IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27-02-2026

PRONOUNCED ON: 17-04-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

CS No. 160 of 2024

A.Raja
3/92, Pillaiyar Koil Street,
Kazhipattur,
Pudur Post Omr,
Chengalpattu.

..Plaintiff(s)

Vs

Indian Bank
Represented By Its Manager,
Saidapet Branch,
Bali Towers No.1, Abdul Razack Street,
Saidapet - Chennai - 600 015.

..Defendant(s)

PRAYER: This Plaint has been filed under Order IV Rule 1 of High Court Original Side Rules read with Order VII Rule 1 of Code of Civil Procedure praying for a) Directing the defendant to pay a sum of Rs.1,59,77,500/- with interest at 24 percentage p.a. from this dated till realisation and b) to pay the cost of this suit.

For Plaintiff(s): Mr. K.V.Ananthakrishnan

For Defendant(s): Mr. M.A.Abdul Wahab for
M/s. K.V.Subramanian Associatez

JUDGMENT

This Suit has been filed by the Plaintiff for the relief of recovery of money to the tune of Rs.1,59,77,500/- with interest @ 24% per annum and for costs.

2. **The brief averments of the Plaint and reply Statement are as follows:-**

The defendant is the bank, which lent loan to one M/s. Arun Agencies and the property in Plot No.45 and 46 measuring 49.412 cents in Old No.128/2 part, 128/3 part, Patta No.396, New S. No.128/2A1C and 128/2A1D of Kazhipattur Village, Kanchceepuram District now Chengalpattu District with a building admeasuring about 3500 sq. ft. belonged to M/s. Arun Agencies and two others has been mortgaged for the loan. The said loan availed by the borrower M/s. Arun Agencies has become 'Non-Performing Asset [NPA]' and thereby, the bank initiated proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act [SARFAESI Act] and brought the said property for sale through an auction on 03.03.2023. The Plaintiff had participated in the E-auction and he was a successful bidder for a sale consideration of Rs.3,79,10,000/- and paid a sum of Rs.94,77,500/- and the remaining amount is payable on or before 31.03.2023. However, the defendant had orally permitted and granted extension of time by 90 days. The Plaintiff effected payment on 06.06.2023 and last payment was made by him on 08.06.2023 and paid a total sum of Rs.1,56,77,500/- and the balance amount of Rs.2,19,32,500/- has to be remitted on or before 30.06.2023. Considering the oral extension and payments received till 08.06.2023, the Plaintiff requested the defendant for extension of time till 30.06.2023 for payment of balance sale consideration. However, the defendant bank refused to extend the time and accepted the payment of third parties offered to buy the property for higher consideration. When the Plaintiff approached the defendant on several times for refund of the amount of Rs.1,59,77,500/-, the defendant bank intimated the Plaintiff through a letter dated 21.06.2023 that the bank had cancelled the sale and forfeited the entire deposit amount of Rs.1,59,77,500/-. Thereafter, the defendant asked the Plaintiff to participate in the fresh auction to be held on 28.07.2023 and stated that if the Plaintiff becomes a successful bidder, the amount already deposited would be adjusted towards the bid amount.

2.1. Accordingly, the Plaintiff also participated in the fresh sale auction after remitting a sum of Rs.37,90,000/- on 27.07.2023. But the schedule property was sold to one Mrs. Parameswari for a sum of Rs.5,06,00,000/- which is higher than the previous sale price. Thereafter, the defendant refunded the 10% bid amount of Rs.37,90,000/- on 03.08.2023. The amount of Rs.37,90,000/- deposited by the Plaintiff to participate has been wrongly mentioned as Rs.3,79,100- in the legal notice dated 28.10.2023. Thereafter, the

Plaintiff requested the defendant to refund the amount in the previous auction to the tune of Rs.1,59,77,500/-. The defendant has not incurred any loss. The Plaintiff was asked to participate in the fresh auction and the defendant assured that if the Plaintiff is successful in the re-auction, the amount paid by the Plaintiff in the previous auction would be adjusted. Therefore, there is no forfeiture when the defendant legally agreed to adjust / refund the entire amount paid by the Plaintiff. The defendant, by a letter dated 04.10.2023 offered to pay a sum of Rs.65,00,000/- only after forfeiture of a sum of Rs.94,77,500/- being 25% of the bid amount. Therefore, the Plaintiff issued a notice dated 28.10.2023 calling upon the defendant to refund the amount of Rs.1,59,77,500/- and the defendant issued a reply notice dated 16.12.2023 with false averments. Thereafter, on 08.02.2024, the defendant credited a sum of Rs.65 lakhs in the Plaintiff's account. The defendant is liable to pay a sum of Rs.1,59,77,500/- with interest @ 24% from 30.10.2023, i.e., the date of receipt of legal notice. Therefore, the Plaintiff filed the Suit for recovery of money to the tune of Rs.1,59,77,500/-.

