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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-11-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**A No. 4969 of 2025
in Rev.Pet.Dr.No.156715 of 2025**

M/s.Suryadev Alloys and Power
Pvt Ltd.,
Represented by its Managing
Director, Mr.Mukesh Agarwal,
No.497 and 498 ISANA Building,
8th Floor, Poonamallee High
Road, Arumbakkam,
Chennai- 600 106.

..Applicant(s)

Vs

East Coast Constructions and
Industries Ltd.,
Represented by its Director,
Buhari Building, No.4, Moores
Road, Chennai-600006.

..Respondent(s)

PRAYER

To Condone the delay of 2327 days in filing the above Review
Application against the order dated 20.03.2019 made in O.P.NO.153
of 2019 on the file of this Court.



For Applicant(s): Mr.P.Krishnan

For Respondent: Mr.P.J.Rishikesh

ORDER

The application (A.No.4937 of 2025) came up for hearing before this Court on 10.10.2025 and this Court passed the following order:

This petition has been filed to condone the delay of 2327 days in filing the review application against the order passed in OP No.153 of 2019 dated 20.03.2019.

2. *The review application has been filed mainly on the ground that when the Section 34 petition was heard by the learned Single Judge, a concession was given by the learned Senior Counsel, who appeared on behalf of the petitioner that the challenge in the Section 34 petition is confined only to claims (b) and (f) (claims 2 and 6). In view of the same, the learned Single Judge focussed on the arguments made with respect to those two claims and proceeded to dismiss the petition by an order dated 20.03.2019.*

3. *Aggrieved by the order passed by the learned Single Judge, the petitioner filed an appeal in OSA No.200 of 2019. The OSA was allowed by an order dated 12.04.2024 and the order passed by the learned Single Judge under Section 34 was set-aside.*

4. *After the above order was passed, the same was put to challenge before the Apex Court. The Apex Court was not inclined to interfere and accordingly, the SLP came to be dismissed on 14.08.2024.*

5. *The applicant thereafter moved the Division Bench by filing Rev.A No.119 of 2025 to review the order insofar as claim No.1*



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is concerned. The Division Bench by an order dated 27.06.2025 dismissed the review application on the ground that the concession was given by the learned Senior counsel appearing on behalf of the applicant before the learned Single Judge and it is only the learned Single Judge, who will be able to deal with the issue and the Division Bench cannot go into the issue. Therefore, the Division Bench observed that it will be open for the applicant to move the learned Single Judge, if so advised. Pursuant to the same, this application was filed on 21.08.2025. The fundamental issue that arises for consideration is as to why the applicant waited for the disposal of the appeal by the Division Bench and thereafter, moved the review application, when the specific case of the applicant is that such concession was given before the learned Single Judge without any instructions from the client. If that is so, it should have been brought to the notice of the learned Single Judge at the first instance by filing a review application. The order passed by the Division Bench in review application No.119 of 2025 dated 27.06.2025, does not really give a cause for the applicant to move this application.

6. When this Court expressed its mind, learned counsel for applicant seeks for some time to make his submissions.

7. It is made clear that unless this Court is convinced about the maintainability of this review application at this stage, no notice will be issued to the other side.

8. Post this application for hearing on 17.10.2025 along with EP No.29 of 2025.

2. Thereafter, the matter was listed for hearing on 17.10.2025 and this

Court passed the following order:

This Court heard Mr. Sharath Chandran, learned counsel for applicant at length. The arguments that were put forth on the side of the



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applicant did not convincingly meet the main issues that were flagged in the earlier order dated 10.10.2025. In view of the same, these matters are adjourned till 31.10.2025. It will be open to the applicant to sit with the respondent and see if any amicable settlement can be arrived at.

Post these cases on 31.10.2025.

3. Pursuant to the above order, the matter was again listed for hearing on 31.10.2025. On that day, this Court on hearing both sides directed the learned counsel for the applicant to prepare a calculation memo and submit before this Court the total amount that is due and payable to the respondent as per the award. This Court also directed the learned counsel for the applicant to take instructions.

