IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.07.2024	Pronounced on:27.09.2024

CORAM:

THE HON`BLE MR.JUSTICE P.B.BALAJI

C.S.No.874 of 2013

M.Thanigachalam

..Plaintiff

Vs.

1.Indian Overseas Bank,
Rep. by its Chairman,
No.763, Anna Salai,
Chennai – 600 002.

2.General Manager,
Indian Overseas Bank,
Aminjikarai Branch,
Chennai 600 030.

3.Chief Manager,
Indian Overseas Bank,
Aminjikarai Branch,
Chennai 600 030.

4.The Authorized Officer,
Indian Overseas Bank,
Aminjikarai Branch,
Chennai 600 030.

...Defendants

PRAYER: Plaint filed under Order VII Rule 1 of CPC r/w Order IV Rule 1 of the O.S. Rules, praying to pass judgment in favour of the plaintiff against the defendants,

Directing the defendants to pay the plaintiff a sum of Rs.1,92,07,559/- as compensation for the losses caused to the plaintiff in the transaction of purchasing the property bearing Door No.61, Gajapathy Street, Aminjikarai, Chennai 30 along with future interest at the rate of 18% per annum from the date of plaint till realization and costs of the suit.

For Plaintiff	:	Mr.K.V.Babu for Mr.Sai Prasanth
For Defendants	:	Mr.F.B.Benjamin George

JUDGMENT

The suit has been filed claiming compensation for the losses suffered by the plaintiff to the tune of Rs.1,92,07,559/- pertaining to purchase of the property bearing D.No.61, Gajapathy Street, Aminjikarai, Chennai- 600 030, together with interest at 18% per annum from the date of plaint till the date of realization.

2. The plaint in a nutshell:-

The plaintiff came across an auction notice published by the defendant Bank on 26.03.2009 mentioning about sale of various properties. The auction in respect of Item Nos.2 & 3 of the list of properties was scheduled on 26.03.2009 and the last date of submission of tender was on the same day before 10.30 am. The auction was scheduled later in the day viz., 12 p.m and 01.00 pm respectively in respect of item Nos.2 & 3. The properties were brought for sale under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act & Rules (SARFAESI Act and Rules) framed thereunder. The plaintiff was the only bidder for the property in the auction conducted on 26.03.2009 and he bid an amount of Rs.1,85,00,000/-. In terms of the auction, the plaintiff also paid 25% amounting to Rs.46.25 lakhs and Rs.58.75 lakhs respectively for two items of the properties, totalling in all, Rs.105 lakhs on 02.04.2009.

3. The plaintiff further states that he was aware of Writ Petitions pending before this Court in W.P. Nos.1149 and 5272 of 2009 between the Bank and the borrowers. The plaintiff further submits that he paid 25% of the bid amount towards Earnest Money Deposit (EMD), subject to outcome of the pending Writ Petitions.

4. The plaintiff further states that this Court, in the Writ Petitions permitted the Bank to proceed with the auction in accordance with law and set aside the impugned order passed by Debt Recovery Appellate Tribunal (DRAT) and Debt Recovery Tribunal (DRT) respectively. On 25.05.2009, the 4th defendant, the authorised Officer of this Bank forwarded sale certificates alongwith parent documents of the said properties. The plaintiff had availed a loan of Rs.3.15 crores from Punjab National Bank by mortgage of the property in question by deposit of title deeds. In addition to the loans sanctioned by the Punjab National Bank, the plaintiff had to pay Rs.45,39,206/-. The sanctioned loan amount was directly paid to the defendant Bank and infact, the loan was sanctioned as early as on 20th May 2009. The plaintiff has agreed to repay the loan, together with interest at 9.75% per annum. The plaintiff also incurred service charges to the tune of Rs.1,50,395/- in that regard apart from incurring expenses to the tune of Rs.33,74,014/- towards interest component alone on the said loan.

5. The borrowers filed W.P. No.9279 of 2009 challenging the auction sale and the Hon'ble Division Bench of this Court by order dated 29.07.2009, set aside the auction conducted by the defendant Bank and consequently, the sale in favour of the plaintiff was set aside on the ground

that Rule 9(2) of Security Interest (Enforcement) Rules 2002, was violated. In fact, the plaintiff was also a party in the said writ petition and the said order of the Hon'ble Division Bench of this Court was not challenged by the borrowers. However, the plaintiff filed a Special Leave Petition challenging the said order of the Hon'ble Division Bench which came to be dismissed on 03.11.2009.

6. The plaintiff further states that the sale in favour of the plaintiff was set aside solely owing to the negligence and illegal action of the defendants in failing to adhere to the statutory rules which has caused undue loss and hardship to the plaintiff. According to the plaintiff, the defendants' Bank lost interest in the litigation after they received the money from the borrowers, who had settled the pending dues with the Bank and got back their property. The plaintiff further states that he approached the defendants' Bank on several occasions for return of the monies paid by him, to enable him to repay the same to the Punjab National Bank. However, the defendants refused to return the sale consideration, unless the title documents were returned to them. The plaintiff was informed by the defendants that only if the loan availed of from Punjab National Bank was repaid, the said Bank would be in a position to return the title deeds and

therefore, the plaintiff was not in a position to adhere to the unreasonable request of the defendants' Bank.

7. The plaintiff also states that the borrowers filed further Writ petitions in W.P. Nos.22004 and 22005 of 2009, for a direction against the defendant to extend a One Time Settlement (OTS) to them in respect of the amounts due to be paid by them to the Bank. In and by order dated 24.02.2010, the Hon'ble Division Bench of this Court disposed of the Writ Petitions and directed the defendants' Bank to refund the entire money deposited by the plaintiff, who was the third respondent in the Writ Petitions, together with the interest at 9% per annum, from the date of deposit, till the date of repayment, within a period of two weeks from the date of receipt of the copy of the order and directed the plaintiff to arrange for return of the original documents deposited with Punjab National Bank. The plaintiff has admitted that he has received the refund as directed by this Court and has also handed over the title deeds to the defendant Bank.

