



C.S.(Comm.Div)No.639 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Judgment reserved on	19.04.2022
Judgment pronounced on	09.06.2022

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Civil Suit(Comm.Div) No.639 of 2018

1.M/s.Reactive Chemicals and Solvents,
A firm represented by its Managing Partner,
Mr.G.Deenadayalu,
GA-2, Arul and Chola Apartments,
Ganga Nagar, Jafferkhanpet,
Chennai-600 083.

2.G.Deenadayalu,
Son of K.Govindaswamy

3.Kalaiaarasi
Wife of G.Deenadayalu

... Plaintiffs

vs.

1.Indian Overseas Bank,
Represented by its Senior Manager,
SSI Guindy Branch,
10, GST Road, Guindy,
Chennai-600 032.

2. Authorized Officer,
Indian Overseas Bank (Regional Office),
763, Anna Salai,
Chennai-600 002.

... Defendants



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The suit has been filed under Order VII Rule 1 of the Code of Civil Procedure 1908, as amended by Act 4 of 2016 read with Order IV Rule 1 of the Original Side Rules praying to pass a judgment and decree that (a) directing the defendant to pay a sum of Rs.1,39,93,779/- with interest at 18% per annum compounded monthly from the date of filing plaint till the date of payment; (b) The amount of Rs.92,36,568/- with interest of 9% per annum compounded annually from the date of filing the plaint till the date of payment; (c) the amount of Rs.87,61,521.06 with interest at 18% per annum compounded monthly from the date of filing the plaint till the date of payment (d) to direct that the costs of the suit, as taxed, be tendered to the plaintiff by the defendant.

For Plaintiffs : Mr.Vineet Subramani

For Defendants : Mr. K.K.Siva Shanmugam

JUDGMENT

The suit was filed by a partnership firm-borrower (the first plaintiff) and its two partners (the second and third plaintiffs) seeking to recover from the lender - the Indian Overseas Bank (the Bank): (a) the sum of Rs.1,39,93,779/- (towards amounts pre-deposited plus interest) with



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interest thereon at 18% per annum compounded on a monthly basis from the date of filing the plaint till the date of payment; (b) the sum of Rs.92,36,568/- (towards surplus sale proceeds plus interest) with interest thereon at 9% per annum compounded annually from the date of filing the plaint till the date of payment; and (c) the sum of Rs.87,61,521.06 (towards alleged excess interest appropriation plus interest) with interest thereon at 18% per annum compounded monthly from the date of filing the plaint till the date of payment.

2. The plaintiffs availed credit facilities from the Bank by creating a mortgage on an immovable property situated at T.S.No.138, Thiru Vi Ka Industrial Estate, Guindy, Chennai 600 032, ad-measuring an extent of 2421 sq.ft. On account of default in discharging the loan, the Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act).

3. By resorting to the procedure prescribed by the SARFAESI Act, the mortgaged property was brought to sale by the Bank and a sum of Rs.60,20,000/- was realised. According to the plaintiffs, the amount due and



payable by the plaintiffs towards discharge of the loan was a sum of Rs.28,01,850/- as on the date of auction sale. Therefore, after deducting the amount due and payable by the plaintiffs from the sale proceeds, a sum of Rs.32,18,150/- was available as surplus. The plaintiffs stated that the Bank was directed to refund the surplus amount to the plaintiffs by the Hon'ble Debts Recovery Tribunal II, Chennai (the DRT-II), in S.A.No.181 of 2007, by order dated 10.03.2010, and, by the Hon'ble Debts Recovery Appellate Tribunal, Chennai (the DRAT), in RA (SA) No.153 of 2010, by order dated 16.11.2012, and subsequently by the Hon'ble Supreme Court in S.L.P.(Criminal) No.3159 of 2015 on 23.02.2017. Since the surplus sale proceeds were not refunded as directed, the plaintiffs asserted that they are entitled to interest compounded annually at 9% per annum on the principal amount. The plaintiffs stated that they have computed interest on the same terms as were applied by the Bank in respect of the facilities availed of by the plaintiffs. Thus, by way of surplus sale proceeds, the plaintiffs claimed a sum of Rs.92,32,568/-, comprising Rs.32,18,150/- as principal and Rs.60,18,418/- as interest and further interest thereon from the date of plaint until realisation.



