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Arb.Appln. No.115 of 2022

in

A.No.4169 of 2018

SENTHILKUMAR RAMAMOORTHY, J

The lender/financial institution has presented this application for payment out of a sum of Rs.90,000/- standing to the credit of A.No.4169 of 2018.

2. The applicant had sanctioned credit facilities to the first and second respondents herein. Upon default in discharging obligations thereunder, the applicant filed A.No.4169 of 2018 against the borrowers and the third respondent/garnishee. Pursuant to orders passed in the said application, the salary of the second respondent was attached and paid into court. Subsequently, pursuant to negotiations between the parties, a settlement was reached in terms of which the amounts lying in court deposit would be paid to the applicant for discharging the dues.

3. Learned counsel for the applicant relies upon a communication dated 06.01.2021 from the second respondent stating that the second respondent has no objection to the applicant filing an appropriate application for payment out of the amount lying in court deposit.



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4. Notice was issued in this application. The applicant has filed an affidavit of service enclosing the two returned postal covers with the endorsement 'unclaimed'. In these circumstances, there is no impediment to proceed with this application in the absence of the respondents.

5. Prior to filing this application, the applicant had filed A. No.18 of 2021 to raise the prohibitory order dated 29.08.2019 and A. No.19 of 2021 for payment out of a sum of Rs.54,000/-, which was then lying to the credit of A.No.4169 of 2018. The present application is filed because a sum of Rs.90,000/- has accrued thereafter to the credit of A.No.4169 of 2018.

6. The certificate of funds establishes that the sum of Rs.90,000/- is lying to the credit of A.No.4169 of 2018. The letter dated 06.01.2021 from the second respondent states expressly as under:

“I state that pursuant to the order settlement negotiations took place between the parties and accordingly I have still some due to be paid. I state that amount lying in the court deposit is sufficient to meet the dues under the loan agreement. I state that the garnishee has deposited the amount to the credit of the application.

I state the under such circumstances I



request you to take out necessary application before the Hon'ble High Court Madras for payment out of the amount lying in court deposit in favour of M/s.Cholamandalam Investment & Finance Company Limited and appropriate the same towards the dues under the loan agreement and refund the excess amount if any remaining after satisfying the outstanding under the agreement. I hereby express no objection to payment out application to be filed by M/s Cholamandalam Investment & Finance Company Limited.”

In spite of issuance of notice, the respondents refused to receive the same.

In these circumstances, this application is liable to be allowed as prayed for.

7. Accordingly, this application is allowed and it is directed that subject to deductions, if any, the sum of Rs.90,000/- standing to the credit of A.No.4169 of 2018 be paid to the applicant by issuing a cheque in favour of the applicant. Such cheque shall be handed over to an authorized representative of the applicant.

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10.10.2022



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