8. The plaintiff further states that despite requesting the defendant to refund the sale consideration immediately on passing of the order of the Hon'ble Division Bench of this Court and consequent disposal of SLP, the

defendants refused to do so which is manifested by the letter dated 13.11.2009, addressed to the plaintiff. For the said letter, the plaintiff sent a reply on 23.11.2009, regarding settlement of the loan account with Punjab National Bank as a pre-condition to enable Punjab National Bank to return of the title deeds.

9. According to the plaintiff, he has suffered huge losses, which he has listed out in the manner following:-

Head of Loss	***Amount***
Service Charges	Rs.1,50,395/-
Interest on the loan amount of Rs.1,38,75,000/-	Rs.1,84,077/-
Interest calculated for Rs.1,05,00,000/-	Rs.21,08,910/-
Legal expenses for litigation	Rs.6,55,033/-
Loss of opportunity	Rs.84,00,000/-
Simple interest at the rate of 18% of the total claim amount Rs.114,98,415/-	Rs.62,09,144/-
Mental agony	Rs.15,00,000/-
Grand Total	Rs.1,92,07,559/-

10. According to the plaintiff, the defendants are liable to compensate the plaintiff for the losses incurred including mental agony.

11. The first defendant filed a written statement denying the plaint

averments and allegations. The defendants admit the averments pertaining to the auction of the properties belonging to K.Ramaselvam and his wife, R.M.Meenal Ramaselvam under the provisions of the SARFAESI Act and also the fact that the plaintiff was the only bidder for two of the items and that the sale in favour of the plaintiff was confirmed and sale certificate was also issued and first defendant also admits to the various writ proceedings which have been reiterated in the plaint and also the factum of the plaintiff borrowing from Punjab National Bank to meet substantial portion of the sale consideration to be paid to the defendants.

12. The first defendant has denied the allegations of negligence and illegality in the auction of the defendants' Bank. The defendants have also denied that they lost interest in the litigation once they received the money from the borrowers and therefore did not appeal before the Hon'ble Supreme Court. The first defendant has justified the auction initiated by the borrower since his right of redemption was always available and therefore, the Bank took a conscious decision, especially dealing with public money, not to precipitate the matter further by filing an Appeal before the Hon'ble Supreme Court.

13. The first defendant denies the allegations made by the plaintiff that the defendant refused to return the sale consideration on demand made by the plaintiff. The first defendant has justified its action in not returning the sale consideration only on the ground that the plaintiff was not able to return the original title deeds. In fact according to the first defendant, the order of the Division Bench of this Court was challenged before the Hon'ble Supreme Court by the plaintiff himself and even an interim order was obtained. After dismissal of the Special Leave Petition, it was only the defendants who demanded return of the title deeds to enable them to return the sale consideration to the plaintiff. The defendants have also denied the averments in the plaint that the writ petition filed by the borrowers were dismissed and relief was granted to the plaintiff. It is clarified by the first defendant that in and by order dated 24.02.2010, in a Miscellaneous Petition filed by the borrowers seeking a direction to the defendant to return the title deeds, the Hon'ble Court passed an interim order directing refund of the entire sale consideration with 9% simple interest, to enable the defendant to get back the title deeds and return the same to the borrowers. The first defendant Bank has also stated that the plaintiff made a bid out of his own volition and was not forced by any of the defendants to purchase the properties and therefore, the loss should have been anticipated by the

plaintiff and therefore, the plaintiff cannot complain of suffering losses.

14. The defendants further states that even after dismissal of the SLP filed by the plaintiff, the defendants alone constantly followed up the matter for return of the title deeds and only after the order passed by this Court on 24.02.2010 in MP Nos.2 & 3 of 2009 in WP. Nos.22004 & 22005 of 2009, the plaintiff handed over the title deeds and as directed by this Court, the defendant Bank also refunded the entire sale consideration together with interest at 9% per annum. The first defendant has denied the alleged claims towards compensation for various losses suffered. The first defendant has denied the very factum of plaintiff having incurred expenses to the tune of Rs.1,50,395/- towards service charges. In respect of interest paid to Punjab National Bank, the first defendant has stated that if the plaintiff has taken timely steps to return the original documents, the plaintiff could have avoided payment of interest to Punjab National Bank. The claim in respect of difference in interest is also denied. Insofar as claim towards litigation expenses, the first defendant has stated that it is the plaintiff's own making and the same cannot be sought to be recovered from the defendants. Insofar as opportunity loss to the tune of Rs.84 lakhs, the defendant has submitted that the major portion of the money was borrowed from the

Pubjab National Bank and the plaintiff has already been compensated by way of 9% interest per annum as directed by this Court and therefore, the defendants cannot be responsible for such alleged loss. Equally, the claim for interest and mental agony are also denied by the defendants. According to the first defendant, the suit filed against the defendants 2 to 4 who are not juristic persons is not maintainable and as such even on the ground of mis-joinder of parties, the suit is liable to be dismissed.

15. Considering the pleadings, this Court on 01.03.2017 framed the following issues:-

> *"1.Whether the plaintiff is entitled to recover the suit amount as prayed for?*
>
> *2.Whether the plaintiff who has purchased the property fully aware about the pending litigations initiated by the borrower is entitled to restitution or compensation?*
>
> *3.Whether the plaintiff who purchased the property in an auction sale conducted by the Secured Creditor under SARFAESI Act subject to confirmation of sale by the High Court has taken a calculated risk in purchasing the property and is he not bound by the ultimate decision of the Court?*
>
> *4.Having returned the entire sale consideration together with interest a the rate of 9% per annum as per the orders of the High Court in W.P. No.22004 of 2009, whether the defendants are absolved from any further liability?*
>
> *5.Whether the defendants were at fault for failing to follow the procedure prescribed under law by not taking consent from the borrower before accepting money from the plaintiff?*
>
> *6. Whether the plaintiff suffered monetary loss as a*

consequence of the defendants failing to follow the procedure prescribed under law in conducting the auction of the property belonging to the borrower?