4. By way of pre-deposit in relation to the appeal filed by the plaintiffs before the DRAT, the plaintiffs were called upon, by order dated 07.05.2010, to deposit a sum of Rs.32,13,000/- in an interest bearing “no lien account” until the disposal of the appeal. When the appeal was dismissed, a direction was issued to the Bank to take appropriate action in relation to the pre-deposit. The plaintiffs alleged that the Bank made no effort to return the pre-deposit amount of Rs.32,13,000/-. Therefore, the plaintiffs state that the Bank is liable to pay the sum of Rs.32,13,000/- with interest at 18% per annum compounded on a monthly basis from 07.05.2010. The plaintiffs stated that they have computed interest thereon on the same terms as were applied by the Bank in respect of the facilities availed of by the plaintiffs, and that this aggregates to a sum of Rs.1,39,93,779/-, comprising Rs.32,13,000/- as principal and Rs.1,07,80,779/- as interest.

5. After filing the suit, upon receipt of the statement of account in respect of the loan account, the plaintiffs further stated that they discovered that the Bank had charged interest even after the date of auction of the property. In specific, the plaintiffs stated that the Bank wrongly charged



interest from 12.10.2006 until 31.03.2009 at the rate of 18% p.a.

compounded monthly. Consequently, the plaintiffs stated that an additional sum of Rs.10,57,795/- was charged. By computing interest on this sum at the rate of 18% p.a. compounded on a monthly basis, by way of an amendment to the plaint, the plaintiffs claimed a further sum of Rs.87,61,521.06. This aggregate sum comprises Rs.10,57,795/- as principal and Rs.77,03,726.06 as interest.

6. The Bank/defendants denied their liability under all three heads of claim. As regards the claim of Rs.32,18,150/- towards surplus sale proceeds, the defendants stated that the auction sale was conducted on 11.10.2006, when, only a sum of Rs.15,05,000/-, representing 25% of the sale consideration, was paid by the purchaser. Although the balance sale consideration of Rs.45,15,000/- was paid on 18.12.2006, the defendants stated that the said amount could not be adjusted against the plaintiffs' loan account because the sale was not confirmed in view of pending legal proceedings. The defendants stated that the plaintiffs initiated proceedings before the DRT II in S.A.No.181 of 2007. Against the order passed in the said proceeding, the plaintiffs filed R.A.(SA) No.153 of 2010 before the



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DRAT. The order passed by the DRAT was challenged by filing

W.P.No.32083 of 2012. The said writ petition was dismissed on 10.07.2013.

The order passed therein was sought to be reviewed by filing Review Application No.184 of 2013, which was dismissed by order dated 13.10.2014. According to the defendants, an application was filed under Section 14 of the SARFAESI Act before the Metropolitan Magistrate Court, Chennai, after the dismissal of the Review Application. Pursuant thereto, physical possession of the property was obtained on 28.02.2015. Thereafter, the sale certificate was issued on 03.03.2015 in favour of the auction purchaser, M/s.Delta Engineers. The defendants stated that the plaintiffs filed a SLP (Civil No.7192 of 2015) against the judgment and order dated 13.05.2014 of this Court in Review Application No.184 of 2013. The said SLP was dismissed by the Hon'ble Supreme Court on 08.11.2016. Another SLP (Criminal) No.315 of 2015 was filed by the plaintiffs against the order and decree dated 05.01.2015 in Crl.M.P.No.8068 of 2014 of the Metropolitan Magistrate Court, Chennai. The said SLP was heard along with SLP (Civil) No. 7192 of 2015. By the order disposing of the SLP, the defendants were directed to credit the excess sale proceeds of Rs.32,00,000/- along with interest at 9% p.a. from 12.10.2006. In



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accordance with the order of the Hon'ble Supreme Court, the defendants stated that an aggregate sum of Rs.66,15,740/- was paid to the plaintiffs under demand draft dated 07.02.2019 towards the surplus sale proceeds along with interest thereon at the rate of 9% p.a. from 12.10.2006 until the date of payment. Therefore, the defendants stated that the claim for the sum of Rs.92,36,568/- comprising the sum of Rs.32,18,150/- as principal and Rs.60,18,418/- as interest is untenable.

