

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-04-2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

A Nos. 5602 & 5603 of 2025

in

E.P.No.57 of 2019

In both Applications

M/s.Indian Bank
Rep. by its Branch Manager, Guindy Branch,
Chennai-600 032

..Applicant(s)

Vs

1. Tamilnadu Small Industries Corporation Limited, Rep. by its General Manager, A Government of Tamil Nadu Undertaking, Thiru.Vi.Ka.Industrial Eastate, Guindy, Chennai-600 032.

...

2. M/s.MSAS Global Logistics India Private Limited, No.4, Casa Major Road, Egmore, Chennai-600 008
3. M/s.Paul Leibingser GMBH And Co. KG Spezial Fabriken Fur Numeriermerk Stelten, Donaustabe-12, 78750, MUHL HEIM / DONAU, Germany.
4. Leibinger JIT-INT Numbering Systems And Ink, Jet Systems, 210, Virwani Industrial Estate, Service Road, Off. Western Exp. Highways, Goregaon (East), Mumbai 400 063.

..Respondent(s)

PRAYER in A.No.5602 of 2025: Judge's summons filed under Order XIV Rule 12 of Original Side rules read with Section 151 of CPC praying to set



aside the order dated 22/08/2025 passed by the Learned Master of the Honble High Court Madras in the above E.P.No.57 of 2019.

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PRAYER in A.No.5603 of 2025: Judge's summons filed under Order XIV Rule 12 of Original Side rules read with Section 151 of CPC praying to grant an interim stay of the operation of the Orders dated 22/08/2025 passed in the E.P.No.57 of 2019, pending disposal of the above appeal application.

In both Applications

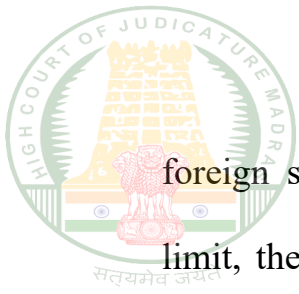
For Applicant(s): Mr.E.Omprakash Senior Advocate
for M/s T. Sundar Rajan

For Respondent(s): Mr.V.R.Kamalanathan
for M/s R.Manibarathi

ORDER

The decree holder filed the civil suit against the 1st judgment debtor/applicant and three others for the following remedies: recovery of a sum of Rs.45,00,000/- with interest thereon at 18% p.a.; a sum of Rs.15,00,000/- as damages and expenses; and for a permanent injunction to restrain payments under letter of credit dated 27.05.1999.

2. The suit claim arose out of a purchase order issued by the plaintiff/decrece holder to a foreign supplier/third defendant. In relation to such supply, the decree holder was directed to open a letter of credit. Such letter of credit was opened by the 1st judgment debtor/applicant. On the ground that the



foreign supplier failed to dispatch the machinery within the prescribed time limit, the decree holder cancelled the purchase order and, thereafter, filed the suit. Shortly after the suit was filed, payment was made under the letter of credit by the 1st judgment debtor to the foreign supplier/3rd defendant.

3. The 1st judgment debtor did not plead a set-off, make a counter claim or file a separate suit. The suit filed by the decree holder was decided in its favour under judgment and decree dated 12.12.2008 directing the 1st and 3rd defendants to jointly and severally pay the plaintiff/decreed holder a sum of Rs.15,03,373/- towards principal and a sum of Rs.37,21,792/- towards interest along with further interest thereon from 01.04.2007 until realization at 18% p.a. In addition, the 1st and 3rd defendants were directed to pay a sum of Rs.1,00,000/- towards damages and expenses with interest at the rate of 6% p.a. from the date of judgment till realization.

4. The matter was carried in appeal by the 1st judgment debtor in O.S.A.No.156 of 2009. The appeal was rejected under judgment dated 01.09.2016. The 1st judgment debtor endeavoured to file a special leave petition along with an application to condone the delay. By order dated 26.05.2020, the proposed special leave petition was rejected at the pre-numbering stage. Meanwhile, the decree holder filed E.P.No.57 of 2019. In such E.P., the Asset Reconstruction Company (India) Limited (ARCIL), which is said to be an

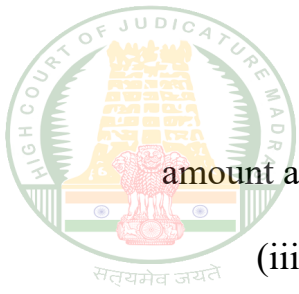


assignee of the 1st judgment debtor/applicant, filed application Nos.2749 & 2570 of 2022 to implead itself in E.P.No.57 of 2019 and requested that a sum of Rs.85,65,519/- be set-off from the sum of Rs.5,19,94,061/-, which was stated to be the liability of the decree holder as on 28.06.2022. Such applications were rejected under order dated 03.12.2024. Thereafter, order dated 22.08.2025 was issued in the execution petition for a warrant for the attachment and sale of movable properties of the 1st judgment debtor. Said order is challenged in these applications.