7. To what relief the plaintiff is entitled to?

16. The plaintiff examined himself as P.W.1 and marked Ex.P1 to P23. Ex.P1, P2, P5, P6, P9, P12, P14, P15, P21, P22 and P23 were marked subject to objections raised by the learned counsel for the defendants. The plaintiff also examined, Mr.V.Selvaraj, a Financial Consultant as P.W.2. Through P.W.1, Ex.P1 to P23 and through P.W.2, Ex.P24 to P29 were marked. Ex.P24 to P29, were marked subject to the defendants' objections that P.W.2 was in no way connected to any of these documents and therefore, the same cannot be marked through P.W.2. On the side of the defendants, Mr.Anuj Kumar Singh, Chief Manager/Constituted Attorney of the defendant Bank was examined as D.W.1 and Exhibits D8 to D15 were marked. Exhibits D1 to D7 were marked during cross examination of P.W.1.

17. I have heard Mr.K.V.Babu, for Mr.Sai Prasanth, learned counsel for the plaintiffs and Mr.F.B.Benjamin George, learned counsel for the defendant.

18. The learned counsel Mr.K.V.Babu appearing for the plaintiff would contend that admittedly the plaintiff was the successful bidder for item Nos.2 and 3 of the properties which were brought for sale and the plaintiff had complied with all the conditions of the auction including payment of 25% of EMD. According to the learned counsel, the plaintiff is a bona fide purchaser for the value and for no fault of the plaintiff and entirely due to the negligence on the part of the defendant bank, the auction sale came to be set aside. He would further submit that apart from paying a portion of the sale consideration out of the plaintiff's pocket, the plaintiff has also availed a loan from Punjab National Bank in connection to which the plaintiff has incurred further expenditure, leave alone the interest component paid to Punjab National Bank. He would further submit that the defendant Bank was unreasonably withholding the plaintiff's money even after the sale was set aside, knowing fully well that unless the dues of Punjab National Bank was fully settled, the said Bank could not release the original documents required. He would also refer to the various orders passed by the Writ Court including the orders of the Hon'ble Division Bench dated 24.02.2010 and subsequent order dated 10.03.2010.

19. The learned counsel would take me through the various heads of losses under which the suit claim has been instituted and elaborate the same, necessitating a decree to be passed as prayed for in favour of the plaintiff. The learned counsel would also take me through the pleadings, especially the written statement of the defendant Bank regarding the allegation that the plaintiff had taken a calculated risk to participate in the auction and therefore, the plaintiff had to suffer the consequences and state that in a case of immovable property the law is well settled that the concept of *"buyer beware"* or *"caveat emptor"* does not apply and therefore, he would submit that it is the duty of the Bank to protect the plaintiff, an innocent purchaser. He would therefore pray for decree being passed as prayed for in the plaint.

20. Per contra, Mr.F.B.Benjamin George learned counsel for the defendant Bank would submit that the sale in favour of the plaintiff was first and foremost not concluded, as neither the sale certificate was issued nor possession of the property was handed over to the plaintiff. He would further take me through the oral and documentary evidence to fortify his contentions that the plaintiff had full knowledge of the litigation and therefore, his claim of being a bona fide purchaser was unsustainable.

21. The learned counsel would further submit that since the sale was not complete, the right to redeem the property was always available to the original borrower/mortgagor and therefore, the auction sale being set aside would not entitle the plaintiff to seek compensation from the defendants. He would further submit that the Bank has not suppressed any material circumstances and even at the time of making the bid, the plaintiff was aware of the pending proceedings before the DRT/DRAT. He would further submit that plaintiff was the only bidder and he bid only for the reserve price and he would also invite my attention to the letter issued by the authorised Officer marked as Ex.P16 where it was made abundantly clear to the plaintiff that the sale is subject to confirmation of the High Court in WP.Nos.1149 & 5272 of 2009.

22. The learned counsel for the defendants would further submit that when the borrower challenged the auction sale alleging violation of second proviso of Rule 9(2) of SARFAESI Rules and this Court accepted the plea and set aside the auction sale in favour of the plaintiff. It was the plaintiff who approached the Hon'ble Supreme Court, instead of accepting the verdict of this Court and taking back the sale consideration paid by the plaintiff. In fact, the plaintiff was not satisfied with the adverse order

passed by the Hon'ble Supreme Court, also preferred a Review which was also dismissed on 03.05.2010 therefore, by his own conduct the plaintiff delayed the matter and therefore, by no stretch of imagination the plaintiff can accuse the defendants for being the reason for all the alleged losses suffered by the plaintiff.

23. The learned counsel would submit that the Hon'ble Division Bench of this Court directed to return the sale consideration paid by the plaintiff together with 9% interest, which was duly paid. The rate of interest was much higher than the normal rate of interest paid by Banks and in such circumstances, the plaintiff cannot have any grievance whatsoever. With regard to the other claims also, the learned counsel for the defendants would submit that the plaintiffs claims are all fanciful and arbitrary and would refer to the cross examination of PW1, where the plaintiff admits that in D1 auction sale notice dated 23.02.2009 it was specifically mentioned that the sale would be subject to confirmation by the Bank and after obtaining permission from DRT, DRAT and the High Court. PW1 would also admit that he had signed the auction proceedings and he was aware of the fact that in view of the interim order granted by the DRT on 25.03.2009, the opening of the tender was deferred to 02.04.2009. He has also admitted that out of

his own volition, the plaintiff challenged the order passed in WP.No.9729 of 2009 before the Hon'ble Supreme Court.

