



EP NO.57 OF 2019

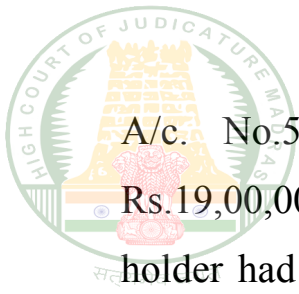
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22.08.2025

1. This petition is filed U/O 21 R.43 and 64 of CPC seeking to issue a warrant for the attachment and sale of movable properties belonging to the 1st judgment debtor more fully described in the petition schedule.

2. The averment of the petitioner in his affidavit filed in support of the EP is that he filed a suit in CS No.650/1999 against the above judgment debtors and the above said suit was decreed in his favor on 12.12.2008 as against which the 1st judgment debtor filed an appeal in OSA No.156/2009 and the same was dismissed on 01.09.2016 confirming the decree and judgment passed in CS No.650/1999. Hence this petition.

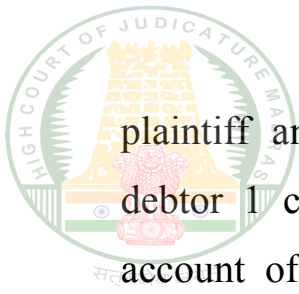
3. The 1st judgment debtor filed his counter stating that the amount claimed by the decree holder is disputed and the calculation that is shown in the petition is also not correct and therefore the EP is not maintainable either on facts or in law. It is further contended by the 1st judgment debtor that the petitioner has shown all factious materials in the petition but really as many properties are not available. The petitioner also has not justified as to how they are entitled to the interest of Rs.31,79,850/- and the calculation of interest not provided in the petition.

4. The 1st judgment debtor filed his additional counter stating that the plaintiff/decreed holder had filed OCC facility from the 1st respondent bank in TBC



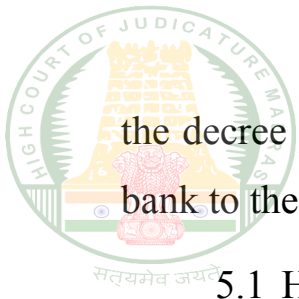
A/c. No.560/2019 (Now CBS A/c No.No.41918015) with the limit of Rs.19,00,000/- and was operating the said loan. In course of business the decree holder had given letters of credit No.GO20LC642006 dated 22.5.1999 of the 3rd respondent/3rd defendant herein and the said letters of credit was invoked on 30.08.1999 and the 1st respondent bank had made payment of the same from the OCC loan account of the decree holder. It is further contended that the decree holder has filed the suit in CS No.650/1999 to declare that the purchase order dated 24.5.1999 made by the plaintiff with the 3rd defendant in Germany has been duly and validly cancelled and to direct the 1st and 3rd judgment debtors jointly and severally to pay a sum of Rs.45,00,000/- (Rupees Forty Five Lakh Only) paid by the 1st defendant to the 3rd defendant in pursuance of the letters of credit and also direct the 1st respondent bank to pay a sum of Rs.15,00,000 towards damages. The said suit was contested by 1st judgment debtor and a decree was passed on 12.12.2008 in favor of the decree holder.

4.2 The respondent contended that however in para No.93 of the said judgment the Hon'ble court with regard to issue No.4 was pleased to observe that no details were given in the court as to how a sum of Rs.45,00,000/-(Rupees Forty Five Lakhs Only) have been arrived at by the plaintiff and there is no evident to show the payment of Rs.45,00,000/- by the 1st defendant to the 3rd defendant in perusing to the letters of credit under Ex.P7. Further as per Ex.P38 the plaintiff has paid a sum of Rs.37,21,782 (Rupees Thirty Seven Lakhs Twenty One Thousand Seven Hundred and Eighty Two Only) by way of interest from 27.8.1999 to 31.3.1999 on the principle amount of Rs.15,03,373/- (Rupees Fifteen Lakh Three Thousand Three Hundred and Seventy Three Only) and so they are entitled to get contra/reverse entry in respect of principle amount paid by them/deposited in the said account till this date and hence the issue number 4 was answer in favor of the



plaintiff and accordingly the decree was also drafted. Respondent/ judgment debtor 1 contended that after February 2007 there is no credit entries in the account of the decree holder and that the account was classified as NPA on 14.5.2008. It was further contended that the said OCC Account facility has been assigned by the 1st respondent bank to RARC on 30.12.2013 by way of a assignment agreement registered as document No.1766/2014 and even at the time of assignment the decree holder herein was due and liable to pay a sum of Rs.50,45,00,037 (Rupees fifty Lakh Forty Five Thousand and Thirty Seven Only) towards principle and further interest in respect of the OCC facility without reversal of the LC amount and the consequential interest.