5. The contentions of learned senior counsel for the 1st judgment debtor/applicant are as under:

(i) At paragraph-93 of judgment dated 12.12.2008, a finding was entered that contra/reverse entry may be made in respect of the principal amount paid. Because payment was made by the 1st judgment debtor against the letter of credit, the 1st judgment debtor was entitled to debit the account of the decree holder with regard thereto.

(ii) The decree holder was provided facilities under an overdraft cash credit account with the credit limit of Rs.90,00,000/-. The 1st judgment debtor marked Exs.R1 and R2 before the learned Master. As per the memo of calculation forming part of Ex.R1, the net amount payable by the decree holder to the 1st judgment debtor is a sum of Rs.46,33,170.38. This amount has been arrived at after deducting a sum of Rs.16,43,708/- towards the letter of credit



amount along with interest from 27.08.1999 to 31.03.2001.

(iii) In effect, in spite of making payment against the letter of credit, the 1st judgment debtor/bank has been directed to once again make such payment to the decree holder. These facts and circumstances justify allowing the 1st judgment debtor to resort to an equitable set-off.

6. In support of these contentions, the following judgments were relied upon:

(a) *Bhoganadham Sessaiah v. Budhi Veerabhadrayya (died) & others*, CDJ 1971 APHC 067(Bhoganadham Sessaiah)

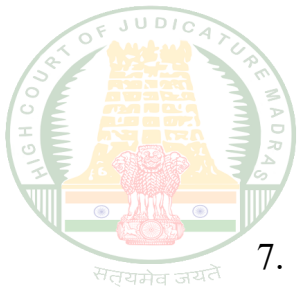
(b) *M/s Lakshmichand and Balchand v. State of A.P.*, (1987) 1 SCC 19 (Lakshmichand), particularly paragraphs 3, 4 and 7 thereof.

(c) *Sharadamma v. Mohammed Pyrejan (D) through legal representatives & Another*, (2016) 1 SCC 730, particularly paragraphs 1,3, 5 and 6 thereof.

(d) *Meenakshi Saxena and Another v. ECGC Limited*, (2018) 7 SCC 479, particularly paragraph 17 thereof.

(e) *Bharti Airtel Limited and Another v. Vijaykumar V. Iyer and others*, (2024) 4 SCC 668 (Bharti Airtel), particularly paragraphs 15 to 21 thereof.

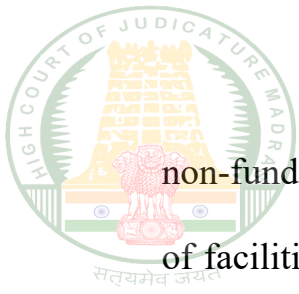
(f) *Jitendra Kumar Khan and others v. The Peerless General Finance and Investment Company Limited and others*, (2013) 8 SCC 769, particularly paragraphs 13, 14 and 16 thereof.



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7. In response to these contentions, Mr.V.R.Kamalanathan, learned counsel, contended that it is not open to the 1st judgment debtor/applicant to go behind the decree. Referring to paragraphs 54, 56, 83 and 91 of judgment dated 12.12.2008, learned counsel contended that the Court examined the issue as to whether the 1st judgment debtor was justified in paying the amounts pursuant to the letter of credit. He pointed out that the Court entered findings that the plaintiff/decreed holder had adduced evidence with regard to the discrepancies between the proforma invoice and the description in the letter of credit. He also pointed out that the Court entered a finding that the 1st judgment debtor did not file an independent suit for recovery of money. As regards payment by the decreed holder to the 1st judgment debtor/bank, he submitted that an open cash credit account was maintained and that all the receivables of the decreed holder were credited into said account. He also pointed out that ARCIL had endeavoured to implead itself and seek a set-off by filing application Nos.2749 & 2750 of 2022, and that such applications were dismissed. In these circumstances, learned counsel submits that the present applications are also liable to be dismissed.