24. Even with regard to the interest component, the learned counsel for the defendants would submit that as against the interest component collected by the plaintiff from Punjab National Bank, a sum of Rs.12,48,750/- was paid to the plaintiff. However, he would point out that the defendant Bank repaid a total sum of Rs.4,53,24,329/- on 07.05.2010 which was Rs.33,24,379/ over and above the principal amount of Rs.4,20,00,000/ which represented 9% interest. He would therefore state that there is no loss suffered by the plaintiff. The learned counsel for the defendants would also invite my attention to the documents filed by the plaintiff which were all objected to even at the time of marking on the ground that they were not complying with the provisions of the Bankers Book of Evidence Act, 1891. The learned counsel for the defendants would also state that P.W.2 had no connection with the suit claim and he was examined only to cover up the lacuna in the evidence of P.W.1 and even the documents filed through P.W.2 did not comply with the provisions of the Bankers Book of Evidence Act. He would also attack the authorisation issued to P.W.2 as being improper and wanting in the eye of law.

25. As regards the loss of opportunity, the learned counsel for the defendants would submit that the defendants had refunded Rs.4,53,24,329/- as early as on 07.05.2010 and nothing prevented the plaintiff from investing the same and without doing so and having allowed time to pass, the plaintiff can blame only himself for having filed the suit on 27.07.2012, more than two years after having received the money from the defendants. He would further submit that the plaintiff has not invested the entire money and a substantial portion of the sale consideration was met only through loan from the Punjab National Bank and therefore, the plaintiff has not suffered any loss, on any account whatsoever.

26. The learned counsel for the defendants would further state that the defendant is only a Trustee for public funds, including the borrower in the present case and in the absence of any plea of fraud, the plaintiff cannot accuse the defendant for having caused any alleged loss for the plaintiff. He would further submit that the suit was also not maintainable as the plaintiff ought to have approached DRT which was empowered to try the present suit claim.

27. The learned counsel for the defendant has placed reliance on the

following decisions;

1. *Agarwal Tracom Private Limited vs Punjab National Bank and Others,* reported in (*2018) 1 SCC 626;*

2. *The Ahmedabad Municipal Corporation of the City of Ahmedabad vs Haji Abdulgafur Haji Hussenbhai,* reported in *1971 (1) SCC 757;*

3. *M/s. Annapurna Industries vs Syndicate Bank,* reported in (*1993) SCC Online Kar 15;*

4. *M.S Padmanabha Iyer vs Devadass Sylus and another,* reported in (*1969) SCC Online Mad 218;*

5. *South City Projects (Kolkata) limited and another vs Kolkata Metropolitan Development Authority,* reported in (*2023) SCC Online Cal 2050;*

6. *Kanchan udyog limited vs United spirits limited,* reported in (*2017) 8 SCC 237;*

7. *Om Prakash vs Central Bureau of Investigation,* reported in *2017 SCC Online Del 10249;*

8. *Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal and others,* reported in *(2020) 7 SCC 1;* and

9. *Santhosh Textile Process vs Veena Texchem Industries,* reported in (*2023) SCC Online Mad 4293.*

28. Having considered the submissions advanced by the learned counsel on either side and after carefully going through the oral and documentary evidence available on record , I proceed to decide the issues.

29. Issues 1 to 6:

The plaintiff has sought for a money decree against the defendants' Bank claiming Rs.1,92,07,559/- as compensation for alleged losses suffered by the plaintiff relating to the auction sale transaction of the property bearing Door No.61, Gajapathy Street, Aminjikarai, Chennai 600 030.

30. The summary of the plaintiff's case is that the plaintiff was an honest and bona fide bidder for the subject property in a public auction conducted by the defendants' Bank and being the successful bidder, the plaintiff paid the total sale consideration within the time stipulated in the conditions of auction sale. However, the borrower challenged the auction sale on the ground that the sale was irregular for non compliance of Rule 9(2) of the Security Interest (Enforcement) Rules, 2002 and the borrower has ultimately succeeded before this Court. By non-compliance with Rule 9(2) which is mandatory, the Bank has been negligent and consequently, the plaintiff has suffered at the hands of the defendants' Bank.

31. The claim is resisted by the defendants' Bank on the ground that the plaintiff was aware of the litigation and Bank also could not be entirely blamed for non-compliance of Rule 9(2) of the Security Interest (Enforcement) Rules, 2002, since various Courts have taken divergent views with regard to this Rule. The further contention of the defendants' Bank is that the plaintiff has been duly compensated by way of 9% interest and there has been no delay on the part of the defendants. Therefore, according to the defendants, the plaintiff is not entitled to any amount by way of compensation.

32. In view of the trajectory of the litigation, it would be appropriate to deal with the orders passed by the Writ Court in connection with the auction sale in favour of the plaintiff. The defendants' Bank preferred writ petition in WP.No.1149 of 2009, challenging the interim order dated 07.01.2009. A conditional order of stay was passed by the DRAT, directing the borrowers to deposit One Crore with the defendants' Bank in two instalments of Rs. 50 lakhs each. The Hon'ble Division Bench of this Court in and by an order dated 29.04.2009, set aside the said interim order of DRAT and prevented the defendants' Bank from proceeding in accordance with law. This order came to be passed on 29.04.2009. On the same date in

WP.No.5272 of 2009 filed by the defendants Bank, the Hon'ble Division Bench of this Court also set aside the interim stay restraining the defendants Bank from taking any action pursuant to the sale notice dated 21.02.2009. From the above, it is seen that as against the interim protection granted to the borrower by the DRT/DRAT, the defendants' Bank challenged the same and also succeeded before this court.