4. When the matter was taken up for hearing today, a detailed note and calculation memo was submitted by the applicant/judgement debtor. For proper appreciation, the entire note and calculation memo is extracted hereunder:

It is respectfully submitted as follows:

1. The decree holder had filed a claim petition before the Arbitral Tribunal (AT) claiming the following reliefs:



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"The claimant therefore prays that the Hon'ble Arbitrator, in view of the facts above stated and the legal position, pass an award for:

- a) Release Payment of Rs. 1,43,33,509/- towards Unpaid Bills.
- b) Order Rs. 4,07,62,096/- towards Hire Charges for various machinery and materials wrongly withheld.
- c) Order Rs. 1,20,64,632/- towards Price Variation for the total work executed including extension.
- d) Order Rs. 3,02,43,024/- towards Overhead Expenses for the extended period of Contract from May 2012 to April 2013.
- e) Order Rs. 56,25,000/- towards Loss of Profit due to reduction in scope of work.
- f) Order Rs. 5,74,33,787/- towards Cost of Plant and Machinery and Shuttering Material.
- g) Interest at a rate of 18% in the circumstances and facts of the case.
- h) Cost of the Arbitration proceedings."

2. In its rejoinder, the claimant has restricted its claim in respect of unpaid bills [Relief (a)] as follows:

- a) "Release Payment of Rs. 1,07,29,045/- towards Unpaid Bills"



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3. In the final statement of accounts filed by the decree holder along with the rejoinder, the claimant has accepted that a sum of Rs. 40,45,914/- has been received by it from price variation and material supply recovery under S.R No. 20 of the final statement of accounts:

Sl. No.	Description	Statement as per Claimant	Statement as per Respondent	Difference	Claimant final statement	Difference
20.	Price variation & Material supply recovery		40,45,914	-40,45,914	40,45,914	
21.	Receivable by claimant	1,43,33,510	-55,47,807	1,98.81,317	1,07,29,045	1,62.76,852

4. The AT passed an award directing payment of Rs 1,43,33,509 with interest at 18% from 01.04.2013. The rest of the two claims towards (a) hire charges and (b) machinery and materials awarded by the arbitrator have been set aside by the Division Bench in O.S.A (CAD) 200 of 2019.

5. It is submitted that the decree holder has filed the instant EP claiming a sum of Rs. 3,51,47,996.26/- is due and payable to it as on the date of the said petition. It is respectfully submitted that the computation in tabular column 9 of the execution petition suffers from two errors.

LEGAL SET OFF UNDER ORDER XXI RULE 19

6. The learned Arbitrator in his award dated 04.10.2018 has awarded a sum of Rs. 90,36,127/- towards the counterclaim of the judgment debtor herein. In this regard, Order XXI rule 19 of the CPC states as follows:



"19. Execution in case of cross-claims under same decree-
Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then-

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree, and

(b) if the two suma are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller aum shall be entered upon the decree."

7. It is submitted that the instant case falls under clause (b) of Rule 19. Therefore, the counter claim decree by the arbitrator ought to have been set off from the sum payable (principle plus interest) as on the date of the award namely 04.10.2018. In support of the above submission, the JD places reliance on the Division Bench judgment of the Kerala High Court in KSEB v Chellappan, (1979) KLT 673. The relevant paragraph is as follows:

"2. Under Order XXI R. 19, C.P.C. it is clearly laid down that where an application is made to court for the execution of a decree under which two parties are entitled to recover sums of money from each other, if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum be entered upon the decree. The clear effect of this provision is that as on date of the decree itself a set-off is deemed to have been effected by the decree of the smaller sum payable under one claim as against the larger sum payable to the other part and satisfaction, for the smallest sum is to be entered eo instanti. The result is that only the balance amount remaining due after



deducting the smaller sum from the larger sum can be treated as payable under the decree to the party entitled to the larger sum with effect from the date of decree itself. This is the view that has been taken by Madhavan Nair, J. In Sreepathi Achariyar v. Sankaranarayana Iyer 1961 KLT. 875. We are in respectful agreement with the said view. It must be then held that the court below was manifestly wrong in holding that the decree-holder is entitled to calculate interest on the full amount stated as due to him under the decree without effecting any set-off in respect of the smaller sum which the Board is entitled to recover from him under the very same decree. The order of the court below is accordingly modified to the extent of holding that the decree-holder is entitled to recover interest from the Judgment debtor Board only in respect of the balance amount due under the decree after setting off the sum of Rs. 1,89,468,78 as on the date of the decree itself. The appeal is allowed to the above extent. The parties will bear their respective costs."

8. In view of the above judgment, the counterclaim ought to have been first set off towards the outstanding interest and principal as on 10.10.2018 je., date of the award. Thereafter, interest would run from 10.01.2019 to date on the principal sum as indicated in the execution petition.

