



A.No.4504 of 2022 in
C.S.No.444 of 2006

R.N.MANJULA,J.

This application has been filed to pass an order for returning the amount of Rs.11,01,89,589.04/- deposited by the Bank in this Court in C.S.No.444 of 2006.

2. The applicant is the first defendant. The first respondent / plaintiff has filed a suit for the relief of specific performance directing the first defendant to execute the sale deed in respect of the suit property in his favour and also direct the third defendant to receive a sum of Rs.6,95,00,000/- and transfer the suit schedule property along with the first defendant and release the charge or claim in respect of the schedule mentioned property and hand over the original title deeds to the plaintiff and also for the relief of declaration that the sale certificate and the sale deed in respect of the suit property executed by the third defendant in favour of the second defendant is null and void or in the alternate to refund the earnest money of Rs.1,10,00,000/- along with a sum of Rs.6,95,00,000/- towards damages.



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3. The suit property originally belonged to the first defendant. The second defendant was a tenant in the suit property and the third defendant IDBI Bank is the creditor of the first defendant from whom the first defendant had availed a loan by offering the suit property as security. The second defendant who was a tenant of the first defendant had entered into a lease agreement by having a pre-emptive right to purchase the suit property, in case it was brought for sale.

4. Since the first defendant had mortgaged the property in favour of the third defendant and the outstanding had become overdue, the third defendant has taken auction proceedings for recovering the loan amount. Since the second defendant was not able to pay money for one time settlement and release the property, the first respondent / plaintiff came to the rescue of the first defendant. Hence, the plaintiff / first respondent had entered into a sale agreement with the applicant / first defendant on 26.03.2004. In order to release the suit property from the clutches of the third defendant, the plaintiff had paid Rs.1,10,00,000/- as one time



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settlement and which was agreed to be treated as a part sale consideration for the suit property. However, due to the subsequent SARFAESI proceedings taken by the third defendant, the property was brought for sale and the second defendant has purchased the suit property through some private treaty.

5. Since the suit property was sold to the second defendant and the first respondent / plaintiff had paid a hefty sum of Rs.1,10,00,000/- in favour of the third defendant towards partial discharge of the loan availed by the first defendant, the first respondent / plaintiff has filed the present suit. During the pendency of the suit, taking into consideration of the ground realities, an order has been passed on 22.12.2021 by this Court. By virtue of the said order, the third defendant IDBI Bank was directed to deposit the balance sale consideration after meeting out its dues, to the credit of the suit. Now, the present application has been filed by the first defendant seeking an order for permitting him to withdraw the said amount deposited in the Court.



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6. The same was resisted by the first respondent / plaintiff by stating that the first defendant had allowed the second defendant to file a suit against the plaintiff and get an order of injunction to protect his pre-emptive right and he also made the first respondent / plaintiff to pay a sum of Rs.1,10,00,000/- to the third defendant and agreed it to be treated as a partial sale consideration of the suit property in view of the sale agreement dated 26.03.2004. If the amount already paid in the deposit of the Court is ordered to be withdrawn by the first defendant, the first respondent / plaintiff will not be in a position to recover any amount in the event of getting a successful decree.

7. The learned counsel for the applicant / first defendant submitted that from the balance sale proceeds, a sum of Rs.1,10,00,000/- paid by the first respondent / plaintiff towards the one time settlement was repaid to him; now the amount lying in the credit of this case entirely belongs to the applicant / first defendant and hence the plaintiff cannot raise any objection; in fact, the first respondent / plaintiff filed a second appeal in S.A.No.113 of 2007 before DRT II by challenging the sale of



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the property in favour of the second defendant; the applicant / first defendant also filed an appeal in S.A.No.53 of 2007 before the same tribunal; by a common order dated 13.05.2011, DRT II had passed an order by upholding the sale in favour of the second defendant and directed the third defendant to return a sum of Rs.1,10,00,000/- to the first respondent / plaintiff; the first respondent / plaintiff filed an appeal before DRAT by challenging the order dated 13.05.2011 and that was allowed and the sale was set aside; a direction was given to the third defendant to refund the sum of Rs.1,10,00,000/- to the first respondent / plaintiff and the balance to the applicant / first defendant as per DRT order; the third defendant preferred a Special Leave Petition and challenged the order of the High Court dated 10.09.2018 and that was dismissed; hence the third defendant is liable to comply the directions of this Court and accordingly, the same has to be complied.

8. The learned counsel for the first respondent / plaintiff submitted that while the outstanding due to the third defendant towards the loan obtained by the first defendant was appropriated from the sale proceeds,



the rest of the sale proceeds were not paid to the first respondent / plaintiff towards refund of partial sale consideration paid by him; under such circumstances, if the first defendant is allowed to withdraw the amount already deposited in the Court without offering any security, that would defeat the interest of the plaintiff.

9. The suit has been filed in the year 2006 and the SARFAESI proceedings have been taken and the suit property was sold during the said proceedings in the year 2006 itself. Thereafter, a long battle was fought by the parties till the Supreme Court. Until that time, the balance sale consideration was retained by the Bank itself. Only on 22.12.2021, the earlier order made in A.No.2902 of 2006 and A.Nos.7872 & 8877 of 2019 dated 23.10.2019, directing the Bank to retain the said sum got modified to the effect that the balance should be deposited into the credit of the case. While passing the said order itself, this Court was aware of the directions issued in the writ petition and also other proceedings. In fact, in the order dated 22.12.2021, the trajectory of the proceedings have been charted out. For the reasons known to the applicant / first defendant,



the said order was not challenged. Now, the applicant has filed this application for seeking permission to withdraw the said amount which would defeat the object of the order dated 22.12.2021.

10. The learned counsel for the first respondent / plaintiff submitted that the suit is pending from the year 2006, despite the same, the applicant / first defendant has not filed any written statement. Since the early disposal of the case can settle the issue and pave a way to release the amount deposited in the Bank in tune with the nature of the disposal of the suit, I feel it is pre-matured to entertain the prayer of the applicant. In view of the above stated reasons, this Application in A.No.4504 of 2022 is dismissed.

17.03.2023

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