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CRP (PD) No. 2744 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2744 of 2021

and

CMP No.20033 of 2021

R.Sudarshan

... Respondent/Defendant/Petitioner

Vs

Indian Overseas Bank
Represented by its Branch Manager
Kangayam Branch
Kangayam Taluk
Tiruppur.

... Petitioner/Plaintiff/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.02.2021 made in I.A.No. 170 of 2020 in O.S.No. 501 of 2019 on the file of the III Additional District and Sessions Judge, Tiruppur and prays to set aside the same.

For Petitioner : Mr. P.Muthukumaarasaamy

ORDER



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Challenge in this Civil Revision Petition is to the order of the learned III Additional District and Sessions Judge, Dharapuram made in I.A.No. 170 of 2020, an application seeking to recall the order dated 04.02.2020 made in O.S.No. 501 of 2019.

2. The suit in O.S.No. 501 of 2019 was filed by the bank seeking recovery of money. During the pendency of the suit, the respondent/Bank proceeded under the SARFESI Act and sold the property of the petitioner. Since the money due were realised in the auction held under the SARFESI Act, the Authorised Officer of the Bank wrote to his counsel requesting him to withdraw the suit since the property has been sold under the SARFESI Act and the monies have been realised. Unfortunately, the counsel filed a memo stating that the suit may be dismissed as settled out of Court and sought for refund of the Court fees. This memo was signed by the Authorised Officer of the Bank also. Thereafter, the petitioner, upon a very novel advise, filed a suit in O.S.No. 137 of 2020 seeking return of the documents from the Bank on the ground that the suit has been dismissed as settled out of Court. Only upon service on notice in the suit did the Bank



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realise the mistake. The realisation resulted in filing of the application in

WEB COPY I.A.No. 170 of 2020 seeking recall of the order dated 04.02.2020.

3. In the affidavit filed in support of the application, it was clearly stated that since the money was realised through the auction under the SARFESI Act, even in December 2019, the Bank addressed the counsel on 10.01.2020, asking him to withdraw the suit since the property has been sold under the SARFESI Act. Unfortunately, the counsel has mistakenly filed a memo stating that the suit has been settled out of Court. That application was opposed tooth and nail on the ground that the sale was done without the prior permission of the Court and that the proceedings under the SARFESI Act were not disclosed.

4. It was also claimed that the memo informing the Court that the suit has been settled out of Court was signed by the Authorised Officer of the Bank also. Fortunately, the learned District Judge, saw through the game and held that the dismissal of the suit on the ground that it is settled out of Court was due to a mistake and recalled the order.

5. Mr. P.Muthukumaarasaamy, learned counsel appearing for the



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petitioner would vehemently contend that the Court should not have recalled its order since the memo reporting settlement out of Court was signed by the Authorised Officer of the Bank also.

6. I am unable to agree with the learned counsel.

7. The learned Trial Court, namely, the III Additional District and Sessions Judge, Tiruppur had recorded that the letter dated 10.01.2020 addressed by the Bank to its counsel clearly states that the property of the petitioner in this Revision has been sold in e-auction conducted under the SARFESI Act and the monies have been realised and therefore, the counsel was advised to withdraw the suit on the ground that the debt stood discharged. Probably in order to invoke Section 69 of the Tamilnadu Court Fees and Suit Valuation Act, the learned counsel chose to file a memo stating that the matter has been settled out of Court. I therefore, have no hesitation in upholding the order of the learned III Additional District and Sessions Judge, Dharapuram. Hence, this Civil Revision Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous



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Petition is closed. No costs.

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vs

Index: Yes/No

Speaking order / Non speaking order

To:

1. III Additional City Civil Court,
Tiruppur.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

Vsg

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