EQUITABLE SET OFF OF RS 40,45,914

9. It is respectfully submitted that the second point is as regards the sum of Rs 40,45,914/- which is admittedly in the hands of the decree holder even before the arbitration proceedings commenced. It is respectfully submitted that the provisions of Order 8 Rule 6 and Order 21 Rule 18 and 19 deal with legal set off. However, Courts have consistently recognised that apart from legal set off, the execution court



can also grant equitable set off by applying the principles under the common law.

10. The principle of equitable set off has been explained by a Division Bench of the Patna High Court in Raja Sri Shiva Prasad Singh u. Lalit Kishore Mitra and Ors AIR 1943 Pat 142, and the relevant passage in extracted hereunder:

"In my opinion, once the facts of the case are clearly understood there will be hardly any serious question of law to be decided so far as the plea of adjustment is concerned, but as the case has been elaborately argued on both sides on this point I wish to summarise my conclusions as briefly as possible. It is well settled that the provisions of 0.8 R.6 Civil P.C., are not exhaustive because apart from a legal set-off which is expressly provided in the Civil Procedure Code in regard to an ascertained sum of money legally recoverable by the defendant from the plaintiff, an equitable set-off may also be pleaded in the Indian Courts, if the defendant's claim is shown to have arisen from the same transaction as the plaintiff's claim.....

There can be no doubt therefore that a set-off can be allowed in this case provided that there was some agreement between the parties on the point. It is equally clear that where set-off is claimed on the basis of an agreement, no set-off can be allowed outside the terms of the agreement which the Court finds to be proved. Again the question of set-off cannot arise in so far as the dues of the plaintiff are proved to have been adjusted in the past. It can arise only in regard to the dues which are outstanding and have not been adjusted."

11. It is submitted that the executing court has also got inherent power to grant equitable set off at the execution stage. This position is clear from the decision of a Full Bench of the Andhra Pradesh High Court in Bhoganadham Seshalah us. Budhi Veerabhadrayya (died) and



ors; AIR 1972 AP 134. The relevant passages are as follows :

"20. The question then is whether apart from the provisions of Rule 18, the Court has general or inherent power to allow a set off in execution proceedings. The matter seems to us beyond any pale of doubt that the Court does possess a general or inherent power to allow a set off of cross-decrees even in cases where Rule 18 or 19 of Order 21 Civil P.C. is not applicable.

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 credits of which they are reciprocally creditors to one another

28. That the Court has general and inherent power to grant equitable set off de hors the provisions of Order XXI Rule 18 or 19 of Civil P.C. is well supported by the following decisions. We are first referring to the decisions in which the cross demands had arisen out of a single transaction or were so connected with each other as to attract equitable considerations. See *Mt. Nonibai v. Jethanand*, AIR 1938 Sind 31, *Badri Nath v. Moti Ram* AIR 1939 Lah 85; *Adwaita Chandra Saha Chittagong Co.* AIR 1925 Cal 102; *Rama Rao v. Venkatramanachar* AIR 1951 Mys 20; *Chinnamal v. Chidambara* AIR 1936 Mad 626; *Bank of*



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Dacca Ltd v. Gour Gopal Saha AIR 1936 Cal 409 and Ramu Sahu v. Thakur Dayal Rai AIR 1917 Pat 259."

12. This judgment of the Andhra Pradesh High Court has been followed by a learned single judge of this Hon'ble Court (Balasubhramanyam, J) in Venkatavaradan v Lakshmi Amal, 1981 84 LW 630 (para 10).

13. The principle of equitable set off has been explained by the Supreme Court in Bharti Airtel Ltd. u. Aircel Ltd and Dishnet Wireless Ltd.; (2024) 4 SCC 668. The relevant portion of the judgment is extracted hereunder:

"48. The second exception will be in the case of "equitable set-off when the claim and counter claim in the form of set-off are linked and connected on account of one or more transactions that can be treated as one. The set-off should be genuine and clearly established on facts and in law, no as to make it inequitable and unfair that the debtor be asked to pay money, without adjustment sought that is fully justified and legal. The amount to be adjusted should be a quantifiable and unquestionable monetary claim, as the corporate insolvency resolution process is a time-bound summary procedure. It is not a civil suit where disputed questions of law and facts are adjudicated after recording evidence. Set-off of this nature does not require legal proceedings. Further, set-off of money is to be given against money alone. It will not apply to assets. Lastly, being an equitable right, it can be denied when grant of relief will defeat equity and justice.