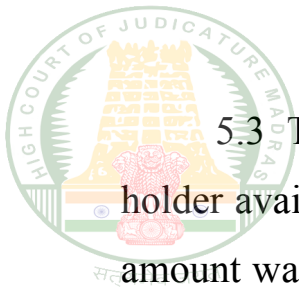
4.3 It is further stated that in view of the above the decree holder is entitled only for reversal of the entries of LC amount and the interest deposited, accordingly, this respondent bank has now reversed the deposit entry of Rs.15,03,373 dated 13.08.1992 and also the reversed all the consequential interest amount which charged for the said amount of Rs.15,03,373 and they have failed this state of accounts of the OCC loan facility after such reversals. As per the statement of accounts even after reversing the LC amount and consequential interest as per the decree, the decree holder is still liable to pay a sum of Rs.2,36,68.91 to the 1st respondent bank on 31.03.2007. Further as on 31.8.2022 even after reversing the debit entries of the LC and the interest charge, the decree holder itself is liable to pay a sum of Rs.40,97,95,979/- with the 1st respondent bank or its assignee in respect of the OCC loan amount and thereby, there is only a debited balance in the OCC account of the decree holder and no credit balance and hence there is no question of payment of any amount of the decree holder. Therefore the respondent prayed to record the reversal of the debit entries in respect of the LC amount and the consequential interest amount as compliance of



the decree passed and also to record that there is no liability of the 1st respondent bank to the decree holder in the above suit and to terminate the EP.

5.1 Heard both side counsels and written statements filed by the both the decree holder and 1st judgment debtor counsel. Perused the material available on record. No oral or documentary evidence let in by the decree holder. On the side of the 1st respondent/ 1st judgment debtor the chief manager of the 1st judgment debtor bank Mr.C.Sathish Kumar was examined as RW1 by way of filing proof affidavit reiterating the contents of the additional counter. Ex.R1 and Ex.R2 were marked through him. Ex.R1 is the statement of accounts of the OCC loan facility after reversal of the LC amount and the consequential interest. Ex.R2 is the statement of accounts of the OCC loan facility without reversing the LC amount of the consequential interest.

5.2 The learned counsel for the decree holder submitted that the decree holder has filed a suit in CS No.650/1999 as against the judgment debtors which was decreed in his favor on 12.12.2008 as against which the respondent/judgment debtor-1 filed an appeal in OSA No.156/2009 and the Hon'ble Division Bench of the Hon'ble High Court of Madras was pleased to dismiss the appeal on 01.9.2016 by confirming the decree and judgment of the trial court. The learned counsel further submitted that pending this EP the 1st judgment debtor has filed a special leave petition before the Hon'ble apex court in SLP(C) Diary No.4041/2020 which was dismissed on 26.5.2020 by observing that the SLP is dismissed both on the grounds of delay and on merits. Till date the 1st judgment debtor has not satisfied the decree and hence he has filed this EP for recovery of sum of Rs.85,65,569 by way of attachment and sale of movable properties belonging to the 1st judgment debtor.



5.3 The learned counsel for judgment debtor submitted that the decree holder availed a loan facility from the 1st judgment debtor and the letters of credit amount was paid to the 3rd judgment debtor only by debiting the said loan amount and even as per the preamble of the decree and Para No.93 of the judgment passed in CS No.650 of 1999. The decree holder has entitled only for a reversal of the debit LC amount and the interest and therefore the 1st judgment debtor bank is entitled to claim a set off as per said judgment and decree. Hence by applying a principle of equitable set off and after reversing the decree amount of Rs.15,03,372 and the consquential interest a sum of Rs.40,97,959.79/- stands in the loan account of the decree holder as on 31.08.2022 as per the Ex.R1 and hence taking into consideration the Ex.R1 this Hon'ble court may treated that the decree has been fully adjusted and set off from the loan liability and record that the 1st judgment debtor owes no liability to the decree holder and terminate the EP.