33. The borrowers filed WP.No.9278 of 2009 against the defendants' Bank as well as the plaintiff. However, the said writ petition was withdrawn on 29.07.2009 and on the same day in the another WP.No.9279 of 2009, the borrowers had sought for setting aside the sale in favour of the plaintiff on the ground of violation of Rule 9(2) of the Security Interest (Enforcement) Rules, 2002 . The said writ petition came to be allowed with the following directions:

> *"For the aforesaid reasons, we are constrained to allow the writ petition with the following directions :-*
>
> *(1) The confirmation of sale in favour of Respondent No.2 is quashed.*
>
> *(2) The secured creditor is free to proceed further in holding a further auction by giving appropriate notice as required.*
>
> *(3) It would be obviously open to Respondent No.2 to withdraw the amount already deposited or keep such amount in deposit, if he decides to participate in the further auction.*

(4) The cost of the earlier auction notice as well as cost of any subsequent auction notice would obviously be debited to the account of the borrower.

(5) Before the subsequent auction takes place, it would be obviously open to the borrower to discharge the loan along with all accrued interest and costs, etc., as contemplated under Section 13(8) of the Act."

34. From the above, it is clear that the plaintiff was given an option to either withdraw the money already deposited by him or participate in the further auction to be conducted by the defendants' Bank. Admittedly, the plaintiff did not opt to participate in the further auction. Instead, the plaintiff preferred a Special Leave Petition before the Hon'ble Supreme Court and on 03.10.2009, the Hon'ble Supreme Court passed the following order:

"List in the month of November 2009. In the meanwhile, notice in terms of the advertisement may go on but the bid shall not be confirmed without the leave of the Court".

35. This Special Leave Petition subsequently came to be dismissed by the Hon'ble Supreme Court on 03.11.2009.

36. In the meantime, the borrowers had also filed Writ Petitions in

WP.Nos.22004 and 22005 of 2009 and in the said Writ Petitions, the interim order of stay sought for by the borrowers was declined citing the pendency of the SLP at the instance of the plaintiff and even this order came to challenged. However in MP No.2 in WP.No.22005 and MP No.3 in WP.No.22004 of 2009, the Hon'ble Division Bench of this Court on 24.02.2010, after impleading the plaintiff as a party, passed the following order:

> *"In that view , we direct the 1st respondent bank to refund the entire money deposited by the 3rd respondent towards the sale consideration with interest at the rate of 9% per annum from the date of deposit made by the 3rd respondent till the date of repayment. Such repayment shall be made by the first respondent bank to the 3rd respondent ,within two weeks of date of receipt of copy of the order. On such refund being affected by the first respondent, the third respondent shall arrange for return of the documents mortgaged with its bankers and handover the same to the first respondent bank within 10 days from the date of refund of the money paid by the first respondent along with interest. As and when the third respondent return the documents to the first respondent, as per the directions contained in this order, the first respondent shall also return the documents of title relating to the above two properties to the petitioner within a period of one week from the date of receipt of such documents from the third respondent. It is also open to the petitioners to approach the first respondent and get back the documents relating to the Mangadu property. As far as the right of the respondent to seek for any other claim on the first respondent, on any account, it is open to the third respondent to work out his remedy, if any available, in accordance with law. We however, make it clear that in as much as the sale affected by the first respondent in the month of March, 2009 confirmed on 20.05.2009, was set aside on the sole ground that the same was not in accordance with section 9 (2) of the security interest (Enforcement) Rules,2002 no liability can be fastened on the petitioners in respect of any claim from the auction purchaser".*

37. This order was also challenged by the plaintiff before the Hon'ble Supreme Court in SLP Civil No.10870 to 10871 of 2010 and the said Special Leave Petition was dismissed on 03.05.2010. Pursuant to the dismissal of the Special Leave Petition by the Hon'ble Supreme Court on 03.05.2010, within 4 days the defendants have repaid the entire money to the plaintiff, together with interest at 9% per annum as directed by the Hon'ble Division Bench of this Court.

38. Vide Exhibit P17, the Bank had also issued a sale certificate in favour of the plaintiff on 25.05.2009 in respect of the two items of the immovable property successfully bid by the plaintiff. Vide Exhibit P18 dated 13.11.2009, the defendants' Bank has written to the plaintiff stating that pursuant to the order passed by this Court on 29.07.2009, the Bank was intending to re-auction the properties and calling upon the plaintiff to return the sale certificates and original documents of title to enable the defendants' Bank to pay the plaintiff a sum of Rs.4.2 crores. In response to Exhibit P18, vide Exhibit P19, the plaintiff has written to the defendants' Bank, the plaintiff has stated that he was not at fault and only because of the defendants conduct and fault the plaintiff had to suffer damages. In the said reply notice the plaintiff has claimed that since he had borrowed money

from Punjab National Bank and the said bank would release the documents only on their dues being settled, the plaintiff was not in a position to return the original documents. The plaintiff further directed the defendants' Bank to negotiate with the Punjab National Bank and collect the documents. Thereafter, vide Exhibits P20 and P21, the defendant Bank has also written to the Punjab National Bank and obtained a reply regarding the dues to Punjab National Bank. Thus it can be seen clearly that the defendant was ready to return the money to the plaintiff and it was only the plaintiff who challenged the orders passed by the Hon'ble Division Bench of this Court before the Hon'ble Supreme Court. The said proceedings before the Hon'ble Supreme Court attained finality only in May, 2010 and immediately the defendants' Bank has settled the plaintiff's dues as directed by the Hon'ble Division Bench of this Court repaying Rs.4,20,00,000/- together with 9% interest per annum.

