respondents, vide Court order
dated 17.04.2018 made in CRP(MD)No.84/2018)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 03.01.2018 made in I.A.No.271 of 2017 in O.S.No.54 of 2011 on the file of First Additional District Judge,Tirunelveli.

For Petitioner : Mrs.N.Krishnaveni, Senior Counsel
for Mr.P.Thiyagarajan

For Respondents : Mr.N.Dilip Kumar

O R D E R

The above Civil Revision Petition has been filed under Article 227 of Constitution of India, challenging the order dated 03.01.2018 made in I.A.No.271 of 2017 in O.S.No.54 of 2011 on the file of the learned First Additional District Judge, Tirunelveli, dismissing the petition for amendment of plaint filed under Order VI Rule 17 of C.P.C.

2.Pending the above civil revision petition, the learned counsel for the petitioner filed a memo dated 08.07.2018 stating that during the pendency of the above civil revision petition, the petitioner tried to settle the matter by offering enhanced sale consideration to the respondent bank, but the same was not accepted and they have stated that a fresh auction will be conducted for the sale of the suit schedule property. Considering the time that will be taken for the disposal of the suit and further proceedings, the revision petitioner has decided to settle the issue which is the subject matter of the suit in O.S.No.54 of 2011 pending before the learned First Additional District Judge, Tirunelveli and to participate in the proposed fresh e-auction to be conducted by the first respondent bank for the sale of the suit schedule property.

3.Further it is stated in the memo that before filing the suit for specific performance, the revision petitioner has paid a sum of Rs.13 lakhs on 29.09.2004 and another Rs.50 lakhs on 30.05.2007 totaling a sum of Rs.63 lakhs and the same is lying with the first respondent bank and the learned Senior Counsel appearing for the civil revision petitioner sought direction from this Honourable High Court to refund the said amount with suitable interest.

4.Further in the memo filed by the revision petitioner it has been stated that pursuant to the order of this Honourable High Court dated 17.01.2018 made in the above civil revision petition, a sum of Rs.4.60 Crores had been deposited into the Indian Bank, High Court Branch, Madurai in a term deposit so as to prove the bonafide of the revision petitioner and the same is lying with the bank and as the revision petitioner decided to settle the issue amicably a suitable direction may be passed to get back the said sum of Rs.4.6 Crores which is lying in the term deposit at Indian Bank, High Court Branch, Madurai with the accrued interest and the learned Senior Counsel appearing for the petitioner prayed for a suitable direction.

5.I heard Mrs.N.Krishnaveni, learned Senior Counsel for Mr.P.Thiyagarajan, learned counsel for the petitioner and Mr.N.Dilip Kumar, learned counsel for the respondents and perused the entire materials available on record.

6.When the civil revision petition was taken up for hearing on 17.07.2018 the first respondent bank filed an additional affidavit admitting the fact that the sum of Rs.63 lakhs was lying with them and on 29.06.2018 transferred to Reserve Bank of India and they are ready to take necessary action to make the payment of Rs.63 lakhs as and when demanded by the revision petitioner. However, for the payment of interest for the said sum of Rs.63 lakhs, the first respondent bank took a stand that they are not liable to pay any interest to the said sum for the reason narrated in the said additional affidavit. However I am not able to accept the said contention of the first respondent bank for the simple reason that the first respondent bank doing banking business is not expected to keep the huge amount without making use of it in their banking business keeping idle. Further the said huge sum of Rs.63 lakhs has been retained for more than 10 years by the first respondent bank and now taken a stand that they are not liable to pay any interest for the said amount retained by them is not legally sustainable.