5.4 In support of his contentions the learned counsel relied on the judgment in(i) **"Bhoganadham Seshiah Vs Budhi Veerabhadrayya (died) and others reported in CDJ 1971 APHC 067** wherein the Full Bench of Andhra Pradesh High Court has held that *"21. On general principles and in exercise of its inherent power an executing court can entertain and give effect to a claim of set off even in cases which do not fall strictly within the provisions of Rule 18 or 19 of Order 21, Civil P. C. It must be remembered that while Rule 18 is applicable to cases passed in two different suits, Rule 19 relates to cases where there is a decree under which two parties are to recover sums of money from each other. These provisions are not however exhaustive. De hors these Rules, there is general and inherent power in the executing court to grant what is called equitable set off.*



22. *The principle of set off may be defined as the extinction of debts of which two persons are reciprocal debtors to one another, by the credits of which they are reciprocally creditors to one another.*

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23. *While Order VIII, Rule 6, Order XXII, Rules 18 and 19, Civil P. C. are instances of legal set off, the equitable set off is mainly based on the principle of equity, justice and good con-science. The provisions for legal set off do not take away from the parties any right to set off which they had independently of the Code. For example in cases of natural debits the credits, that is in mutual open and current account cases and in cases where cross decrees arise out of the same transaction or cases where cross demands arise from different sets of transactions but are so connected in their nature and circumstances as to make it inequitable that the plaintiff or the decree-holder should recover from the defendant and the judgment-debtor driven to a cross suit or execution petition. This set off is known as equitable set off, if one may like to call then so and such a right is well recognised in India apart from the provisions of the Civil P. C.*

24. *The distinction between the two has, however, to be borne in mind. The difference between the legal set off and an equitable set off is that while in the former case the Court is bound to entertain and adjudicate upon the plea when raised, the defence of equitable set off cannot be claimed as a matter of right, but the Court has a discretion to adjudicate upon it in the same suit or execution proceedings or to order it to be dealt with in a separate suit or execution proceedings.*

25. *From what is discussed above, it would be plain that equitable set off can be claimed in a case where cross-demands, arise out of the same transaction as well as in cases where the cross-demands may not arise out of the same*

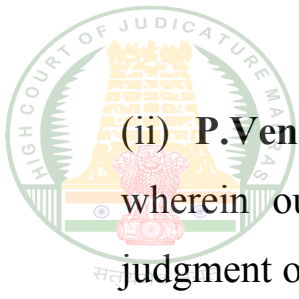


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transaction but they are so connected in the nature or circumstances that it would be inequitable to allow one party to execute his decree driving the other party to separate proceedings of execution. No hard and fast rules can be laid down, nor it is desirable to do so as to in what circumstances in such cases equitable set off can be permitted. The granting of equitable set off rests in the discretion of the Court. This discretion is a judicial discretion and we conceive that the dominant feature of judicial discretion is that it has to be exercised accordingly to settled rules rather than individual fluctuating and unsettled opinion. Thus where a Court thinks that investigation into the claim of equitable set off will cause great delay it may refuse to allow it or may order the enquiry to proceed on such terms as it thinks fit.

26. The equitable set off, however, cannot be treated as a strait-jacket formula. It cannot be bound down to the procedural limitations. Since the matter is in the discretion of the Court, it may grant equitable set off in a proper case in spite of the fact that no execution petition is independently filed for that purposes. It can grant such a set off if an execution petition is pending albeit seeking a different mode of executing the decree such as arrest of the judgment-debtor.

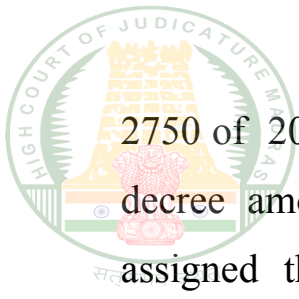
27. It is also not relevant that execution petition of a decree which is sought to be set off is or is not filed by the other decree-holder. And even in a case where an independent execution petition if necessary and if filed for the purpose of claiming set off is time barred, that would not deter the Court from granting an equitable set off like legal set off would not be permitted if the claim separately enforced would be time barred. But the jurisdiction of the Court exists to grant equitable set off if special circumstances permit even in a case where claim for set off is time barred.”



