



THE HIGH COURT OF JUDICATURE AT MADRAS

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Judgment reserved on : 06.07.2026

Judgment pronounced on : 10.07.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.3462 of 2026
& CMP.No.15063 of 2026

M/s.Otto India Private Limited,
Represented by Transferee Decree M/s.Papthi Reals,
represented by Partners A.Narayanan
residing at No.139, T.H.Road, Chennai – 600 193
and V.Bhaskaran, having office at No.442/3-C2,
T.H.Road, Minjur, Chennai – 601 203.

.. Petitioner

Vs.

1.Venkatesh Coke and Power Limited,
No.6926A/D1, Chandrawal Road,
New Delhi – 110 007.
2.Ravi Agarwal
3.Rahul Swarup
4.Manju Swaroop

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 10.04.2026 passed in E.A.No.6 of 2021 in E.A.No.48 of 2021 in E.P.No.128 of 2017 on the file of the I Additional District Court, Tiruvallur.



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For Petitioner : Mr.Navaneetha Krishnan
Senior Counsel for
Mr.Jaisankar Srinivas

For Respondents : Mr.Ravikumar Paul
Senior Counsel for
Mr.M.V.Seshachari for RR1 and 2
Mr.J.P.Karunakaran for RR3 and 4

ORDER

The decree holder is the revision petitioner, challenging the dismissal of E.A.No.6 of 2021, which was filed to review the order in E.A.No.48 of 2021 in E.P.No.128 of 2017 on the file of the I Additional District Court, Tiruvallur.

2. I have heard Mr.Navaneetha Krishnan, learned Senior Counsel for Mr.Jaisankar Srinivas, learned counsel for the revision petitioner and Mr.Ravikumar Paul, learned Senior Counsel for Mr.M.V.Seshachari, learned counsel for the respondents 1 and 2 and Mr.J.P.Karunakaran, learned counsel for the respondents 3 and 4.

3. Mr.Navaneetha Krishnan, learned Senior Counsel would firstly contend that the petitioner holds a valid decree in C.S.No.196 of 2005, which was passed by the High Court of Judicature at Calcutta and that the said decree was transmitted to the I Additional District Court, Tiruvallur, for the purposes of execution by attachment and sale of the properties of the judgment-debtor. He would further state that attachment was also ordered and duly notified before the Sub-Register concerned, after the



respondents failed to appear even in the execution proceedings. He would further state that thereafter alleging that the respondents came to know about the ex-parte proceedings only on 25-08-2016, EA.No.48 of 2017 was filed to set aside the ex-parte order dated 22-10-2008, ordering attachment. He would further state that the said EA.No. 48 of 2017 was allowed by the trial Court and seeking review of the said order dated 18-11-2020, the petitioner filed EA.No. 6 of 2021, alleging that the respondents had not let in any oral evidence, but however, had chosen to mark Exs.P1 to P5. He would further state that the said application, seeking review was dismissed, as against which, the present revision petition has been filed.

4. Mr.Navaneetha Krishnan, learned Senior Counsel would state that after the amendment to the Code of Civil Procedure, especially Order XVIII Rule 4 of CPC, unless a proof affidavit is filed and documents are marked by the witness, the same cannot be looked into. His contention is that the trial Court failed to notice the flagrant violation of the mandate of law under Order XVIII Rule 4 of CPC and had erroneously dismissed the review application. He would further state that the decree-holder, despite obtaining a decree before the competent Court in Calcutta, is unable to reap the benefits of the said decree. The learned Senior Counsel would further state that the impugned order may therefore be set aside, with an opportunity being given to the petitioner to agitate the permissibility of the documents having been marked in the absence of either a proof affidavit or the witness getting into the box.



5. In support of his submissions, Mr. Navaneetha Krishnan, learned Senior Counsel has relied on the decision of this Court in *D. Komala Vs. S. D. Ramalingam*, reported in 2021 5 LW 64 and *Venkatesh Coke Power Limited Vs. M/s. Otto India Private Limited* in CRP.No.3030 of 2022 dated 18.10.2022, where this Court had passed an order between the same parties in this revision petition.