7. As regards the claim of Rs.1,39,93,779/-, the defendants stated that the pre-deposit amount of Rs.32,13,000/- was kept in a “no lien deposit” in the first plaintiff's name as directed by the DRAT. Since the deposit was made in the Bank's re-investment deposit scheme, the amount carried interest which was compounded quarterly. The said deposit was periodically renewed without any break until 15.05.2020. The proceeds thereof carried a maturity value of Rs.63,32,934/-, and TDS was deducted thereon and remitted to the Income Tax Department. As per the terms of deposit, the proceeds thereof were paid to the plaintiffs by encashing the deposit prior to the maturity date. Upon payment of the pre-deposit amount along with interest accruals thereon, the defendants stated that the claim for



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Rs.1,39,93,779/- is completely unsustainable. Since the claim for alleged wrongful appropriation of interest was made by way of an amendment, the said claim was not dealt with in the original written statement and the defendants did not file an additional written statement after the amendment application was allowed.

8. Upon considering the pleadings and documents, by order dated 30.09.2019, the Court framed the following issues:

(i) Whether the defendants wrongfully retained the surplus auction sale proceeds beyond 11.10.2006?

(ii) Whether the defendants wrongfully retained the sum of Rs.32,13,000/- being the amount deposited by the plaintiffs with the defendants in connection with AIR 354 of 2010 subsequently numbered as RA(SA) No.153 of 2010?



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(iii) Whether as on 11.10.2006, the plaintiff's loan account had an outstanding balance of only Rs.19,26,539/-?

(iv) Whether the defendants have wrongfully overcharged the plaintiffs to the extent of Rs.10,57,795/-?

(v) Whether the defendants are ready to pay damages to compensate the plaintiffs for loss caused by the defendants to the plaintiffs, including for depriving the plaintiffs of the use of their monies?

(vi) What amount ought the defendants pay damages to compensate the plaintiffs for the loss caused by the defendants to the plaintiffs?

(vii) To what other relief the plaintiffs are entitled?

9. The plaintiffs adduced evidence through Mr.G.Deenadayalu, who was examined as PW1. 8 documents were exhibited through PW1 as



Exs.P1 to P8. PW1 was cross-examined by the defendants. The defendants adduced evidence through Mr.RM.Arunachalam, the Chief Manager of the first defendant, who was examined as DW1. 13 documents were exhibited through DW1. These documents were also marked as Exs.P1 to 13 although they should have been marked as Exs.D1 to D13. DW1 was cross-examined by the plaintiffs. Oral submissions were advanced by Mr.Vineet Subramani, learned counsel for the plaintiffs, and by Mr.K.K.Siva Shanmugam, learned counsel for the defendants.

10. Learned counsel for the plaintiffs submitted that the claim of Rs.92,36,568/- is towards the surplus sale proceeds, which were retained by the defendants unlawfully along with compound interest at the same rate at which the Bank charged interest from the plaintiffs. Learned counsel stated that interest was computed on the principal sum of Rs.32,18,150/- from 12.10.2006, which is the date immediately following the date of auction. Therefore, it was contended that this amount is payable as per the order of the Hon'ble Supreme Court. As regards the claim for a sum of Rs.1,39,93,779/-, learned counsel stated that this sum was arrived at by applying interest at 18% p.a. compounded monthly on the pre-deposit



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amount of Rs.32,13,000/- from 07.05.2010. According to the learned counsel, the pre-deposit was made on 07.05.2010. Therefore, the defendants are liable to pay interest on the pre-deposit from 07.05.2010. On both these interest claims, it is stated that interest has been levied as per Section 34 of the Civil Procedure Code, 1908 (the CPC). As regards the claim for the sum of Rs.87,61,521.06, learned counsel stated that this amount was claimed by making an amendment to the plaint after noticing that the defendants had charged interest up to 31.03.2009, although the auction sale took place on 11.10.2006. Until the plaintiffs received the statement of account in course of the suit, it is stated that the plaintiffs were not aware about the charging of an additional sum of Rs.10,57,795/- by the defendants. By applying interest at 18% p.a. compounded monthly on the sum, the claim of Rs.81,61,521.06 was made. In spite of being provided an opportunity to oppose the amendment or file an additional written statement, learned counsel pointed out that the defendants chose not to do so. Therefore, it was contended that this claim is liable to be allowed.