39. In this backdrop, let us test the claims made by the plaintiff. The plaintiff claims loss of interest which is the alleged interest paid to Punjab National Bank, a sum of Rs.1,50,395/- and Rs.1,84,077/- towards interest had been claimed by the plaintiff. From the admitted position, as can be seen from the documents, it is the plaintiff's case that the plaintiff had paid

only Rs.14,32,827/- as interest to Punjab National Bank. However, pursuant to the order passed by the Hon'ble Division Bench of this Court the plaintiff has got a sum of Rs.33,24,379/- towards interest alone, which is much higher than the interest paid by the plaintiff to Punjab National Bank. In such circumstances, the plaintiff cannot claim to have suffered any loss. As regards the service charges, only because of the plaintiff not possessing sufficient funds, he approached Punjab National Bank for loan and the plaintiff was not compelled by the defendants' Bank to avail any loan to meet the sale consideration. In such circumstances, the defendant cannot be made liable to reimburse the alleged sales charges incurred by the plaintiff.

40. With regard to the interest at 18% per annum, the plaintiff has claimed Rs.21,08,910/-. This amount cannot be passed on to the defendants since the Hon'ble Division Bench of this Court directed the defendants' Bank to refund a sum of Rs.4,20,00,000/-, together with 9% interest which has been duly complied with and the plaintiff has not established as to how he is entitled to an interest at the rate of 18% per annum, over and above the order passed by the Hon'ble Division Bench of this Court.

41. With regard to the legal expenses for litigating Writ Petitions in

the High Court as well as the Hon'ble Supreme Court, transportation, accommodation, the plaintiff claims Rs.6,55,033/-. This claim is wholly fanciful and arbitrary. The plaintiff admits that he approached the Hon'ble Supreme Court on his own volition and as rightly contended by the learned counsel for the defendants' bank, the right of redemption being available to the mortgagor and there being non compliance of Rule 9(2), the borrowers were successful in setting aside the auction sale and even the Bank was forced to litigate the issue by moving this Court by way of writ petitions besides also defending proceedings initiated by the borrower. In such circumstances, the claim of Rs.6,55,033/- can never be entertained.

42. Next claim is with regard to loss of opportunity to the tune of Rs.84 lakhs. It is the case of the plaintiff that if he had invested sum of Rs.4.2 crores in some other land or business, he would have gained a profit of 20%. This claim again cannot be countenanced for the simple reason that the entire sum of Rs.4.2 crores was not the plaintiff's money. First of all, only a small portion of the said amount was invested by the plaintiff and the remaining money was borrowed from Punjab National Bank. When the interest component of Punjab National Bank has been taken care of already, the plaintiff cannot claim that he had the entire Rs.4.2 crores at his disposal.

43. Further, as rightly pointed out by the learned counsel for the defendants, though this Rs.4.2 crores was refunded as early as on 07.05.2010, the plaintiff, after receiving the same, could have invested it beneficially, which has not been done so and after sleeping over the matter for more than 2 years, the plaintiff has filed the suit, claiming loss of opportunity. Therefore, I do not see any merit in the said claim towards loss of opportunity as well. In any event, the plaintiff has failed to establish by adducing sufficient and satisfactory evidence as to how he claims 20% towards loss of opportunity on the entire sum of Rs.4.2 crores, which in any event, he has not entered into.

44. The next claim is the sum of Rs.62,09,144/-, being 18% interest on the remaining rest of the above claims, totaling in all Rs.1,14,98,415/-. Clearly, the plaintiff is claiming interest on interest and the same cannot be permitted.

45. The next claim is Rs.15,00,000/- towards mental agony, loss of fase, lowering of prestige and harassment. The plaintiff has not let in any evidence whatsoever with regard to the claim of mental agony and in the absence of proof, the plaintiff will not be entitled into such a claim.

46. Reverting back to the order of the Hon'ble Division Bench of this Court, whereby, the defendants' Bank was directed to return the sum of Rs.4.2 crores together with interest at 9% per annum, it is to be noted that the Hon'ble Division Bench of this Court granted two weeks time to the defendants' Bank to repay the said money of Rs.4.2 crores together with 9% interest from the date of deposit made by the plaintiff, till the date of repayment.

47. The Hon'ble Division Bench also made clear that the plaintiff may seek any further claim on the defendants' Bank by working out his remedy separately, if any available, in accordance with law. Therefore, the said observation of the Hon'ble Division Bench does not straight away clothe the plaintiff with a right to seek compensation. Admittedly, even at the time of the bid being opened in March 2009 itself, the plaintiff was aware that the borrowers were not agreeable to sale of their properties and ought to have taken note of the risk involved in proceeding to bid for the properties. Throughout, the plaintiff has been made aware of the legal proceedings and in fact, he has been a party respondent in the various Writ Petitions as well. There is merit in the contention of the learned counsel for the defendants that the Bank cannot be accused of failure to comply with

Rule 9 of the Security Interest (Enforcement) Rules, 2002 for the simple reason that different Courts have taken divergent views with regard to the said Rule.

48. The Kerala High Court in *Varghese, Ukken v. State Bank of India,* reported in *(2010) SCC Online Ker 4745,* taking note of the Hon'ble Division Bench judgment of this Court in *K. Raamaselvam v. Indian Overseas Bank*, reported in *AIR 2010 Mad 1993*, held that even if sale fetches a price higher than reserve price, the secured creditors can refuse to give effect to the same and go for a fresh sale, holding that the secured creditor is interested in legalising its debt and also acts as a Trustee on behalf of the borrower so as to generate the best possible amount. The Kerala High Court also held that Rule 9 can be defeated by merely adding one rupee to the reserve price and quote the bid amount. Accordingly, taking advantage of the fact that statute does not state that the minimum gap/ difference between the reserve price and the higher price for effecting sale without consent of the borrower, the property can be sold for a higher price. Interpreting the proviso to Rule 9(2) the Kerala High Court, disagreed with the observations made by this Court and held that consent of the borrower would be required only when the property was being sold at a

lesser price. The law insofar as interpretation of Rule 9 is not finally settled and therefore, the defendants' Bank cannot be blamed for having not obtained the consent of the borrower in the present facts and circumstances of the case.

