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C.R.P.(PD)No.5253 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.01.2025**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.5253 of 2024

Bank of India, Rep. by its Chief Manager,
Kodambakkam Branch,
25, 2nd Cross Street,
Trustpuram, Kodambakkam,
CHENNAI 600 024.

....

Petitioner

..Vs..

1. M/s.ATHULYA ENTERPRISES,
Represented by its Proprietor Mr.P.B.Bimal Raj
No.20/16, Bharathi Street,
Choolaimedu, Chennai 600 094.

2. Mr.P.B.Bimal Raj
Proprietor M/s. Athulya Enterprises,
Son of Mr.Pandarathi Unni Balakrishnan,
No.20/16, Bharathi Street,
Choolaimedu, Chennai 600 094.

....

Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 29.04.2024 passed in I.A.SR.No.2424 of 2024 in O.S.No.2199 of 2023 of the Hon'ble VII Additional City Civil Court, Chennai and consequently allow the same as prayed for.



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For Petitioner : Mr.S.Jabeen
for Mr.M.P.Venkateswaran

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ORDER

This civil revision petition arises against the order passed by the learned VII Additional Judge, City Civil Court, Chennai in I.A.SR. No.2424 of 2024 in O.S.No.2199 of 2023 dated 29.04.2024.

2. The civil revision petitioner is the plaintiff in the suit. O.S. No. 2199 of 2023 was presented for a recovery of a sum of Rs.10,11,657/- together with interest.

3. For the disposal of this revision, it is not necessary to refer to the facts in detail.

4. On the suit being admitted, in terms of Order VII, Rule 9 of the Code of Civil Procedure, notice was issued to the defendant. Notice was directed for hearing on 22.12.2023. The counsel for the plaintiff was suffering from gout and therefore could not take steps as ordered. Hence, the suit was dismissed for default on 22.12.2023. Without any delay, an application was filed Order IX, Rule 9 to set aside the order of dismissal dated 22.12.2023 and to restore the suit onto the file of the Court.



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5. When the suit was originally presented, the plaintiff bank was represented by its Chief Manager. Subsequently, on account of re-categorization of the branch, no post of Chief Manager is available in the said branch. Instead, the branch was reclassified and is being headed by a Senior Manager. Therefore, the affidavit to restore was sworn to by the Senior Manager.

6. The learned Trial Judge dismissed the application giving the following reasons:

(i) Since the suit had been filed by the Chief manager, the Chief Manager can present the restoration application.

(ii) As the authorization had not been obtained from the original Chief Manager, the application is untenable.

7. The application was rejected in the SR stage itself, Hence this revision is at the instance of the plaintiff.

8. In the suit as well as in the application to restore, the defendants were not put on notice. Hence, notice is dispensed to the respondents in this revision.



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9. I heard Ms.Jabeen, for the civil revision petitioner. I have gone through the records.

10. The suit has not been presented by the Chief Manager in his personal capacity. It had been presented by him for and on behalf of the plaintiff, which is a nationalized bank. The learned counsel for the plaintiff, to the return made by the court on 06.03.2024, had made the following endorsements:

“The branch earlier in the head category of Scale IV for which "Chief Manager" is the in-charge. Now the head of one branch has been degraded to Scale-III, for which "Sr.Branch Manager" is the incharge and no "Chief Manager" post in the branch as of now.”

11. This makes it clear that there is no Chief Manager available on account of the gradation of the bank being reduced by the plaintiff. When there is no Chief Manager available in the concerned branch to expect an affidavit to be filed by the Chief Manager is to expect the plaintiff to do an impossible deed. Law does not require parties to perform impossible tasks- *Lex non cogit ad impossibilia*.



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12.As the applicant has to be properly represented by a person authorized to represent the bank, an authorization letter had also been also been issued by another Chief Manager to the department. The authorization letter has been enclosed in page 37 of the typeset of papers. Hence, all the procedural requirements have been complied with.

13. In ***Selvaraj Vs. Koodankulam Nuclear Corporation Power Plant, (2021) 4 CTC 539***, the Honorable Mr. Justice Seshasayee held that it is not duty of the Court to play the role of the defendant, at the time of numbering the application. At that stage, the Court only plays a ministerial role. It is only after numbering when notice is ordered, the judicial role of the Court commences.

14. Remembering this Verdict, I approach the present case. When the counsel for the plaintiff has made an endorsement that there is no Chief Manager at the concerned branch, the Court ought to have accepted the said endorsement. It is always open to the defendant to plea that the person who has filed the affidavit is not authorised. The Trial Court could have probed into the said issue, if raised, at that stage, Instead, it has decided to play the role of the defendants which falls foul



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for the view taken by this Court in *Selvaraj's* case. In any event this is a suit filed by nationalized bank for recovery of the loan amount. It is not the suit filed by the Chief Manager or the Senior Manager in their personal capacity.

15. In the light of the aforesaid observations, I am unable to sustain the order of rejection passed by the VII Additional City Civil Court, Chennai. The Civil Revision petition is allowed. The order passed by the learned VII Judge, Additional City Civil Court in O.S.No.2199 of 2023 is set aside.

16. There shall be a direction to the VII Additional City Civil Court, Chennai. to number I.A.SR.No.2424 of 2024. He shall issue notice to the defendants. After hearing defendants, appropriate orders shall be passed in the application under Order IX Rule 9 of the Code of Civil Procedure. No costs.

08.01.2025

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

1. M/s.ATHULYA ENTERPRISES,
Represented by its Proprietor Mr.P.B.Bimal Raj
No.20/16, Bharathi Street,
Choolaimedu, Chennai 600 094.

2. The Additional City Civil Court, Chennai.



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V. LAKSHMINARAYANAN,J.

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