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C.R.P.No.4268 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 22.01.2025

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.4268 of 2024

and

C.M.P.No.23738 of 2024

1.State Bank of India,  
RACPC, OMR,  
Rep. by its Assistant General Manager,  
Chennai.

2.The Branch Manager,  
State Bank of India,  
Adyar Branch, Chennai.

..... Petitioners

-Versus-

1.P.Jeyaprakasam  
2.J.Jayapriya  
3.J.Thamaraiselvi

..... Respondents

Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the order dated 18.09.2024 passed by the learned IX Assistant Judge, City Civil Court, Chennai, in E.P.NO.3167 of 2023 in O.S.No.860 of 2013.

*For Petitioner(s) : Mr.Arfat Mohammed A.*

*For Respondent(s) : Ms.R.Vijayasundarai for  
Mr.M.Kumar for RR1 to 3*



C.R.P.No.4268 of 2024

## ORDER

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Challenging the order dated 18.09.2024 passed by the learned IX Assistant Judge, City Civil Court, Chennai, allowing the execution petition in E.P.No.3167 of 2023 filed by the respondents herein under Order XXI, Rules 43 & 44 of the Code of Civil Procedure for issuance of a warrant for attachment of the movable properties and sale thereof to satisfy the decree amount, the judgement debtors are before this court with the present revision petition.

2. The respondents filed a suit in O.S.No.860 of 2023 against the petitioner bank for recovery of a sum of Rs.1,00,000/- as damages for having committed wilful default in not giving the credit on receipt of the cheque a sum of Rs.28,305/- and Rs.7,500/-, a total sum of Rs.35,805/- in the 1st respondent's Savings Bank Account and not disclosing the fate of the said cheques and for other reliefs. Though the petitioner bank entered appearance through their counsel, later on, they were called absent, and they remained *ex parte*, and therefore, the learned XII Assistant Judge, City Civil Court, had proceeded *ex parte* against the petitioner bank and by judgement and decree dated 26.08.2022 decreed the suit as prayed for with costs. Thereafter, the respondents levied an execution proceeding, which was taken on file as E.P.No.3167 of 2023 on the file of the learned IX Assistant Judge, City Civil Court, Chennai, for the attachment and sale of movable properties belonging to the 2nd petitioner. That application was, after contest, ordered by the learned IX



Assistant Judge, by her order dated 18.09.2024.

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3. It appears that in the meantime, the petitioner bank filed two applications: one under Section 5 of the Limitation Act, 1963, praying to condone the delay of 751 days in filing the application to set aside the *ex parte* decree and judgement dated 26.08.2022 made in O.S.No.860 of 2013 on the file of the learned XII Assistant Judge, City Civil Court, Chennai, and the other one under Order IX, Rule 13 of CPC praying to set aside the above said *ex parte* decree. Those applications have been numbered as I.A.Nos. 2 and 3 of 2024, and the same are pending. However, the executing court has ordered the attachment and sale of the movable properties belonging to the 2nd petitioner/2nd judgement-debtor. Hence, this revision.

4. Heard Mr.Arfat Mohammed A, learned counsel appearing for the revision petitioners and Ms.R.Vijayasundari, learned counsel appearing for the respondents.

5. The learned counsel for the petitioners/defendants would submit that despite the fact that counsel for the petitioners/defendants have been ready to argue the delay condonation and set aside the *ex parte* decree applications, the learned XII Assistant Judge did not take up the same for hearing as the respondents/plaintiffs have not yet filed their counter affidavit(s), and they only try to protract the matter, taking advantage of the order of attachment of immovable properties.

6. The learned counsel appearing for the respondents/plaintiff would, on the other hand, strongly oppose the revision.



C.R.P.No.4268 of 2024

7. Taking note of the nature of the suit and the *ex parte* decree passed thereof, this court, without going into the merits of the revision, directs the learned XII Assistant Judge, City Civil Court, Chennai, to take up the applications in I.A.No.2 and 3 of 2024 in O.S.No.860 of 2023 and dispose of the same on merits and in accordance with law within a period of two months from the date of receipt of a copy of this order. Until disposal of such applications, the learned IX Assistant Judge shall not pass any further orders on the execution proceedings and the order of attachment and sale of movable properties belonging to the 2<sup>nd</sup> petitioner/judgement-debtor shall be kept in abeyance.

**In the result**, this civil revision petition is disposed of accordingly with the above directions. No costs. Consequently, connected CMP is closed.

Index : yes / no  
Neutral Citation : yes / no  
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To

1.The IX Assistant Judge, City Civil Court, Chennai.

1.The XII Assistant Judge, City Civil Court, Chennai.



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C.R.P.No.4268 of 2024

N.SATHISH KUMAR.J.,

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C.R.P.No.4268 of 2024

22..01..2025