(ii) **P.Venkatavaradhan Vs. Lakshmi Ammal** reported in **1982 0 AIR MAD 5**

wherein our Hon'ble High Court of Madras has relied upon the full bench judgment of the Andhra Pradesh High Court and held that *"I am satisfied that the petitioner is entitled to equitable set off on the principle of the Full Bench decision of the Andhra Pradesh High Court cited earlier. I am also satisfied that the set-off can be equitably worked out without detriment to any of the parties. Both these steps might be taken either within the framework of the execution proceedings or even outside the court. Indeed, it is a surprise to me that the simple arithmetic of set off and contribution available under the law had not been followed by the parties in this case. The disappointment is all the greater, because the parties are not strangers to each other, but sharers in a partition. Be that as it may, the claim for equitable set-off in this case provides an effective answer to the petitioner to resist the present execution petition filed against him by the respondents. The application of the equitable doctrine either set-off the decree for costs here and now. Or it provides the petitioner at least with a justification for non payment. Either way, the execution petition deserves to be dismissed. The order of the contrary passed by the court below is accordingly set aside.*

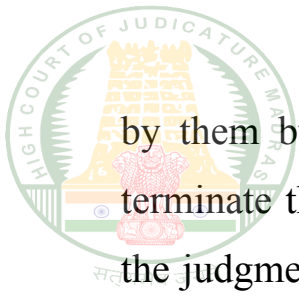
6.1 On perusal of the evidence of RW1 It is seen that during the course of his cross examination RW1 was not able to show/identify the entries in the Ex.R1 and Ex.R2 that reflected reversal of entries / adjustment of accounts as per the decree and RW1 also did not explain the meaning of reverse of entries which has been used by the 1st judgment debtor. Similarly there was no explanation in the evidence of RW1 as to how the accounts here adjusted despite the account having classified as a non performing assets on 14.05.2008 itself. Further it is seen that 3rd party Asset reconstructions company (India Ltd) filed application Nos.2749 and



2750 of 2022 seeking to implead them as parties to EP and claimed to set of the decree amount on the ground that the 1st judgment debtor/1st defendant had assigned the account of the decree holder of the assignee 3rd party while assignment deed dated 30.12.2013 and the said applications were dismissed by this court on 03.12.2024.

6.2 The present counsel for the 1st judgment debtor has appeared for the applicants in A Nos.2749 and 2750 of 2022 where he was taken a stand that there was a active mutual debt between the decree holder and 3rd party namely Asset reconstructions company (India Ltd) and prayed for a set of and parallelly the same counsel who appears for 1st judgment debtor has filed an additional counter dated 02.09.2022 as taken his stand that there is no debit liability and the decree amount was long before adjusted in the account statements and as marked as Ex.R1 and Ex.R2 before this court. These two stance taken by one and the same counsel appearing for 1st judgment debtor and the applicants in A No.2249 and 2750 of 2022 are contradictory to one another which has to show that the judgment debtor-1 has failed to substantiate his case to equitable set of.

6.3 Further 1st judgment debtor has not mentioning about the adjustment of accounts either before the Hon'ble Division Bench in OSA No.156 of 2009 or before Hon'ble Supreme Court in SLP (C) D No.4041/2020 and hence the stand taken by the 1st judgment debtor regarding adjustment of accounts is abated argument and is also not substantiated with sufficient evidence. In these circumstances the contention of the 1st judgment debtor that they are entitled to claim set of as per the judgment and decree in CS No.650/1999 and taking into consideration Ex.R1 this court has to treat that the decree has been fully satisfied



by them by reversing the debit entries and consequential interest charged and terminate the EP is not acceptable. Further on perusal on records it is reveal that the judgment and decree passed in CS No.650 of 1999 as went into Hon'ble apex court and was confirmed in SLP No. Therefore the decree is obtained itself finality. This court is a executing court cannot go beyond the decree. The decree holder has stated that the movables despite in the schedule belongs to the 1st judgment debtor. The decree holder has entitled for the relief claim in EP.

7. In the result this EP is allowed against 1st judgment debtor and ordered to attach and sale of the schedule mentioned movable property belonging to the 1st judgment debtor. The attachment of movables by 19.09.2025. No order as to costs.

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