49. Coming to the decisions relied on by the learned counsel for the parties, with regard to the suit being barred under Section 34 of the SARFAESI Act, the Hon'ble Supreme Court in *Agarwal Tracom Private Limited*'s case (referred herein supra), held that Section 17 of the SARFAESI Act provides a remedy to a person who is aggrieved by measures taken by the secured creditor or the authorized officer under Section 13(4) of the Act and further held that an auction purchaser is also a person aggrieved by the action of the secured creditor in forfeiting money and held that an auction purchaser also can invoke Section 17(1) and challenge the action of the secured creditor before the DRT. However, in the said case before the Hon'ble Supreme Court, the secured creditor had challenged the action of the Bank in forfeiting the auction purchaser's deposit under Rule 9(5) and in such circumstances, the Hon'ble Supreme Court held that the borrower ought to have approached the DRT under the SARFAESI Act. In the present case, facts are entirely different. The suit

claim is one for damages by way of compensation. The proceedings under Section 17 of the SARFAESI Act are summary in nature and do not contemplate elaborate pleadings and evidence. Therefore, I do not find that the suit filed seeking compensation/damages being not maintainable. The remedy under Section 17(1) will not include a suit for compensation against the Bank.

50. In *The Ahmedabad Municipal Corporation of the City of Ahmedabad*'s case (referred herein supra), the Hon'ble Supreme Court held that in an auction sale, there is no warranty of title and doctrine of caveat emptor would apply to such purchase. Here again, the facts of the case before the Hon'ble Supreme Court are on a different footing. In the said case, it was only held that the purchaser at an auction sale takes the property subject to all defects in title and in such context, doctrine of caveat emptor applies to the auction purchaser. Here, the facts of the present case are different. It is not a case of both the parties that the borrower did not have title. The suit arises only on account of violation of Rule 9 of the Security Interest (Enforcement) Rules and therefore, the defendants may not be justified in claiming the benefits of the ratio laid down in this decision.

51. In the *M/s. Annapurna Industries*'s case (referred herein supra), the Karnataka High Court held that an auction purchaser is only entitled to refund of price paid with interest and would not be entitled to any compensation and holding that the auction purchaser was aware that the purchase made by him was in Court auction and was liable to be annulled, he had only taken a chance knowing fully well that what he had done was not a firm investment.

52. This Court in *M.S Padmanabha Iyer*'s case (referred herein supra), held that only where error was due to fraudulent misrepresentation by the vendor, compensation can be claimed. As rightly pointed out, in the present case, there is no fraudulent misrepresentation made by the Bank and there is also no breach of warranty in favor of the auction purchaser. In such circumstances, the plaintiff cannot seek compensation even on this ground.

53. In *South City Projects (Kolkata) limited* 's case (referred herein supra), the Calcutta High Court held that a person cannot claim both expenses/loss on account of promise performance and opportunity loss at the same time.

54. The Hon'ble Supreme Court in *Kanchan Udyog Limited*'s case (referred herein supra), held that any grant of expectation loss towards anticipatory profit and grant of reliance loss would tantamount to giving benefit to a person for his own lapses

55. In *Om Prakash*'s case (referred herein supra), the Delhi High Court held that where a statement of account without necessary certification under Section 2A of the Bankers Book Act is produced, it would be inadmissible in evidence. The ratio laid down in the said case would squarely apply to the facts of the present case. The endorsement made by the Bank official in Exhibit P18 which have been marked subject to objection are clearly not in compliance with the requirement of Section 2A and therefore, the said statements of account cannot be looked into by this Court. In fact, Section 65B of the Evidence Act is *pari materia* to Section 2A of the Bankers Book Evidence Act and in *Arjun Panditrao Khotkar*'s case (referred herein supra), the Hon'ble Supreme Court discussed the same and held that the certificate under Section 65B(4) was condition precedent to admissibility of any electronic record.

56. This Court in the *Santhosh Textile Process*'s case (referred herein

supra), the Hon'ble Division Bench of this Court held that a computer generated account statement without a certificate contemplated under Section 65B and not marked through the concerned person cannot be admissible in evidence. In the present case, P.W.2 was in no way related to the plaintiff's business concern and its accounts and as rightly pointed out by the learned counsel for the defendants only in order to get over the lacuna in evidence of P.W.1, P.W.2 has been examined and for clear want of compliance of Section 2A of the Bankers Book Evidence Act as well as Section 65B of the Indian Evidence Act none of the documents exhibited by P.W.2 can be considered.

57. Further, as held by the various Courts as discussed herein above, the plaintiff cannot feign ignorance of the fact that the auction purchase was under cloud, right from the very beginning. He has been made a party respondent even in the writ petitions filed by the borrower and all through, he was aware that there is a possibility of the sale being set aside. Even though the Bank did not challenge setting aside of the auction sale by this Court, on his own, the plaintiff approached the Hon'ble Supreme Court and only because of the plaintiff, the Bank was not in a position to refund the money until 07.05.2010 and therefore, there is no delay attributed on the

side of the defendants for not returning the money due to the plaintiff.

58. Even after the refund being made by the defendants on 07.05.2010, despite the liberty granted by the Hon'ble Division Bench of this Court as early as on 24.02.2010, the plaintiff never chose to initiate any action and at the fag end of the 3 years, the plaintiff has filed a suit claiming compensation under various heads which have already been discussed in detail and found against the plaintiff. In fact, I am constrained to even hold that the suit itself is barred by limitation under Article 72 of the Limitation Act, 1963. A claim for compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force is only one year and time begins to run from the date of the act of omission.