49. We would in fact borrow the term "transactional set-off" [See Rory Derham, Derham on the Law of Set-Off (Oxford University Press,



4th Edn., 2010) and Gerard McCormack, "Set-off under the European Insolvency Regulation (and English Law)", 29 IIR 100, 100-117 (2020) instead of equitable set-off, when we describe the second exception. The reason is that the second exception refers to an ascertained amount which is a requirement for legal set-off under Order 8 Rule 6CPC and at the same time relies on equitable right when the statute is silent and there is no reason to deny set-off under the common law. It is an equitable right because the transactions are close and connected, harbingering the claim and the counterclaim. It would be manifestly unjust to bifurcate the connected transactions to accept and enforce the claim of one party without adjusting the amount due to the second party. This, in our opinion, does not contradict the eclipse by way of moratorium, because the transactions are treated as singular and one. When transactions are closely connected, a claim for transactional set off during the moratorium period on a claim by the resolution professional, is by way of a defence to protect the legitimate expectation and respect legal certainty."

14. In *In Geldof Metaalconstructie NV and Simon Carves Limited* (2010) EWCA Civ 667, the UK Court of Appeal explained the essentials to apply equitable set off as under:

"vi. For all these reasons, I would underline Lord Denning's test, free of any reference to the concept of impeachment, as the best restatement of the test, and the one more frequently referred to and applied, namely "cross-claims so closely connected with the plaintiff's] demands that it would manifestly unjust to allow him to enforce payment without taking into account the cross claim."



15. the instant case, the jurisdictional requirements to apply equitable set off are completely satisfied. The amount to be adjusted is quantifiable. In fact there is an unqualified admission by the DH that a sum of Rs. 40,45,914/- is with the respondent. The transactions are also closely interconnected and it would be manifestly unjust to enforce the claim of the judgment debtor without adjusting amount at the hands of the defendant. There is no impediment in equity to set off this sum which is admittedly in the hands of the decree holder. Since the decree holder has admitted that a sum of Rs. 40,45,914/- is available with him, the judgment debtor is not liable to pay any interest on the said amount. The purpose of granting interest is to compensate the person who has been put out of his money without sufficient cause. In *Nepa Ltd. vs. Manoj Kumar Agrawal* (2023) 17 SCC 659, the Supreme Court has held as follows:

"23. The interest is payable only on the amount that is not paid. It will be incongruous to hold that a person would be liable to pay interest even in respect of the amount, which has been paid and handed over to the decree-holder."

16. Thus,

(A) The total principal sum payable would be Rs.1,43,33,509 less Rs. 40,45,914 being set off equitably as money already in the hands of the decree holder totalling **Rs.1,02,87,595.**

(B) Interest at 18% p.a on the said amount from 01.04.2013 to 10.10.2018 is **Rs.1,01,84,724.**



(C) Setting of Rs 90,36,127 as legal set off towards accrued interest on Rs. 1,02,87,595 as on the date of passing of the award ie., 10.10.2018 is **Rs.11,48,597.**

(D) Interest at 18% p.a on **Rs. 1,02,87,595** from 10.01.2019 till 07.11.2025=**1,26,53,666.**

Total(A)+(C)+(D)=Rs.1,02,87,595+Rs.11,48,597+Rs.1,26,53,666.

=Rs.2,40,89,858.

5.In view of the above, the learned counsel for the applicant submitted that a total sum of Rs.2,40,89,858/- is payable by the applicant to the respondent. Per contra, the learned counsel for the respondent/award holder submitted that a total sum of Rs.3.51 crores is payable by the applicant and even if the set off is granted, the applicant has to pay a sum of Rs.2.53 crores. The learned counsel submitted that he leaves it to this Court to finalise the amount payable by the applicant to the respondent and also requested this Court to fix a time frame for payment of the amount.

6.In view of the above development, this Court is inclined to fix the debt amount due and payable by the applicant is Rs.2.41 Crores. This amount shall be paid by the applicant to the respondent in full quits of the entire liability and



on such payment, the respondent will have no further claims against the applicant in any manner whatsoever.

7.This Court is inclined to permit the applicant to pay the above amount in three installments. The first installment of a sum of rupees One Crore shall be paid by the applicant to the respondent on or before 21.11.2025. The balance amount shall be paid in two equal monthly installments on or before 21.12.2025 and 21.01.2026 respectively.

8.A.No. 4969 of 2025 is disposed of in the above terms.

9.In view of the order passed in A.No.4969 of 2025,
Rev.Pet.Dr.No.156715 of 2025, as closed.

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