THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM:

**THE HON'BLE Mr. JUSTICE N.SESHASAYEE**

CRP.PD.No.1923 of 2021 &
C.M.P.No.14938 of 2021

P.Venkatachalam ... Petitioner/Respondent/Plaintiff

Vs

Indian Bank
Stressed Assets Management Branch
(Erstwhile Asset Recovery Management Branch)
Variety Hall Road,
Coimbatore. ...Respondent/Petitioner/Defendant

**PRAYER**: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and Decretal order dated 11.03.2021 made in I.A.No. 1 of 2020 in O.S. No. 466 of 2011 on the file of the II Additional Subordinate Judge, Coimbatore.

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| For Petitioner | : | Mr.N.Sridhar for Mr.R.Bharath Kumar |
| For Respondent | : | Ms.S.R.Sumathy |

**O R D E R**

The suit in O.S.No.466 of 2011 was filed before the II Additional Subordinate Court, Coimbatore for recovery of earnest money deposited by the plaintiff pursuant to a call to participate in a proposed auction, within the scheme of SARFAESI Act. The very auction is being challenged by the debtor of the Bank as a result the intended auction has not taken place yet. However, with an intent to participate in the said auction, the plaintiff had deposited a sum of Rs.3.50 Lakhs as earnest money. But with the holding of the auction is dragging on without a time limit, the plaintiff chose to withdraw from the auction with an intent to secure at least his earnest money. Hence he laid the suit.

2. The Indian Bank had shown exemplary attitude in defending this action for a mere Rs.3.0 lakhs, which deserves to be showcased prominently. Initially, it remained ex-parte, and this order came to be set aside when the court allowed an application of the Indian Bank on payment of certain cost. This cost it did not pay, following which the application for setting aside the exparte order itself came to be dismissed. It was again restored and was allowed and the

matter went to trial. During trial, the plaintiff examined himself as P.W.1 and the matter came to be posted for his cross-examination, but despite granting several adjournments, the defendant/Indian Bank did not cross-examine the plaintiff and consequently the suit came to be decreed ex-parte. Diligence in defending this ordinary action apparently was not in the list of priorities of the bank.

3. It is in these circumstances, the defendant has now taken out an application to condone the delay of 947 days in filing an application to set aside the ex-parte decree passed against it. This came to be allowed by the trial Court Vide its order dated 11.03.2021. This is now in challenge. Before this Court, the contention took a slightly different course.

4. Heard, Mr.N.Sridhar for Mr.R.Bharath Kumar, the learned counsel for the revision petitioner. He would argue that the trial Court has been far excessively charitable to the respondent/defendant in accommodating its irresistible temptation to delay the course of trial. The ex-parte decree is not a consequence of the absence of the Indian Bank before the Court on a solitary occasion, but it is the result of what it has, by its own conduct,

demonstrated as its habit. Here is a plaintiff who believed that there would be an auction and in right earnestness deposited the earnest money, but, the said auction never took place for reasons over which the plaintiff has no control and therefore, the plaintiff opted out of the auction to save his money. He further argued that the Indian Bank has been unfairly holding on to the plaintiff's money without any reason or justification.

5. Mrs.S.R.Sumathy, the learned counsel for the defendant/respondent contended that the Court does not have inherent jurisdiction to pass the decree, and if at all the plaintiff needs a forum for remedy, it has to approach the DRT. What is mildly indicated here, or at least what this Court understands as an indication, is that even if the decree is allowed to be sustained, it will be resisted as inexecutable.

6. Turning to the principal contention of the counsel for the respondent/Indian Bank that the civil court might not have jurisdiction to pass a decree that it has passed is concerned, it must be stated that the plaintiff has not entered the net of SARFAESI Act yet. He only responded to an invitation to offer with his intent to participate in the auction, and he would have been in the net only

if the auction had proceeded to the next stage. But with the proposed auction, a non-starter till date with no immediate prospects of going though, the plaintiff cannot be forced to stay where he is constrained to stay. It is not his mistake after all. There is no legitimacy therefore in the bank, deflecting the plaintiff to a forum other than the Civil Court. In other words, this Court holds the decree passed is valid.

7. Turning to the present revision, this court does not find the delay can be condoned. After all the bank's deligence vis-a-vis defending the present suit is far from satisfactory. This Court does not expect a nationalised bank such as the Indian Bank to conduct its affairs in the way it has conducted here. It will neither pay the plaintiff what it ought to pay nor, nor will it participate in the proceedings. What it fails to realise is, ultimately if the earnest money is repaid to the plaintiff, it will also have to pay such interest as the trial Court might have fixed and this additional interest money is the public money. It is not the right way for the bank to conduct its affairs.

8.In the result, the Civil Revision Petition is allowed as above. No costs. Consequently, the connected miscellaneous petition is closed.

**10.03.2022**

Index : Yes/No
Speaking Order/Non Speaking Order
tsg/dk

To

II Additional Subordinate Judge,

Coimbatore.

**N.SESHASAYEE, J.,**

tsg/dk

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