

O.S.A.Nos..35 to 37 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2025

CORAM :

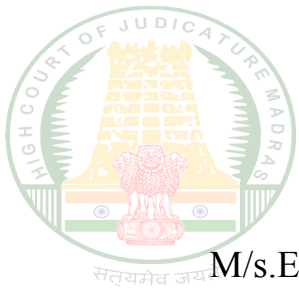
**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**O.S.A.Nos.35 to 37 of 2025
and CMP Nos.3559, 3560 and 3561 of 2025**

1. M/s.Sri Kaleeswari Stores,
a partnership firm
represented by its Partners,
Mr.Venkateshwaran Ramu & Mrs.Selvi
No.133, Big Street, Kumbakonam
Thanjavur District – 612 001.
2. Mr.Venkateshwaran Ramu (Guarantor)
Partner M/s.Sri Kaleeswari Stores,
No.133, Big Street, Kumbakonam
Thanjavur District – 612 001.
Also at
Door No.899-1-B/B899 B3, Kalasandhikattalai Street,
Kumbakonam, Thanjavur District – 612 001.
3. Mrs.Selvi
Partner M/s.Sri Kaleeswari Stores,
No.133, Big Street, Kumbakonam
Thanjavur District – 612 001.
Also at
Door No.899-1-B/B899 B3, Kalasandhikattalai Street,
Kumbakonam, Thanjavur District – 612 001.

.. Appellants in the above OSAs.

VS



O.S.A.Nos..35 to 37 of 2025

M/s.Equitas Small Finance Bank Limited

Having its registered office at

4th Floor, Phase II, Spencer Plaza,

No.769, Annasalai, Chennai – 600 002

Chennai, Tamil Nadu.

.. Respondent in the above OSAs.

Common Prayer : Appeals filed under Order XXXVI Rule 1 of the Original Side Rules read with Section 37(1)(b) of the Arbitration and Conciliation Act against the common order dated 10.02.2025 in A.Nos.548, 546 and 547 of 2025 in Arb.Application Nos.587, 585 and 586 of 2024.

In all OSAs

For Appellants : Mr.V.Raghavachari
Senior Counsel
for Mr.U.Karunakaran

For Respondent : Mr.Srinath Sridevan
Senior Counsel
for Mr.M.S.Murali

COMMON JUDGMENT

(Delivered by Dr.ANITA SUMANTH..J)

The respondents in the applications are the appellants before us. These Original Side Appeals arise from a common order passed by the learned Judge on 10.02.2025 declining to extend the time sought by the appellants to make payment to the Equitas Small Finance Bank Limited (in short 'Bank')/applicant in Arbitration Applications under Section 9 of the Arbitration and Conciliation Act, 1996 (in short 'Act').



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2. The trajectory that the matter has taken thus far is this:

The appellants had sought financial accommodation from the Bank and had defaulted in re-payments. Proceedings for Arbitration of the disputes inter se the parties were on the anvil and prior thereto, three applications had been filed by the Bank in Commercial Arbitration Original Application Nos.585 to 587 of 2024 seeking the following reliefs:

A.No.585 of 2024:

To appoint an Advocate Commissioner to take possession/seize the stock lying at the business premises and godown of the 1st Respondent and take inventory and hand over the same to the applicant.

A.No.586 of 2024:

To direct the concerned jurisdictional Police Aid for smooth implementation and execution of the warrant by the Advocate Commissioner.

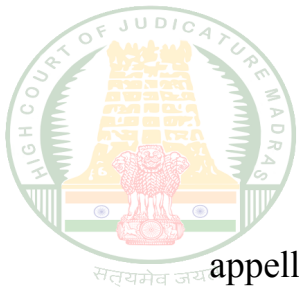
A.No.587 of 2024:

To permit the applicant to sell the hypothecated stock so handed over by the Advocate Commissioner either by public auction or private treaty for the realization of its dues in a sum of Rs.7,50,43,401/- (Rupees Seven Crores Fifty Laksh Forty-Three Thousand Four Hundred and One only) as on 21.08.2024.