2.2. The defendant had enjoyed the benefit of the entire amount of Rs.1,59,77,500/- till 08.02.2024. Even after crediting a sum of Rs.65 lakhs into the Plaintiff's account, he was not allowed to operate the account and the defendant had enjoyed the benefits of the Plaintiff's money and the defendant sold the property for a higher price than the previous sale price. Rule 9(5) of the SARFAESI Rules is subject to the provisions of Section 73 of the Indian Contract Act. Therefore, the defendant is liable to repay the said amount with interest @ 24% per annum.

3. **Brief averments of the Written Statement filed by the defendant are as follows:-**

The allegations levelled in the Plaint are all denied as false. The averments that the defendant bank orally permitted and granted extension of time and refused to extend the time and accepted the payment because of third parties offered to buy the property for higher consideration and the Plaintiff approached the defendant on several times for refund of money and the defendant asked the Plaintiff to participate in a fresh auction to be held on 28.07.2023 and if he becomes a successful bidder, the amount already deposited would be adjusted towards the bid amount, are all denied. The Plaintiff himself admitted that he was unable to pay the entire sale consideration of Rs.3,79,10,000/- within a period of 90 days as stipulated under Rule 9(3) and 9(4) of the SARFAESI Rules. As per Rule 9(5) of SARFAESI Rules, the default of payment within the period of 90 days, the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold. Therefore, the defendant bank is in order to forfeit 25% of the sale consideration paid by the Plaintiff in view of the default to pay the balance amount within the stipulated time by the Plaintiff. Further the Plaintiff himself admitted that he has participated in the next auction and paid 25% of the sale consideration by remitting a sum of Rs.37,90,000/- on 27.07.2023. Having participated in the second auction, the Plaintiff is estopped from questioning the previous auction and his payment towards sale consideration in the previous auction. The defendant has already credited a sum of Rs.65 lakhs after forfeiting 25% of the amount of Rs.94,77,500/- and therefore, the claim of the Plaintiff for the refund of Rs.94,77,500/- is illegal and against the provisions of SARFAESI Act. The bank after following the rules mentioned in the SARFAESI Act, had forfeited 25% of the total amount of sale consideration as stipulated in the clause of sale notice. Even in the case of the property fetching a higher sale value in the subsequent auction, the bank cannot be directed to refund the forfeited amount to the purchaser who failed to remit the balance sale price as per Section 9(5) of the SARFAESI Act. Therefore, the Suit is liable to be dismissed.

4. Based on the above pleadings, after hearing both sides and after perusing the entire records, this Court has framed the following issues on 10.03.2025:

1. Whether the Plaintiff is entitled to refund a balance sum of Rs.94,77,500/- as per law?

2. Whether the defendant is entitled to forfeit 25% of the bid amount?

3. Whether the defendant has suffered a loss, which would entitle the defendant to forfeit any amount?

4. To what other reliefs, the Plaintiff is entitled to?

5. In order to prove the case of the Plaintiff, on the side of the Plaintiff, PW1 was examined and Ex.P.1 to Ex.P.13 were marked. On the side of defendant, DW1 was examined and marked Ex.D.1 to Ex.D.3. Both sides have filed written arguments.

6. The learned counsel appearing for the Plaintiff would submit that the Plaintiff has filed the Suit for recovery of money as against the defendant bank. In fact, the Plaintiff participated in the E-auction sale held on 03.03.2023 for the purchase of property belonging to one M/s. Arun Agencies through SARFAESI proceedings. The Plaintiff became successful bidder to the tune of Rs.3,79,10,000/- and he already paid a sum of Rs.94,77,500/- and thereafter, the balance amount to be paid within 90 days. The Plaintiff has paid Rs.1,59,77,500/- and the remaining amount of Rs.2,19,32,500/- has to be paid within 90 days. On 21.06.2023, the defendant bank cancelled the sale and forfeited the entire amount of Rs.1,59,77,500/-. Again the defendant bank conducted second e-auction sale, in which, the Plaintiff has also participated and paid a sum of Rs.37,79,000/- as EMD, but the property was sold to one Parameswari, who was a successful bidder in the second auction, for a sum of

Rs.5,06,00,000/-. Therefore, the said EMD amount of Rs.37,90,000/- was refunded to the Plaintiff and previous sale consideration amount of Rs.1,59,77,500/- has not been repaid by the defendant bank and later a sum of Rs.65 lakhs alone was credited into the account of the Plaintiff on 08.02.2024 after forfeiting a sum of Rs.94,77,500/-. Therefore, the Plaintiff filed the Suit.