7.It is stated by the respondent that Reserve Bank of India regulations speaks only payment of interest to the unclaimed deposits/inoperative accounts in the banks. And there is no mention about the unclaimed demand draft of bankers cheque. This contention of the respondent cannot be accepted. The Reserve Bank of India regulation does not mention that interest is not payable to the unclaimed draft or bankers cheque. Only because it is silent about the payable of interest to unclaimed demand draft or bankers cheque, it cannot be presumed that interest is not payable. it is seen from the counter statement filed by the respondent that only on 29.06.2018, the said sum of Rs.63 lakhs has been transferred to RBI, that too when the Civil Revision Petition is pending. When the validity of the cheque /demand draft is only for 6 months during relevant period, the contention of the respondent the amount is kept as reserve cash for payment of the unclaimed DD/cheque cannot be accepted. At least when the suit is filed the respondent could have deposited the same in the suit instead retaining the same in the non interest bearing head. No further action taken to pay the amount back to the petitioner but transferring the amount only on 29.06.2018 when the Civil Revision Petition is pending shows the malafide intention of the Bank to drag the petitioner for his amount. In whatever head the amount is retained by the bank, the fact remains that the amount is with the bank and the same is utilized by them and retaining the amount under non interest bearing account is only on paper and not on reality.

8.Further the bank entrusted with the money of public are in the position of a bailey and they have to function with care and caution that is expected of a bailey in taking care of the funds given to them. They cannot simply say that since the revision petitioner failed to encash the bankers cheque issued to him or Reserve Bank of India guidelines has not specified any interest payable, he is not entitled for any interest. In my considered opinion, the denial of such interest for which the revision petitioner is legitimately entitled to is not just and proper. Moreover the bank also had the benefit of enjoyment and therefore I am inclined to direct the first respondent bank to refund the said sum of Rs.63 lakhs with annual compounding interest at the rate of 8% per annum for the amount Rs.13 lakhs from 29.04.2004 and for the remaining amount of Rs.50 lakhs from 30.05.2007 till the date of payment and I hereby direct the first respondent bank to refund the said sum of Rs.63 lakhs with the accrued interest at the rate stated supra to the civil revision petitioner within four weeks from the date of receipt of copy of this Order.

9.Since the learned Senior Counsel appearing for the revision petitioner submitted before this Court that the revision petitioner decided to settle the issue by withdrawing the suit and participating in the ensuing e-auction to be conducted by the first respondent bank for the sale of suit schedule property and requested to grant permission to foreclose the term deposit, deposited by the revision petitioner pursuant to the order of this Honourable Court dated 14.02.2018 lying with the Indian Bank High Court Branch, Madurai. The respondent also have no objection for the petioner to fore close the deposit and take his money back. As the dispute is about to be settled, there is no necessity for keeping the deposit made as per the order of this Honourable High Court and therefore, I hereby permit the revision petitioner to foreclose the term deposit for the sum of Rs.4.6 Crores vide deposit receipt No.0930809 dated 13.02.2018 with accrued interest from Indian Bank High Court, Madurai Branch and receive the money from the bank.

10.Further as stated supra with regard to the intention of the revision petitioner to amicably settle the dispute and to participate in the subsequent e.auction to be conducted by the first respondent bank for the sale of the suit schedule property, I am of considered view that instead of directing the civil revision petitioner to approach the trial Court so as to effect the proposed settlement exercising supervisory jurisdiction of this Honourable High Court under Article 227 of Constitution of India, I record the submission of the learned Senior Counsel appearing for the revision petitioner that the revision petitioner is willing to settle the dispute before the Lok Adalath and I hereby direct the learned First Additional District Judge, Tirunelveli to refer the matter to the forthcoming Lok Adalath under the provisions of Section 89 of Civil Procedure Code.

11.With the above directions, the above Civil Revision Petition is disposed off. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar (CS-II)

To

1.The 1st Additional District Judge,
Tirunelveli.

2.Indian Overseas Bank,
Represented by its Senior Regional Manager,
Regional Office,
131, East Car Street,
Tirunelveli.

3.The General Manager (Administration),
Indian Overseas Bank,
No.763, Anna Salai,
Chennai - 600 002.

4.The Executive Director,
Indian Overseas Bank,
No.763, Anna Salai,
Chennai - 600 002.

+1cc to Mr.P.Thiagarajan, Advocate, SR.No. 74657
+1cc to Mr.N.Dilip Kumar, Advocate, SR.No.74869

C.R.P.(PD)(MD)No.84 of 2018 and
CMP(MD)No.356 of 2018
24.07.2018

VSV
KK/RP/SAR-2/26.07.2018/5P-7C/