11. With regard to the preliminary objection on jurisdiction, learned counsel for the plaintiffs contended that the defendants did not plead



lack of jurisdiction. Moreover, it was contended that a civil court has plenary jurisdiction and that such jurisdiction should not be ousted in relation to common law remedies. By contrast, it was contended that the jurisdiction of the DRT and DRAT under special statutes is confined to matters expressly provided by statute, such as enforcement of security interest, and does not extend to matters incidental or consequential thereto. In order to substantiate these contentions, learned counsel for the plaintiffs relied on several judgments, which are discussed later.

12. In response and to the contrary, learned counsel for the defendants made submissions. With regard to the claim of Rs.92,36,568/- towards surplus sale proceeds, learned counsel for the defendants stated that the surplus sale proceeds of Rs.32,18,150/- were refunded to the plaintiffs along with interest at 9% p.a. as per the order of the Hon'ble Supreme Court in Special Leave Petition (Criminal) No.3159 of 2015. After adding interest at 9% p.a., it was stated that a sum of Rs.65,48,473/- was paid to the plaintiffs. Similarly, as regards the pre-deposit of Rs.32,18,150/-, the defendants contended that this amount was deposited in the re-investment deposit scheme, which carried interest compounded with quarterly rests.



Since the deposit was pre-closed before maturity, as per the terms of deposit, the proceeds of the deposit, including interest accruals thereon were paid to the plaintiffs in Court. As regards the claim for a sum of Rs.87,61,521.06 towards alleged excess appropriation towards interest from 12.10.2006 to 31.03.2009, it was submitted that the amount received from the auction purchaser towards sale proceeds could not be adjusted against the loan account of the plaintiffs on account of the pending legal proceedings. By contending that there was no certainty as regards the auction sale until these legal proceedings were terminated, it was pointed out that the sale proceeds could be adjusted only on 24.03.2009. Therefore, it was contended that all the suit claims are liable to be rejected.

13. The defendants further contended that the present suit is not maintainable in view of the prohibition in Section 34 of the SARFAESI Act read with Section 11 of the Commercial Courts Act, 2015. The defendants stated that Section 34 of the SARFAESI Act stipulates that no civil court shall exercise jurisdiction in respect of any matter which a debts recovery tribunal or appellate tribunal is empowered by or under the SARFAESI Act to determine. According to the defendants, all the three suit claims relate to



the loan account of the plaintiffs and the measures taken in relation thereto under the SARFAESI Act. Consequently, the defendants contended that the plaintiffs should have canvassed all grievances before the jurisdictional DRT or DRAT, as the case may be. In support of the above contention, learned counsel for the defendants relied on the judgment of the Supreme Court in *Harshad Chiman Lal Modi v. DLF Universal*, (2005) 7 SCC 791.

14. On perusal of the written statement of the defendants, it appears that the defendants did not plead lack of jurisdiction. Therefore, this Court did not frame an issue on jurisdiction. Notwithstanding the fact that an issue was not framed, in light of Section 34 of the SARFAESI Act read with Section 11 of the Commercial Courts Act, the objection is undoubtedly with regard to subject matter jurisdiction, which, if upheld, is not subject to consent and acquiescence unlike pecuniary or territorial jurisdiction. Therefore, it becomes necessary to examine the question of jurisdiction. Section 34 of the SARFAESI Act is as under:

“34. Civil Court not to have jurisdiction.—No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery



Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

Section 11 of the Commercial Courts Act, 2015 reads as under:

“11. Bar of jurisdiction of Commercial Courts and Commercial Divisions.—
Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.”