6.1. The defendant bank has not suffered any loss. In fact, the bank sold the property for a higher price and the defendant bank has no legal right to forfeit such a huge amount of Rs.1,59,77,500/-. The defendant bank can only forfeit the EMD amount of Rs.37,90,000/- being 10% of the bid amount. The bank has also admitted the receipt of amount of Rs.1,59,77,500/- and they repaid an amount of Rs.65 lakhs only on 08.02.2024. Therefore, the Plaintiff is entitled to refund of the above said amount. Since the auction was not conducted by the Court, the condition mentioned in the E-auction notice under Section 8(5) of the SARFAESI Act, is not applicable and Section 8(6) alone is applicable. Therefore, e-auction notice dated 15.02.2023 is to forfeit only the EMD amount and not the 25% of the bid amount. Since the defendant issued notice under Section 8(6) of the SARFAESI Act, the EMD amount alone can be forfeited for non-payment of the bid amount. The proceedings under Sections 8(6) and 9(4) of the SARFAESI Act, cannot be clubbed together to justify the forfeiture. Therefore, the Plaintiff is entitled to recover the amount with interest @ 24% per annum, after deducting the amount of Rs.65 lakhs paid under the interim decree. In order to prove the case of the Plaintiff, he has examined PW1 and marked Ex.P.1 to Ex.P.13 and on the side of the defendant, DW1 was examined and marked Ex.D.1 to Ex.D3. The Plaintiff's side evidence categorically deposed about the Plaintiff's case and he proved the case through sufficient evidences. Therefore, the Suit is liable to be decreed.

7. The learned counsel appearing for the defendant would submit that the Plaintiff, who was the successful bidder, failed to pay the entire sale consideration within the stipulated time and the same was also admitted by the Plaintiff. Thereafter, the property was sold through re-auction. In the subsequent auction, the Plaintiff had also participated, and he was not a successful bidder and the property was sold for higher price of Rs.5,06,00,000/. In the second auction also, the Plaintiff deposited EMD amount of Rs.37,90,000/-. Therefore, he himself after accepting the cancellation of previous auction, once again participated in the re-auction sale proceedings and he is estopped from questioning the earlier sale price and the forfeiture. Therefore, the Suit itself is not maintainable. As per Rule 9(4) of SARFAESI Rules, the bank is entitled to forfeit 25% of the sale price and thereby, they forfeited a sum of Rs.94,77,500/- and remaining amount of Rs.65 lakhs was repaid to the Plaintiff and without any protest, the Plaintiff also accepted the said amount. Therefore, the Plaintiff is not entitled to any relief and the Suit has no merits and deserves to be dismissed.

8. Heard both sides and perused the entire materials.

9. This Court has framed appropriate issues. Since all the issues are inter-linked, all the issues have been taken together for answering.

10. In this case, according to the Plaintiff, the property belongs to M/s. Arun Agencies was sold through public auction under the SARFAESI Act and he was also a successful bidder and the total amount of sale price was Rs.3,79,10,000/-, the Plaintiff initially paid a sum of Rs.94,77,500/- and the remaining amount has to be paid within 90 days. While so, the Plaintiff had only paid a sum of Rs.1,59,77,500/- and the balance amount of Rs.2,19,32,500/- was not paid by the Plaintiff within the stipulated time, thereby, the property was re-sold through another auction and in the said subsequent action, the Plaintiff also participated by paying EMD amount of Rs.37,90,000/- on 27.07.2023, where the property was sold to one Mrs. Parameswari, who was the successful bidder, for a sum of Rs.5,06,00,000/- and thereafter, the above said EMD amount of Rs.37,90,000/- was repaid to the Plaintiff on 03.08.2023. As far as previous auction amount is concerned, after deducting 25% of the sale price i.e., a sum of Rs.94,77,500/-, the remaining amount of Rs.65 lakhs was credited to the account of the Plaintiff. Now the Plaintiff has filed this Suit claiming the forfeited amount of Rs.1,59,77,500/- with interest @ 24% per annum.