3. The aforesaid applications came to be ordered on 22.01.2025

after hearing both the parties. The learned Judge has noted therein that the

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appellants had been afforded a one-time settlement by letter dated 31.12.2024 where the Bank has waived the penal interest and other charges that had accrued under the sanction of credit facilities. The sum waived amounts to Rs.1,05,15,682/- and the balance remaining to be paid was a sum of Rs.8,24,81,000/-. The offer of the Bank was to hold good till 31.01.2025.

4. The appellant was to remit a sum of Rs.4,24,81,000/- on or before 10.01.2025 and the balance sum of Rs.4,00,00,000/- on or before 31.01.2025. Thereafter, a memo of compromise was to be entered into, which was to be filed before this Court in the Section 9 applications paving the way for consent of the sole Arbitrator to pass an award as per the agreement between the parties. The Bank has, in communication dated 31.12.2024, categorically stated that the proposal for settlement would hold good only if all terms in that communication were satisfied.

5. It is in the aforesaid circumstances that order dated 22.01.2025, came to be passed and the operative portion of that order reads thus:

‘

2.The learned Senior Counsel appearing for the applicant would submit that the first installment, even as per the one time settlement, is payable on 10.01.2025 and the respondents have not come forward to pay even a single rupee and thereby he would persuade this Court to pass



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suitable orders directing the Advocate Commissioner to proceed to sell the hypothecated assets and deposit into the credit of the above application in Arb.Appln.No.585 of 2024.

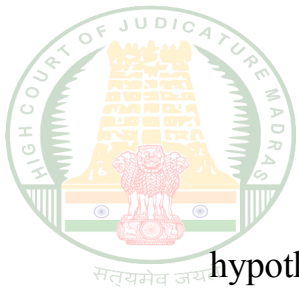
3.Per contra, the learned counsel appearing for the respondents would submit that even in the one time settlement provided by the applicant bank, the respondents have time till 31.01.2025 and he would contend that the respondents are taking active steps to mobilize funds to settle the claim of the applicant bank.

4.Considering the above, the Advocate Commissioner is directed to initiate steps for sale of the hypothecated assets, after 02.02.2025. It is made clear that in the event of the respondents settling the claim of the applicant bank in full on or before 31.01.2025, then the Advocate Commissioner may not proceed with the sale process. However, if the respondent does not pay the claim amount in full on or before 31.01.2025, the Advocate Commissioner is at liberty to proceed to sell the hypothecated assets of the respondents, by following due process of law.

5.It is also made clear that the Advocate Commissioner is entitled to approach the jurisdictional Police Station for police protection at the time of sale of the assets. On receipt of such request, the police officials concerned are directed to provide adequate police protection to the Advocate Commissioner enabling him to proceed with the sale process.

6. Post the matter on 24.02.2205 for filing report of the Advocate Commissioner'

6. It is relevant to note that order dated 22.01.2025 has attained finality and the appellants have not challenged the same. Thus, they are bound in full measure by the directions issued thereunder, where the Advocate Commissioner has been directed to initiate steps for sale of the



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hypothesized assets after 02.02.2025. The date has been specifically fixed, the Court having taken note of the offer of settlement, which was valid till 31.01.2025.

7. If at all the appellants were of the view that further time was necessary, applications ought to have been made within the time that had been stipulated by the Court, instead of which, as rightly pointed out by the respondent, the applications seeking extension of time had been filed only on 09.02.2025, long past the expiry of the offer. It is those applications seeking extension that have come to be rejected on 10.02.2025 by way of the impugned order.

8. Mr.V.Raghavachari, learned Senior Counsel for Mr.U.Karunakaran, learned counsel on record for the appellants assails the impugned order mainly on the ground that the learned Judge ought not to have rejected the application stating that he was not vested with necessary powers to consider the relief sought for.