15. On reading Section 34 of the SARFAESI Act and Section 11 of the Commercial Courts Act conjointly, the position that emerges is that a commercial court or commercial division is prohibited from entertaining a



suit or proceeding in respect of matters which the jurisdictional DRT or DRAT, as the case may be, is empowered by the SARFAESI Act to determine. The second limb of Section 34 deals with the grant of injunctions and is, therefore, not relevant in relation to the present suit. Section 11 of the Commercial Courts Act prohibits a commercial court or a commercial division from entertaining or deciding any suit, application or proceeding relating to any commercial dispute if the jurisdiction of a civil court is expressly or impliedly barred in respect thereof. Therefore, what remains to be considered is whether the jurisdictional DRT or DRAT is vested with jurisdiction under the SARFAESI Act to determine the matters in respect of which the suit was filed. If so, this Court is prohibited from exercising jurisdiction. If not, this Court is entitled to exercise jurisdiction.

16. *In Mardia Chemicals Limited and Others v. Union of India and Others*, (2004) 4 SCC 311 (**Mardia Chemicals**), the Hon'ble Supreme Court dealt with the scope of the SARFAESI Act and the extent to which the jurisdiction of a civil court is ousted by the SARFAESI Act. After noticing Section 34 of the SARFAESI Act, the Hon'ble Supreme Court concluded, in paragraph 50 of the above report, that the prohibition under



Section 34 covers even matters which can be taken cognizance of by the

DRT though no measures in that direction were taken under sub section (4)

of Section 13. Thereafter, at paragraph 51, the Hon'ble Supreme Court held

as under:

“51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the case of English mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely, V. Narasimhachariar, AIR at pp 141 and 144, a judgment of the learned single Judge where it is observed as follows in paragraph-22:(AIR p 143)

22. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the Court



before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: 'Adams v. Scott, (1859) 7 WR (Eng.) 213 (Z49). I need not point out that this restraint on the exercise of the power of sale will be exercised by Courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely (See Rashbehary Ghose Law of Mortgages, Vol. II, Fourth Edition, page 784)."

17. Thus, **Mardia Chemicals** recognizes that a mortgagor/borrower is entitled to approach the civil court if the proposed auction sale by the lender is fraudulent or irregular. In this case, it cannot be said that the auction sale *per se* was fraudulent or irregular. Instead, the contention of the plaintiffs is that they are entitled to incidental and



consequential remedies such as refund of surplus sale proceeds and refund of amounts pre-deposited. Such remedies are not within the exception carved out in ***Mardia Chemicals***. Learned counsel for the plaintiffs, however, relied upon the following judgments to contend that the jurisdiction of this Court is not ousted under Section 34 of the SARFAESI Act read with Section 11 of the Commercial Courts Act:

(1) *Premier Automobile Ltd. v. Kamlekar Shantaram* (1976) 1 SCC 496 (***Premier Automobile***), wherein, at paragraph 23, the Hon'ble Supreme Court formulated the principles applicable to the jurisdiction of the civil court in relation to industrial disputes. In particular, the Supreme Court held that a civil court may exercise alternative jurisdiction if the dispute is an industrial dispute arising out of a right under common law and not under the special statute.

(2) *Rajasthan SRTC v. Bal Mukund Bairwa* (2009) 4 SCC 299, wherein, at paragraph Nos.12 to 14, 33 and 42, the Hon'ble Supreme Court held that the ouster of the civil court's jurisdiction is not to be readily inferred and that if there is a doubt as to whether a civil court has jurisdiction or not, the court should proceed on the presumption that it has jurisdiction.



(3) *State of Haryana v. Randhir Singh* 1995 Supp (1) SCC 144,

wherein the Hon'ble Supreme Court applied the principle laid down in ***Premier Automobile***.

(4) *Standard Chartered Bank v. Dharminder Bhohi* (2013) 15 SCC 341, wherein, at paragraphs 33, 34, 36 and 38, the Hon'ble Supreme Court took note of Section 34 of the SARFAESI Act and concluded that the jurisdiction of the tribunal is confined to matters which fall within its domain under the special legislation.

(5) *Axis Bank v. SBS Organics (P) Ltd.* (2016) 12 SCC 18 (***SBS Organics***), wherein, at paragraphs 21 to 23, the Hon'ble Supreme Court dealt with the right of a borrower to claim refund from the DRAT of amounts pre-deposited as a condition for entertaining the appeal, and held that such amounts cannot be retained by the bank in exercise of statutory lien under Section 171 of the Indian Contract Act, 1872.

