IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2025

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

OA No. 513 of 2025, A.Nos.2396 & 2397 of 2025

in

C.S.(Comm. Div) No.129 of 2025

In **OA No. 513 of 2025, A.Nos.2396 & 2397/2025**

Shankar Karikar
No. 24, Bawa Road, Alwarpet, Chennai- 600 018

..Applicant/Plaintiff

Vs

1. IDBI Bank Ltd
   Represented by its Assistant General Manager,
   Retail Asset Care, No.44/86, First Floor,
   Ashok Nagar, Chennai 600 083.

2. IDBI Bank Ltd
   Represented by its Deputy General Manager,
   Greams Road Branch, No. 37 PM Towers,
   Greams Road Chennai 600 006

3. DP Foam Private Limited
   No. 17 Flat A and B Seethala, Jawaharlal Nehru
   Street, Puducherry
   Represented by Director Mr.D.P.Sarath

   Also at: A24-26 & 37-40, Industrial Estate,
   Sedarpet, Pondicherry-605 111.

4. DP Sharath
   No. 7 Jawaharlal Nehru Street,
   Puducherry 605 001

5. DP Vasudevan
No. 7 Jawaharlal Nehru Street,
Puducherry 605 001

..Respondents/Defendants

Prayer in O.A.No.513 of 2025: Judge's summons filed under Order XIV Rule 8 of O.S.Rules R/W Order XXXIX Rule 1 & 2 of the Code of Civil Procedure praying to grant an ad interim injunction restraining the Respondents No.1 to 5, their agents, servants or anybody claiming through or under them from acting any adverse action in abridgement of the Applicant's rightful possession of the impugned Property.

Prayer in A.No.2396 of 2025: Judge's summons filed under Order XIV Rule 8 of O.S.Rules R/W Order XXXIX Rule 1 & 2 of the Code of Civil Procedure praying to grant an ad interim stay of the Sale Notice dated 17.01.2025 issued by the Respondent No.2 and restraining the Respondent Nos.1 and 2, their agents, servants or anybody claiming through or under them from making unauthorized transfer of the title deeds and render justice.

Prayer in A.No.2397 of 2025: Judge's summons filed under Order XIV Rule 8 of O.S.Rules R/W Order XXXVIII Rule 5 of the Code of Civil Procedure praying to direct the Respondent to furnish security amounting to a sum of Rs.2,00,90,891/- (Two Crores Ninety Thousand Eight Hundred Ninety One only) pending disposal of this suit.

In all Applications

For Applicant(s): M/s. M.V.Swaroop
Hredai H.S.
Gayathri S
Thivakkaran M-MS/3481/2019
Rajagopalan R

Devadharshni B

For Respondent(s): Mr.V.Suresh for M/s.Shivakumar and Suresh for D1&D2/R1&R2

M/s.Ramasubramaniam Raj for D3&D5/R3&R5

Ms.L.Lakshmi Swaroopa for M/s.S.Subramanian for D4/R4

ORDER

The suit was filed to recover sums of Rs.1,63,00,000/- and Rs.37,90,891/- jointly and severally from the defendants with interest thereon. By these applications, the plaintiff seeks to restrain respondents 1 to 5 / defendants 1 to 5 from abridging the applicant's rightful possession of the property described in the schedule to O.A.No.513 of 2025 and to direct the respondents to provide security to the extent of Rs.2,00,90,891/- pending disposal of the suit.

2. The applicant entered into an agreement of sale dated 10.09.2022 with the third respondent for purchase of the property described in the schedule thereto for the total consideration of Rs.2,12,50,000/-. As part payment, a total sum of Rs.50,00,000/- had been paid on the date of execution of the agreement of sale. After execution thereof, a sum of Rs.88,00,000/- was paid on

27.02.2023 and further sums of Rs.10,00,000/- and 15,00,000/- on 09.03.2023 and 02.06.2023, respectively.

3. By alleging that the payment of Rs.88,00,000/- was made on behalf of the third respondent to IDBI Bank (the Bank) on the basis of a misrepresentation by the Bank that, upon realisation of such amount, the original title deeds would be handed over to the applicant/plaintiff by closing the loan account, the present suit and applications were filed.

4. Learned counsel for the applicant referred to communication dated 27.02.2023 from the Bank to Mr.D.P.Sarath/4th respondent herein and pointed out that it is stated therein that the loan account will be closed subject to cheque realisation and that the original documents would be handed over within 15 days from loan closure. Learned counsel submits that this communication was issued after a series of meetings with the applicant and the borrower. He further submits that the applicant would not have made the payment of Rs.88,00,000/- but for the misrepresentation by the Bank. He points out that the Canara Bank Cheque No.893393, which is referred to in the letter, is a cheque issued by the applicant in favour of the Bank. After realising the proceeds of the cheque, learned counsel contends that the Bank made a volte-face and

refused to part with the title deeds by alleging that there are amounts due and payable by the third respondent in relation to other loan accounts. By referring to supplemental memorandum of deposit of title deeds dated 03.09.2021, learned counsel submits that the documents listed in Schedule I thereto do not relate to the property forming the subject of the agreement of sale with the applicant. He points out that there is an ambiguous reference to the office premises at Door No.17, Flat A and B at Karikar Center, Jawaharlal Nehru Street in the said document, but that no valid mortgage has been created over the relevant immovable property by the said document.