8. From the above narration, it appears that facilities were extended by the 1st judgment debtor to the decreed holder. It is stated that an overdraft facility with the credit limit of Rs.90,00,000/- formed a part thereof. It also appears that



non-fund based facilities, such as a letter of credit, formed a part of the package of facilities. As is evident from judgment dated 12.12.2008, the decree holder's suit and said judgment are confined to the letter of credit opened by the 1st judgment debtor in favour of the decree holder. As regards said letter of credit, at paragraphs 83 and 86 of the judgment, in relevant part, the following findings were recorded:

“83.Under Ex.P16 the first defendant also admitted that the description of goods differs from Letter of Credit terms as proforma invoice dated 05.05.1999 (Ex.P3) with regard to the machineries supplied. Ex.D3 received by the first defendant had also contained the details of machinery to be imported by the plaintiff from the third defendant. Under Ex.P18, the plaintiff has specifically pointed out in detail the discrepancies between the proforma invoice and the Letter of Credit and the bank documents and specifically made the request to the first defendant that they should not honour the Letter of Credit and not release payment and that they are also refusing to take delivery of the consignment.

....

Therefore, the plaintiff has specifically pointed out the fraud played by the supplier with regard to the Master Airway Bill and the House Airway Bill and therefore they requested the first defendant not to honour the payment and if they honouring, it will be at their own risk and cost. Under Ex.P23, the first defendant had stated that the objection raised by the plaintiff



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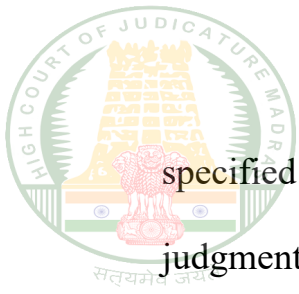
were communicated to Duetsche Bank and they does not accept the refusal as the document is the discrepancies are not tenable as per UCPDC 500.

...

86. Therefore, for the reasons stated above, in respect of issue No.2, it is held that the first defendant was not justified in paying the amount in pursuant to the Letter of Credit especially when the machineries supplied by the third defendant were not in compliance of terms of the purchase order and Letter of Credit and in spite of having knowledge, the first defendant had made such payment.”

9. The conclusion at paragraph 86 is to the effect that the 1st judgment debtor was not justified in paying the amount pursuant to the letter of credit. The judgment of the Court of first instance was not interfered with by the first appellate court and the special leave petition was dismissed at the pre-numbering stage. Consequently, as regards the letter of credit and obligations arising thereunder, finality had been reached.

10. Learned senior counsel for the 1st judgment debtor invited my attention to Exs.R1 and R2 to contend that a net sum of Rs.46,33,170.38 is due and payable by the decree holder to the 1st judgment debtor and that this liability arises out of the facilities agreement. The memo of calculation relied on in this regard records a balance outstanding of Rs.71,50,949.46 as on 30.08.1999. After giving credit to amounts paid by way of credits into said account, it is



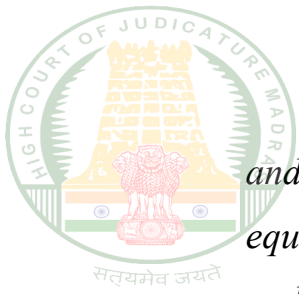
specified therein that the amount reduces to Rs.16,76,878.38. Thereafter, the 1st judgment debtor has deducted the letter of credit amount along with interest thereon for a specific period. After making this deduction of Rs.16,43,708/-, the net claim is stated to be Rs.46,33,170.38.

11. The memo of calculation relied upon by the 1st judgment debtor indicates that its claim against the decree holder does not relate to the letter of credit and instead represents the alleged net dues under the facilities agreement between said parties. When the suit filed by the decree holder was pending, it was open to the 1st judgment debtor to either make a counter claim in this regard or file a cross suit. As recorded at paragraph-91 of the judgment dated 12.12.2008, this was not done. The question that falls for consideration is whether the 1st judgment debtor is entitled to an equitable set-off in relation thereto.

12. The sheet anchor of the 1st judgment debtor's case is the judgment of the Full Bench of the Andhra Pradesh High Court in *Bhoganadham Seshaiiah*. Paragraphs 22 to 29 of the judgment are set out below:

“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.

23. While Order VIII, Rule 6, Order XXI, Rules 18



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and 19, Civil Procedure Code are instances of legal set off, the equitable set off is mainly based on the principle of equity, justice and good conscience. 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 and 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 them so and such a right is well recognised in India apart from the provisions of the Civil Procedure Code.

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 of 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 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 according 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 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 purpose. 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.