11. According to the defendant, the total sale price of Rs.3,79,10,000/- was not paid within time by the Plaintiff. The Plaintiff has only paid Rs.1,59,77,500/-, thereby, the property was sold through re-auction and the Plaintiff had also participated in the subsequent auction by depositing the EMD amount of Rs.37,90,000/- and he was not a successful bidder and he was not able to purchase the property, as the sale price was higher price to the tune of Rs.5,06,00,000/- than the previous sale proceedings and the said EMD amount for resale was repaid to the Plaintiff. Since the Plaintiff was a defaulter in the previous sale proceedings, 25% of the sale price to the tune of Rs.94,77,500/- was deducted under Rule 9(5) of the Security interest (Enforcement) Rules and the remaining amount of Rs.65 lakhs was credited to the account of the Plaintiff. Therefore, the defendant is entitled to forfeit the 25% amount as per SARFAESI rules.

12. This court carefully perused the entire materials in the auction proceedings, the terms and conditions of forfeiture have been clearly mentioned and after accepting the said terms and conditions, the Plaintiff participated in the auction and he was not able to pay the entire sale consideration within the time limit of 90 days, thereby, the bank has forfeited 25% amount of the sale price. In order to prove the case of the Plaintiff, he examined PW1 and marked Ex.P.1 to Ex.P.13. On the side of the defendant, DW1 was examined and Ex.D.1 to Ex.D.3 were marked. The Plaintiff,PW.1 had deposed by supporting

his case and the DW1defendant has deposed by supporting his case The Plaintiff, only after admitting the terms and conditions of the sale, participated in the re-auction. Ex.P.2, there is a condition that "*Please be informed that in case you fail to deposit due amount by scheduled dates, sale shall be cancelled and any amount deposited by you related to this bid, shall be forfeited"*. As per Ex.P.2, the remaining amount of Rs.2,84,32,500/- has to be paid on or before 31.03.2023 and thereafter, the Plaintiff also sought for time for making balance amount on or before 03.06.2023. However, no payment was made by the Plaintiff and the sale in favour of the Plaintiff was cancelled through Ex.P.5 on 21.06.2023, where the defendant bank had duly informed about the forfeiture of the amount. The Plaintiff has also admitted the non-payment by him within the time stipulated by the bank and thereafter only, the property was re-sold by re-auction. Therefore, the Plaintiff has himself admitted the default in payment of balance sale price. Now, the main point is issue No. 2 ***whether the bank is entitled to forfeit 25% of the sale price?".***

13. In this context, the learned counsel appearing for the defendant would submit that as per Section 9(5) of the SARFAESI Act, the bank is entitled to forfeit 25% of the sale price and he has also relied upon the judgment of Hon'ble Supreme Court in ***Authorized officer, Central Bank of India vs. Shanmugavelu reported in (2024) 2 MLJ 65 (SC),*** wherein it has been held that ***"Forfeiture contemplated by statute, Equitable considerations cannot***

supplant the consequences of a legal rule, Equity always follows the law and Equity cannot supplant the law, and equity has to follow the law, if the law is clear and unambiguous, the consequence of forfeiture of 25% of the deposit under Rule 9(5) of the Security Interest (Enforcement) Rules is a legal consequence that has been statutory provided in the event of default in payment of the balance amount, the consequence envisaged under Rule 9(5) follows irrespective of whether a subsequent sale takes place at a higher price or not, and this forfeiture is not subject to any recovery already made or to the extent of the debt owed, in such cases, no extent of equity can either substitute or dilute the statutory consequence of forfeiture of 25% of deposit under Rule 9(5) of the SARFAESI Rules". Further, ***"forfeiture of earnest money is not a penalty – Section 74 of the Indian Contract Act would apply only when forfeiture is like a penalty and not otherwise. Rule 9(5) of SARFAESI Rules prescribing forfeiture of EMD of 25% of the total amount cannot be termed as a penalty within the meaning of Section 74 of the Indian Contract Act.*** Further it is clear that ***the SARFAESI Act is a special legislation with an overriding effect on the general law and only those legislation which are either specifically mentioned in Section 37 or deal with securitization will apply in addition to the SARFAESI Act. Being so, the underlying principle envisaged under Section(s) 73 and 74 of the 1872 Act which is a general law will have no application, when it comes to the SARFAESI Act more particularly the forfeiture of earnest money deposit which has been statutorily***

provided under Rule 9(5) of the SARFAESI Rules as a consequence of the auction purchaser's failure to deposit the balance amount".