59. Here, even taking the order passed by the Hon'ble Division Bench to be the starting point of limitation, the plaintiff ought to have instituted the suit within a period of one year from the said date. The suit has been instituted clearly filed beyond the said period of one year. Therefore, the suit is liable to be dismissed as time barred. Even though, such a specific contention has not been taken by the defendants, under Section 3 of the Limitation Act, the Court has the power to dismiss the suit which is filed

after the prescribed period, even though limitation has not been set up as an defence. Even from this angle, the plaintiff is not entitled to any relief.

60. In such view of the matter and for all the foregoing reasons, the plaintiff is not entitled to any relief or compensation under any of the heads claimed and the plaintiff is not entitled to any of the monetary compensations sought for as against the defendants. Moreover, the suit is also barred by the law of limitation as well.

61. In fine, the suit is dismissed. However, there shall be no order as to costs.

27.09.2024

Index : Yes/No
Speaking/Non-speaking order
rkp

<u>Witnesses examined on the side of the plaintiffs:</u>

P.W.1 – Mr.M.Thanigachalam

P.W.2- Mr.V.Selvaraj

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	Ex.P1	02.04.2009	Certified copy of statement of account at Punjab National Bank
2.	Ex.P2	21.04.2012	Certified copy of Statement of account at Punjab Nation Bank
3.	Ex.P3	29.04.2009	Certified copy of order in W.P. No.1149 of 2009.
4	Ex.P4	29.04.2009	Certified copy of order in W.P. No.5272 of 2009.
5	Ex.P5	01.03.2010	Certified copy of Statement of account at Punjab National Bank.
6	Ex. P6	16.04.2010	Certified copy of statement of Account at Punjab National Bank.
7	Ex.P7	29.07.2009	Certified copy of order in W.P. No.9728 of 2009
8	Ex.P8	29.07.2009	Certified copy of order in W.P. No.9729 of 2009.
9	Ex.P9	26.09.2009	Certified copy of Demand Draft taken out in the name of V.Balaji for Rs.1,70,000/-
10	Ex.P10	09.10.2009	Certified copy of order in S.L.P. No.26344 of 2009
11	Ex. P11	28.10.2009	Certified copy of order W.P. No.22004 of 2009.
12	Ex. P12	07.04.2018	Certified copy of statement of account at Punjab National Bank dated 07.04.2018.
13	Ex.P13	24.02.2010	Certified copy of order passed in W.P. No.22004 of 2009.
14	Ex.P14	14.09.2009	Certified copy of letter from Punjab National bank to the defendant's dated 14.09.2009.
15	Ex.P15	26.03.2009	Certified copy of Auction notice
16	Ex.P16	02.04.2009	Certified copy of letter regarding receipt of 25% amount in auction sale.
17	Ex.P17	25.05.2009	Certified copy of Sale Certificates issued in the name of the plaintiff and sent to Punjab National Bank.
18	Ex.P18	13.11.2009	Certified copy of letter from Defendants.

19	Ex.P19	23.11.2009	Certified copy of Detailed reply sent by plaintiff to defendants.
20	Ex.P20	04.12.2009	Certified copy of letter from defendants.
21	Ex.P21	05.12.2009	Certified copy of letter from Punjab National bank.
22	Ex.P22	01.08.2007 & 31.03.2012	Certified copy of Guideline value of the suit property.
23	Ex.P23	01.04.2012	Certified copy of Guideline value of the suit property.
24	Ex.P24	20.03.2009 to 02.04.2009	The certified copy of statement of account at Punjab National Bank, Kilpauk.
25	Ex.P25	03.04.2010 to 14.06.2010	The certified copy of plaintiff's ledger account.
26	Ex.P26	20.05.2009 to 01.03.2010	The certified copy of statement of account at Punjab National Bank, Kilpuak.
27	Ex.P27	20.05.2009 to 31.03.2010	The certified copy of statement of account at Pubjab National Bank, Kilpauk.
28	Ex.P28	01.04.2009 to 31.03.2010	The certified copy of statement of account at Punjab National Bank, Kilpuak.
29	Ex.P29	14.09.2018	The original letter dated 14.09.2018 from the plaintiff addressed to the Chief Manager, Punjab National Bank, Kilpuak.

Witnesses examined on the side of the defendants:

D.W.1 -Anuj Kumar Singh

Documents marked on the side of the defendants:

S.No.	Exhibits	Date	Description
1.	Ex.D1	23.02.2009	Paper Advertisements published in “Business Line” and “Thina Thanthi” regarding the auction sale to be conducted by the defendants (2 Nos.)
2.	Ex.D2	26.03.2009	Plaintiff's tender for a sum of Rs.2.35 crores in respect of item 2 property.
3.	Ex.D3	26.03.2009	Plaintiff's tender for a sum of Rs.1.85 crores in

			respect of 3 property.
4	Ex.D4	02.04.2009	The photocopy of 4th defendant auction proceedings (2 Nos).
5	Ex.D5	26.03.2009	The photocopy of proceedings letter of the 4th defendant.
6	Ex.D6	02.04.2009	The photocopy of letters (2 Nos).
7	Ex.D7	26.03.2009	The photocopy of the proceedings of the authorised officer.
8	Ex.D8	30.01.2009	The power of attorney granted in favour of D.W.1.
9	Ex.D9	25.03.2009	Interim order in S.A. No.47 of 2009.
10	Ex.D10	19.05.2009	The copy of letter of confirmation of sale in favour of the plaintiff.
11	Ex.D11	19.05.2009	The copy of letter of confirmation of sale in favour of the plaintiff.
12	Ex.D12	20.05.2009	The copy of letter information regarding disposal of the writ petitions to the plaintiff.
13	Ex.D13	25.05.2009	The sale certificate for the other property.
14	Ex.D14	03.11.2009	The copy of the dismissal order in S.P. No.26344 of 2009.
15	Ex.D15	03.05.2010	The copy of the dismissal order in SLP Nos.10870 & 10871 of 2010.

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P.B.BALAJI,J.

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