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A.No.5496 of 2022
and A.No.No.4020 of 2022
in C.S.No.607 of 2008

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N.SESHASAYEE.J.,

The plaintiff has obtained an exparte decree for recovery of Rs.1.61 Crores along with past and future interest. Today, this claim has swollen to around 4.5 Crores.

2.The backdrop of this application can be stated as below:

- On 07.07.2010, the suit was decreed exparte. Close to a decade thereafter, the defendants have taken out an application for setting aside the exparte decree along with an application to condone the delay in filing the same. This Court allowed the application filed in A.No.1707 of 2022 vide its order dated 05.08.2022 with a condition that the defendants deposit in the Court a sum of Rs.20,00,000/-. This has been duly done. Challenging this order, the plaintiff went for an intra court appeal in O.S.A.No.240 of 2022 and that came to be allowed on 19.10.2022.

3.It is in this backdrop, the plaintiff has taken out this application for withdrawing the sum of Rs.20 Lakhs deposited in the Court by the defendants. Opposing it, the



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learned counsel for the defendants submitted:

(a) that the defendants propose to prefer a S.L.P challenging the order in O.S.A.No.240 of 2022;

(b) that at any rate, the money deposited by the defendants in due obedience to the condition imposed by the Court cannot *per se* be to answer plaintiff's claim, since according to the defendants even the suit is barred by limitation.

4.After weighing rival submissions, this Court is of the view that if at all the plaintiff may obtain the said sum now in the Court deposit, that can be claimed by the plaintiff only by properly attaching it in execution of the decree. After all, the defendants have not deposited the money voluntarily as an admitted claim but have merely obeyed the condition imposed on them by the Court. Therefore, this would mean that the character of the amount in Court deposit is not intended to be adjusted towards the claim of the plaintiff.

5.This Court now understands from the counsel for the plaintiff that necessary application indeed has been filed before the Execution Court in E.P.No.108 of 2019,



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which is now pending before the I Additional District Court, Thiruvallur. The Registry of the I Additional District Court, Thiruvallur is required to process this application expeditiously.

6. So far as the present application is concerned, for the reasons already indicated, this Court does not consider it appropriate to allow the same. Hence the same stands dismissed.

09.02.2023

(1/2)

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