In the case on hand also, the Plaintiff has failed to deposit the entire sale price and thereby as per Section 9(5) of the SARFAESI Rules, 25% of the earnest money deposit was forfeited by the bank. Therefore, there is no illegality in the forfeiture of the above said amount by the defendant bank.

Issue No. 1: This court in issue No.2 already decided that the defendant bank is entitled to forfeit the 25% of deposit amount of bid price as per rule 9(5) of Security Interest (Enforcement) Rules. It is admitted fact that the plaintiff has not paid the entire bid price and only paid a sum of Rs. 1,59,17,500/- out of Rs.3,79,10,000/- thereby failed to comply the condition of rule 9(3) and 9(4) of Security Interest (Enforcement) Rules, thereby 25% deposit money was forfeited by the defendant Bank and the remaining amount of Rs. 65,00,000/- was returned to the plaintiffs. Therefore the plaintiff is not entitled to relief of the money forfeited by the Bank as the forfeiture is as per law. Thus Issue No.1 is answered.

Issues No.3: According to the plaintiff the defendant bank forfeited the 25% of deposit money of bid price, without any loss caused to the bank. The Bank sold the property through subsequent auction for a higher price of

0Rs.5,06,00,000/- and thereby no loss caused to the bank and hence to the bank cannot forfeited the money. The Hon'ble Suprement court in the case of ***Authorized Officer, Central Bank of India -vs- Shanmugavelan*** reported in ***(2024) 2 MLJ 65 SC*** settled the law that the consequences of forfeiture of 25 % of deposit under Rule 9(5) of Security Interest (Enforcement) Rules is a legal consequence that has been statutory provided in the event of defendant in payment of balance amount and the consequences envisaged under Rule 9(5) follows irrespective of whether a subsequent sale taken place at a higher price or no and this forfeiture is not subject to any recovery already made or to the extent of the debt owned. Therefore the question of loss caused to the bank has no relevance and the bank has a power to forfeit the deposit money of 25 % as per rule 9(5) of Security Interest (Enforcement) Rules. Thus the issue is answered. As far as the arguments of the learned plaintiffs counsel in respect of Section 8(6) and 9(4) of Security Interest (Enforcement) Rules is concerned Rule 8(6) has not relevance to this case.

14. Issue No. 4: with the above discussions and observations, this Court is of the opinion that The plaintiff is not entitled to any relief through this suit and this Civil Suit has no merits and deserves to be dismissed.

15. In the result, the ***Civil Suit is dismissed.*** Considering the nature of relief, there shall be no order as to costs.

17-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MJS

APPENDIX:

List of Plaintiff side Witnesses:

PW1 : Mr.A. Raja

List of Plaintiff side Documents:

Exhibit No.	Date	Description of Documents
Ex.P.1	15.02.2023	E-Auction notice paper publication.
Ex.P.2	16.03.2023	Photocopy of the Auction confirmation.
Ex.P.3	16.03.2023	Letter by Plaintiff seeking extension.
Ex.P.4	20.03.2023	Photocopy of the Confirmation of Sale.
Ex.P.5	21.06.2023	Photocopy of the Forfeiture of entire amount.
Ex.P.6	12.07.2023	2nd E-Auction notice paper publication.
Ex.P.7	27.07.2023	Deposit of EMD for fresh auction Rs.37,90,000/-.
Ex.P.8.	18.07.2023	Bank statement for Return of Rs.37,90,000/-
Ex.P.9.	12.09.2023	Letter from Plaintiff to defendant with postal tractk.

Ex.P.10	04.10.2023	Letter from defendant to Plaintiff.
Ex.P.11	28.10.2023	Legal notice from Plaintiff's counsel to defendant with acknowledgement card.
Ex.P.12	16.12.2023	Reply to the legal notice from defendant counsel with cover.
Ex.P.13	08.02.2024	Photocopy of the bank statement for credit payment of Rs.65 lakhs.

List of Defendant side Witnesses:

DW1 : Mrs. A.J. Shenbagavalli

List of Defendant side Documents:

Exhibit No.	Date	Description of Documents
Ex.D.1	14.02.2023	Notice of intended sale.
Ex.D.2	10.07.2023	Notice of intended sale.
Ex.D.3	04.10.2025	Letter to the Plaintiff from bank.

17-04.-2026

To

The Sub-Assistant Registrar (Original side),
High Court, Madras.

P.DHANABAL, J.

MJS

CS No. 160 of 2024

17-04.-2026