18. The SARFAESI Act is a legislation enacted with a view to enable a bank or financial institution to recover its dues by calling on and enforcing the security interest created in its favour by a borrower or a guarantor. In *Jagdish Singh v. Heeralal*, (2014) 1 SCC 479, the Hon'ble



Supreme Court held categorically that the jurisdictional DRT should be approached in respect of any grievance against any measure under Section 13(4) of the SARFAESI Act. In the present case, the security interest was in the form of immovable property. The said property was brought to sale by initiating measures under Section 13(4) of the SARFAESI Act. Such measures were challenged by the borrowers by initiating proceedings under Section 17 of the SARFAESI Act. Pursuant thereto, the auction sale was conducted under the supervision of the jurisdictional DRT. The second claim in the suit relates to the payment of surplus sale proceeds to the borrowers after adjusting the Bank's dues. As such, this is a matter which is incidental or ancillary to the auction sale process under Section 13(4) of the SARFAESI Act. Therefore, it is a matter which the jurisdictional DRT is authorized to determine while exercising powers under the SARFAESI Act.

19. Turning to the first claim, this claim relates to the amount pre-deposited by the plaintiffs as a pre-condition for the consideration of the appeal presented by the plaintiffs before the DRAT. According to the plaintiffs, the DRAT directed the Bank to initiate appropriate action in relation to such pre-deposit while dismissing the appeal. The alleged non-



compliance with the direction of the DRAT is undoubtedly a matter within the jurisdiction of the DRAT. Indeed, in paragraph 21 of **SBS Organics**, the Supreme Court held that the pre-deposited amount should be directed to be refunded by the DRAT upon termination of the appeal. Therefore, this relief is also within the jurisdiction of the DRAT in exercise of authority under the SARFAESI Act.

20. The third relief relates to alleged excess interest charged by the Bank. As stated earlier, the SARFAESI Act enables a bank to realize its dues by calling on and enforcing the security interest. While enforcing the charge, the Bank is empowered to bring the secured asset to sale and to realize its dues from the sale proceeds. In order to realize the dues from the sale proceeds, it is necessary to crystallize the amount due and payable to the Bank. Only upon determining the amount due and payable to the Bank, is it possible to adjust the said dues from the sale proceeds. The allegation by the plaintiffs is that interest was levied and adjusted beyond the date of auction. The plaintiffs state that the auction took place on 11.10.2006, whereas interest was charged up to 31.03.2009. The entire auction sale process was conducted under the supervision of the DRT upon the filing of



S.A.No.181 of 2007 by the plaintiffs before the DRT. In fact, the plaintiffs had applied for and obtained an interim stay of the auction sale in the said proceedings and in consequential proceedings. Therefore, the amount due and payable to the Bank is a matter within the jurisdiction of the jurisdictional DRT which was seized of the proceeding under Section 17 of the SARFAESI Act. In effect, all the three claims in the suit are matters which are within the jurisdiction of the DRT under the SARFAESI Act. Consequently, Section 34 of the SARFAESI Act read with Section 11 of the Commercial Courts Act is attracted.

21. In view of the above conclusion, it is not necessary to dilate at length on the contentions with regard to the three claims made by the plaintiffs. Nonetheless, since the Court framed seven issues on the merits, a brief discussion is warranted. Issue No.1 deals with the claim for surplus sale proceeds. By way of background, it should be noticed that the Bank endeavoured to refund the surplus sale proceeds on 05.04.2010 (Ex.D11) but the same was refused by the first plaintiff by citing a stay order. Eventually, the defendants paid the plaintiffs the sum of Rs.66,15,740/- in the aggregate, by way of DD No.125972195 on 07.02.2019, towards the



surplus sale proceeds plus interest thereon at 9% p.a. in terms of the order of the Hon'ble Supreme Court dated 08.11.2016. The claim made in the suit is for a sum of Rs. 92,36,568 under the above head by computing compound interest. The plaintiffs contended that compound interest is claimed at the same rate and on the same terms at which the Bank levied interest on them. In *State of Haryana and others v. S.L. Arora and Company (2010) 3 SCC 690 (S.L. Arora)*, the Supreme Court explained the concept of compound interest lucidly as follows:

“10. Compound interest refers to a method of charging interest where interest is computed not only on the principal, but also the accrued interest. For this purpose, periodical rests are provided for computation of interest, say yearly, or quarterly or monthly. At the end of the first “rest”, the interest accrued till then is added to the principal, so that for the second interest-bearing period, the aggregate of the original principal and interest thereon becomes the enhanced principal. At the end of the second “rest”, the accrued interest on the enhanced principal is added to the enhanced principal so that such further enhanced principal becomes the principal for charging the interest for the third period. It goes on in this manner until repayment, by



progressively enlarging the principal base by adding interest at regular intervals. As a result, the debtor is made to pay interest not only on the original principal, but on the interest on the principal, and on the interest upon the interest on the principal and so on.”

Thereafter, on entitlement to compound interest, it was held as under:

“ 12. Compound interest can be awarded only if there is a specific contract or authority under a statute, for compounding of interest. There is no general discretion in courts or tribunals to award compound interest or interest upon interest.”

Although *S.L.Arora* was overruled partly in *Hyder Consulting (UK) Limited v. Governor, State of Orissa (2015) 2 SCC 189*, the overruling was limited to the interpretation of S.31(7)(a) of the Arbitration and Conciliation Act, 1996, and did not extend to the principle laid down in paragraph 12 of *S.L.Arora*.

22.The plaintiffs claim compound interest both on the basis that the Bank levied compound interest and by relying on Section 34 CPC. Therefore, the plaintiffs clearly do not rely on contract. Section 34 CPC, in relevant part, is as under:



"34. Interest.—(1) *Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:*

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions."

On examining Section 34 CPC, it is evident that it provides for interest at a rate considered reasonable by the Court. Even the proviso thereto, which



was relied on strongly by the plaintiff, enables the Court to award further interest for the post-decree period at the rate at which nationalized banks lend in commercial transactions but does not provide for award of compound interest. To put it differently, the scope of the proviso is limited to interest in the post-decree period and, in any event, does not authorise the court to award compound interest. Hence, the plaintiffs' claim for compound interest is neither supported by contract nor by any statute. Hence, as instructed by **S.L. Arora**, compound interest cannot be awarded.

23. Issue No.2 deals with the claim for the pre-deposit amount. Once again, this claim is for the principal with compound interest thereon. The admitted position is that the defendants paid the plaintiffs the pre-deposited amount of Rs.32,13,000/- along with interest accruals thereon. As regards the claim for compound interest on the principal sum, the said claim fails for reasons set out while dealing with Issue No.1.

24. Issue Nos. 3 to 7 deal with the third monetary claim towards alleged wrongful appropriation of interest and consequential remedies. The defendants justified the appropriation of interest between 12.10.2006 and



31.03.2009 on the ground that the sale in favour of the auction purchaser could not be confirmed in view of the legal proceedings at the instance of the plaintiffs. The plaintiffs also admitted at paragraph 6(c) of their written submissions that the Bank was restrained by an order in W.P. No.37172 of 2006 from confirming the sale between 10.10.2006 and 30.06.2008. The plaintiffs further admitted that the sale was confirmed only on 16.07.2008 by referring to and relying on the answers of DW1 to Questions 72-73. Until confirmation, the Bank is not permitted to credit the loan account of the plaintiffs. Therefore, it appears from the order dated 10.03.2010 of the DRT in S.A.No.181/2007 that the sale certificate was initially issued on 18.09.2009. It should be borne in mind that S.A.No.181/2007 was still pending at that point of time. In fact, on examining the DRT order, it is clear that the plaintiff argued the matter on 11.12.2009 by contending that the plaintiff still has the right to redeem the property in view of the non-registration of the sale certificate. In the said facts and circumstances, the appropriation of interest until end March 2009 cannot be faulted. Besides, in view of the successful jurisdictional objection, this claim is liable to be rejected.



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25. Thus, all the issues are decided in favour of the defendants and against the plaintiffs. Ordinarily, the plaintiffs would be directed to pay costs incurred by the defendants on the loser pays principle. However, by taking into account the fact that the plaintiffs paid a sum of about Rs.3,23,443.65 towards court fee and the suit was triggered by the earlier failure of the Bank to pay the surplus sale proceeds and the fixed deposit amount, C.S.No.639 of 2018 is dismissed without any order as to costs.