5. Since the applicant was induced by misrepresentation to part with a sum of Rs.88,00,000/-, learned counsel contends that the Bank should be restrained from appropriating the sale proceeds to that extent once the property is sold. In the alternative, learned counsel submits the Bank should be directed to deposit any surplus from the sale proceeds to the credit of the suit.

6. Mr.Suresh, learned counsel for the Bank, made submissions in response. By referring to memorandum of deposit of title deeds dated 25.05.2012 in favour of the Bank, learned counsel submits that sale deeds dated 27.03.1995 bearing document Nos.1147 of 1995 and 1077 of 1995 were

deposited by the third respondent with intent to create a mortgage. He further submits that the mortgage has not been redeemed till date by discharging the relevant loans. In this connection, he refers to letter dated 07.11.2023 from the third respondent to the Bank stating that the balance dues will continue to be repaid as per the schedule of repayments. He points out that this letter is subsequent to the letter dated 27.02.2023 that the applicant relies on to contend that the loans stood fully discharged upon payment of a sum of Rs.88,00,000/-. His next contention is that the agreement of sale records that a total sum of Rs.50,00,000/- had been paid by the applicant as on 10.09.2022, i.e. the date of execution of the agreement of sale. He also points out that further sums of Rs.10,00,000/- and Rs.15,00,000/- were paid by the applicant after payment of the sum of Rs.88,00,000/-. According to learned counsel, this establishes that the payment of Rs.88,00,000/- was not induced by the Bank. After further submitting that the agreement of sale is unregistered in contravention of applicable law, learned counsel submits that the interim order is liable to be vacated.

7. Learned counsel for respondents 3 to 5 submits that the relevant immovable property is more than sufficient to discharge the dues of both the Bank and the applicant. They further submit that the agreement of sale was

entered into after obtaining the approval of the Bank and that this is evident from the in-principle approval granted by the Bank on 08.01.2016 (page 16 of the typed set). They also submit that they are ready and willing to settle their disputes with both the above mentioned parties and seek reference of the matter for mediation.

8. By order dated 23.05.2025, this Court permitted the Bank to proceed with the sale under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act) subject to the condition that amounts realized from such sale should not be appropriated by the Bank. The question that arises for consideration is whether this order should be discharged or continued.

9. The applicant has placed on record agreement of sale dated 10.09.2022. As contended by learned counsel for the Bank, the said agreement records the payment of a total sum of Rs.50,00,000/- by the applicant as of the date of execution of the agreement. It should be noticed that this was prior to the payment of Rs.88,00,000/- by the applicant to the Bank. Such payment is also recorded in the agreement of sale. Thereafter, the agreement records the receipt of Rs.10,00,000/- and Rs.15,00,000/- by the vendor/third respondent on

09.03.2023 and 02.06.2023, respectively. In the face of payments being made by the applicant both prior to and after 27.02.2023, it does not *prima facie* appear that the applicant decided to buy the relevant property on the basis of representations by the Bank. As noticed earlier, in the suit, the applicant/plaintiff seeks to recover an aggregate sum of Rs.1,63,00,000/- and Rs.37,90,891/- from all the defendants, including the Bank. After asserting that one installment of Rs.88,00,000/- was paid at the instance of the Bank, it is unclear as how the entire suit claim is sought to be recovered from the Bank, either on the basis of misrepresentation or otherwise.

10. The claim against the third respondent and its directors appears to be a claim to recover amounts paid as part consideration for the purchase of the property. Put differently, the claim is in respect of an alleged debt. By contrast, the claim against the Bank is in respect of alleged misrepresentation resulting in alleged damages. In these facts and circumstances, the applicant has failed to make out a *prima facie* case and is not entitled to either restrain the Bank from taking possession of the immovable property or even from appropriating and adjusting the sale proceeds against its dues from the third respondent.

11. The Bank has initiated proceedings under Section 13(4) of the SARFAESI Act to bring the mortgaged asset to sale. The said process cannot be interfered with indirectly by way of these applications. Since these applications are completely devoid of merit, both these applications are dismissed by leaving it open to the applicant to file an appropriate application against the third respondent and its directors.

06-08-2025

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SENTHILKUMAR RAMAMOORTHY, J.

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