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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, Civil Procedure Code 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, A.I.R. 1938 Sind 31; Badri Nath v Moti Ram, A.I.R. 1939 Lahore 85; Adwaita Chandra Saha v. Chittagong Co., A.I.R. 1925 Calcutta 102; Rama Rao v. Venkatramanachar, A.I.R. 1951 Mysore 20; Chinnammal v Chidambara, A.I.R. 1936 Madras 626; Bank of Dacca Ltd. v. Gour Gopal Saha, A.I.R. 1936 Calcutta 409 and Ramu Sahu v. Thakur Dayal Rai, A.I.R. 1917 Patna 259.*

29. *Counter claims arising out of two separate transactions are not treated to fall outside the jurisdiction of the Court in granting equitable relief de hors the said provisions of the Civil Procedure Code. Whatever may be the position in legal set off under Order VIII, Rule 6, Civil Procedure Code the provision of order XXI, Rule 18, Civil Procedure Code recognises the legal set off of two cross decrees arising out of separate transactions. Whatever may be the considerations for not allowing distinctly separate transactions to be the basis of the set off under Order VIII, Rule 6, in executing proceedings the two cross decrees not only can be legally set off by observing Rule 18, but they can also be equitably set off obviously because after the decrees are passed, there is precious little-unlike a claim of set off based on separate transaction in a suit under Order VIII, Rule 6 to be enquired into. Thus on the execution side the two cross decrees although arising out of two separate and unconnected*



transactions when legally can be set off under Rule 18 of Order XXI, Civil Procedure Code one fails to see why in such cases equitable set off cannot be permitted. If power exists to grant equitable set off apart from Rule 18, as we comprehend it does exist, then equitable set off in proper cases can be permitted although the decrees may have been the result of unconnected and independent transactions. The said position of law gathers support from the following decisions: Bangar Raju v. Kalidindi Suraiahmma, A.I.R. 1957 Andhra Pradesh 403 and Narayanan v. Krishnar, A.I.R. 1951 Trav Co. 78.”

13. Principles relating to set off were also discussed in *Lakshmichand and Bharti Airtel*. In *Sambu Films and others v. Vijaya Pictures* (1990) 2 MLJ 405, a Division Bench of this Court rejected a plea of equitable set off after concluding that a claim for damages was appropriate in the circumstances by also recording that court fee should be paid on a claim for an equitable set off. Courts have thus consistently recognized that, in appropriate cases, a party may be entitled to plead and make a claim on the basis of equitable set-off. All these judgments record that a claim for equitable set off should ordinarily arise from and out of the same transaction and that the facts and circumstances should lead to the conclusion that it would be inequitable to direct the party pleading an equitable set off to resort to an independent suit.



14. In the case at hand, the claim made by the 1st judgment debtor under Exs.R1 and R2 relates to the facilities agreement. In the memo of calculation forming part of Ex.R1, the decretal amount or part thereof has been deducted to arrive at the net claim. Thus, the claim relates to other facilities under the facilities agreement after excluding the letter of credit. While a net claim of Rs.46,33,170.38 has been made in relation thereto, this claim had not been tested thus far in any legal proceeding. When the suit was prosecuted, an equitable set off relating to this claim was not made. In spite of having the option to do so, the 1st judgment did not make a counter claim or file a cross suit in respect thereof. It cannot, therefore, be ruled out that the decree holder may contest this claim.

15. Besides, the agreed position is that the 1st judgment debtor has assigned the non-performing asset to ARCIL and such entity endeavoured to claim a set off in course of execution proceedings. Such effort was a failure partly on the ground that the assignee is not a judgment debtor. The fact remains, however, that the assignee is the person entitled to make a claim against the decree holder. Considering the facts and circumstances in totality, I decline to exercise the discretion of permitting the 1st judgment debtor/applicant to claim an equitable set-off in course of execution proceedings. Therefore, by leaving it open to ARCIL to institute fresh proceedings in accordance with law

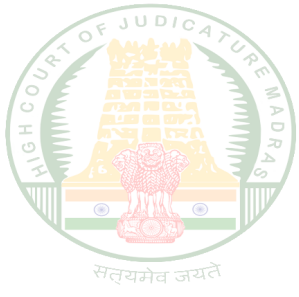


in respect of the claim against the decree holder, these applications are disposed of. If such proceedings were to be initiated, it is needless to say that it is open to the plaintiff(s) to claim any exclusions under the Limitation Act, 1963 that it may be entitled to rely upon.

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Neutral Citation: Yes/No

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SENTHILKUMAR RAMAMOORTHY, J.

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