09.06.2022

Index : Yes

Internet : Yes

kal/rrg

Plaintiffs' witness:

1.Mr.G.Deenadayalu : P.W.1

Defendants' witness:

1.Mr.RM. Arunachalam : D.W.1

Documents exhibited by the Plaintiff:

Sl.Nos	Exhibits	Date	Particulars of Documents
1.	Ex.P1	28.03.2003	Partnership Deed
2.	Ex.P2	10.03.2010	Order in S.A.No.181 of 2007
3.	Ex.P3	07.05.2010	Order of the DRAT

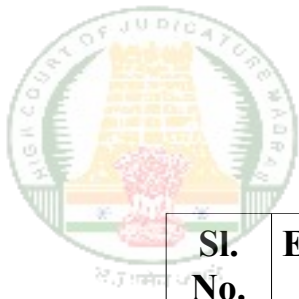


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Sl.Nos	Exhibits	Date	Particulars of Documents
4.	Ex.P4	16.11.2012	Order in RA SA No.153 of 2010
5.	Ex.P5	23.02.2017	Order in S.L.P.No.3159 of 2015+
6.	Ex.P6	13.06.2018	Notice to the Defendants
7.	Ex.P7	-	Acknowledgement Card and Tracking Receipt
8.	Ex.P8	-	Statement of Accounts furnished by Defendants.

Documents exhibited by the Defendants:

Sl. No.	Exhibits	Date	Particulars of Documents
1.	Ex.D1	12.12.2006	The photocopy of the Interim order passed in SASR No.251/2006 by Hon'ble Debt Recovery Tribunal I at Chennai dated 12.12.2006.
2.	Ex.D2	10.03.2010	The photocopy of the final order passed by Hon'ble Debt Recovery Tribunal II Chennai in S.A.No.181 of 2007
3.	Ex.D3	07.05.2010	The photocopy of the order passed in IA No.720/2010 (Waiver Application) in AIR No.352/2010 in RASA No.153 of 2010 by Hon'ble Debt Recovery Appellate Tribunal, Chennai
4.	Ex.D4	-	The photocopy of the Final order passed in RA (SA) No.153 of 2010 by Hon'ble Debt Recovery Appellate Tribunal, Chennai.
5.	Ex.D5	-	The photocopy of the order passed in writ petition No.32085 of 2012 by High Court of Judicature at Madras dated 10.07.2013.
6.	Ex.D6	13.10.2014 -	The photocopy of the order passed in Review A.No.184 of 2013 in W.P.No.32085 of 2012 by



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Sl. No.	Exhib its	Date	Particulars of Documents
			High Court of Judicature at Madras.
7.	Ex.D7	05.01.2015	The photocopy of the order passed in CrI.M.P.No.8068 of 2014 by Hon'ble Chief Metropolitan Magistrate Egmore, Chennai
8.	Ex.D8	23.02.2017	The photocopy of the order passed in special leave to appeal (CrI) No.3159 of 2015 by the Supreme Court of India.
9.	Ex.D9		The photocopy of the order passed in Review A.No.2538 of 2017 in petition for special leave to appeal (c) No.7192 of 2015 by the Supreme Court of India.
10.	Ex. D10	23.03.2009	The photocopy of the letter sent to plaintiff by defendant bank to receive the surplus sale proceeds dated 23.03.2009.
11.	Ex. D11	05.04.2010	The photocopy of the communication sent by defendant bank to plaintiff along with demand draft for Rs.33,35,659/- dated 05.04.2010.
12.	Ex. D12	03.03.2015 -	The photocopy of the sale certificate issued by defendant bank in favour of the auction purchaser Mr.D.Santhanam, Proprietor M/s.Delta Engineers dated 03.03.2015.
13.	Ex. D13	-	The photocopy of the deposit receipt stands in the name of plaintiff under interest bearing no lien account for deposit made under the waiver application.

SKRJ

SENTHILKUMAR RAMAMOORTHY, J



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Pre-Delivery Judgment in
Civil Suit(Comm Div) No.639 of 2018

09.06.2022