9. This is countered by Mr.Srinath Sridevan, learned Senior Counsel for Mr.M.S.Murali, learned counsel on record for the respondent to state that the applications have been rejected on merits taking note of the position that the amounts were admittedly outstanding, offer dated 31.12.2024 was valid only till 31.01.2025 and the applications for



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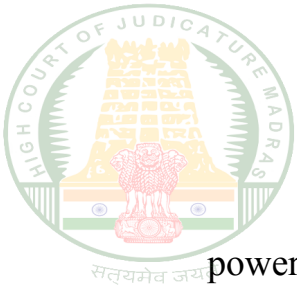
extension had itself been filed only after the offer of settlement had expired.

10. Having heard both learned senior counsel and having perused the material documents, we are of the considered view that there is no merit in this appeal.

11. In order dated 22.01.2025, as we have already observed supra, the detailed contentions of both parties have been taken note of. At paragraph 3, the learned Judge has recorded that sufficient time, till 31.01.2025, has been granted to the appellants to make the payment of the admitted outstandings. He has also recorded the contention of the appellants that active steps were being taken to mobilise the required funds. He has thereafter been cautious enough, to fix the date of sale only post the expiry of the settlement date.

12. That order, dated 22.01.2025 has been accepted by the appellants and in the teeth of that, we are of the view that the rejection of their applications seeking extension of time calls for no intervention, particularly as those applications had itself been filed only subsequent to the expiry of the period granted by the Court.

13. That apart, a perusal of the impugned order will nowhere indicate that the learned Judge had opined that he was denuded of the



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power to consider the applications. In fact, he has categorically held in order dated 10.02.2025 that the applications do not merit consideration and had assigned reasons for the same.

14. Firstly, due consideration had been given to the offer of settlement dated 31.12.2024, secondly, the applicants had submitted that they actively pursuing the settlement of the amount, thirdly, that they were bound by the undertaking given before the Court on 22.01.2025 and sufficient time had been granted to the appellants to make payments to the respondent. It was in the aforesaid circumstances that the Court held that there had been clear breach of the undertaking that they had been bound by, and hence the question of granting further time did not arise.

15. In our view, the learned Judge has rightly exercised the discretion to reject the applications, and we do not find any cause to intervene.

16. The appellants have referred to the judgment of the Hon'ble Supreme Court in *P.T.Thomas V. Thomas Job* ((2005) 6 SCC 478) in support of their submission that there was no fetter on the power of the Court to grant extension of time. After all, appellants would plead, what they seek is only extension of time to make the required payments and they should not have been denied this opportunity.

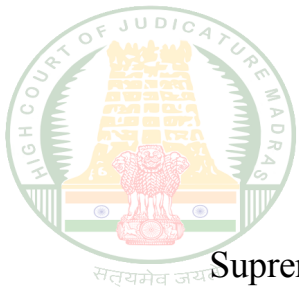


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17. The ratio of the aforesaid judgment does not, in our view, apply to the facts and circumstances of the present case. There, the Court was concerned with the nature and binding effect of an award passed by the Lok Adalat. While holding that such Award was final and permanent and equivalent to a decree executable, what weighed with the Court was that, if there were any means by which the litigation could be finally settled qua the parties, such an opportunity must be provided to them.

18. It is in that context that they express the view that the High Court could have considered the grant of time sought to settle the matter. That was also a case where notice had not been served on the parties and sufficient time had not been granted to the parties to perform their respective obligations. It is in those circumstances that the Supreme Court holds that the High Court has not taken note of the circumstances, and ought to have exercised discretion to execute the sale deed by extending the time for the same. They thus conclude that the High Court was in error in holding that the Court had no jurisdiction to extend the time.

19. The present case is different and distinguishable. We have, in the paragraphs supra, adumbrated the reasons which have prevailed with us in not interfering with order dated 10.02.2025 impugned before us. In this we are fully supported by a decision of three Judges of the Hon'ble



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Supreme Court in the case of *Wanderland Ltd. And another V. Antox India P. Ltd.* (1990 SCC (Supp) 727) reiterating the settled proposition that Courts would be slow in interfering in appeal, except if it finds perversity writ large on the face of the order. Such circumstances do not arise in the present case.

20. In light of the discussion as above, these Original Side Appeals are dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

[A.S.M., J] [C.K.,J]
17.02.2025

Index:No
Speaking order
Neutral Citation:Yes
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