6. Mr. Ravikumar Paul, learned Senior Counsel appearing for the contesting respondents would state that at the time of the institution of the suit, the defendant/Company was under liquidation and the mandatory leave as contemplated under Companies Act was not obtained and rightly the application to set aside the ex-parte order came to be allowed in E.A.No.48 of 2017. He would also point out to the order passed by this Court in CRP.No.3030 of 2022, which was a revision challenging an order permitting oral and documentary evidence to be adduced in the review application, where this Court had taken note of the fact that the documents in Exs.P1 to P5 had already been marked in E.A.No.48 of 2017 and that at the time of marking the said documents, no objection was taken with regard to the same and hence, proceeded to hold that it was not open to the petitioner to agitate the admissibility of the documents at a later stage. The learned Senior Counsel would further state that a very valuable property of about 100 acres is being held for ransom by the petitioner, decree-holder and taking advantage of the same, the petitioner is not willing to prosecute the execution



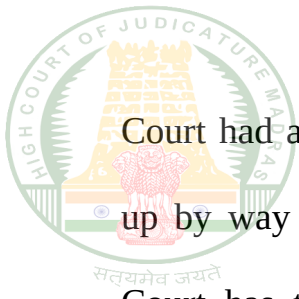
petition on merits and is harping on technicalities. He would therefore pray for dismissal of the revision.

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7. I have carefully considered the submissions advanced by the learned Senior Counsel on either side.

8. The fact that E.A.No.48 of 2017 was allowed and the ex-parte order passed in E.P.No.128 of 2017 was set aside is not in dispute. Equally, it is also an admitted position that the petitioner, decree-holder sought to review the order in E.A.No.48 of 2017, by taking out EA.No.6 of 2021, mainly on the ground that without filing a proof affidavit as required under Order XVIII Rule 4 of CPC, the judgment-debtor has been permitted to mark exhibits Exs.P1 to P5. I noticed that between the very same parties, CRP.No.3030 of 2022 was heard and disposed of by this Court on 18-10-2022.

9. No doubt, as rightly contended Mr.Navaneetha Krishnan, learned Senior Counsel, the order which was under challenge in the said revision petition was an order allowing an application to lead oral and documentary evidence in a review application. However, this Court was put on notice about not only EA.No.48 of 2017 being allowed, but also the attempt to review the said order by way of EA.No.6 of 2021. In fact, it is only in the said review application that EA.No.15 of 2022 was filed by the decree-holder, seeking leave to lead oral and documentary evidence. The trial



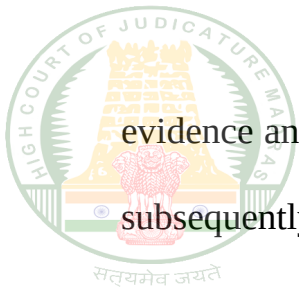
Court had allowed the said application, as against, which the respondents here came up by way of revision under Article 227 of the Constitution of India. However, this

Court has taken note of the fact that Exs.P1 to P5 had been marked without any objection and the relevant discussion made by this Court is usefully extracted hereunder:

“6. The short question that arises for consideration in this revision is whether the 1st respondent is entitled to lead oral evidence and mark the documents which were already marked without leading oral evidence in the proceedings sought to be reviewed (EA.No.48 of 2017). Admittedly, the documents sought to be marked by the 1st respondent in this review application were already marked in E.A.No.48 of 2017.

7. It is settled law if a document is marked without any objection as to proof of document, any objection as to sufficiency or absence of proof cannot be raised later.....”

10. Further, this Court, relying on the decision of the Hon’ble Supreme Court in *R.VE.Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P.Temple and another*, reported in 2003 (8) SCC 752, held that when documents have been marked on either side, Exs.P1 to P5 on the side of the respondents and Exs.R1 to R23 on the side of the petitioner and no objection was taken, then, it would be impermissible for questioning the admissibility of the documents thereafter. In fact, this Court further held that the petitioner was also not required to even seek leave to lead oral evidence to mark Exs.R1 to R23, since the documents have already been marked. The very same contentions have therefore been subject matter of the earlier revision petition and clear findings have been given. Further, this Court has clearly said that once the documents have been admitted in



evidence and marked, it was no longer open to either of the parties to question the same subsequently.

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11. In *D.Komala's case*, this Court was deciding a statutory first appeal under Section 96 of CPC and was testing the findings of the trial Court, based on pleadings as well as oral and documentary evidence. In this context, this Court held that facts can be proved by proof affidavit as provided under Order XVIII of CPC, but however, marking of documents can be done only in the manner provided in the proviso to Rule 4(1) in the presence of the Court, proviso having been inserted by the Amendment Act. However, even though there may have been a procedural irregularity in admitting documents not only on the side of the respondents, but also on the side of the petitioner and relying on the same, admittedly, the petitioner had lost his right in questioning the admissibility and proof of the documents by allowing the documents to be marked, without any objection as held by the Hon'ble Supreme Court in *R.VE.Venkatachala Gounder's case*. This ratio was also applied in an earlier revision petition between the very same parties to this revision petition as well. I am therefore unable to see any error or infirmity committed by the trial Court in dismissing the application, seeking review of the order in EA.No.48 of 2017.



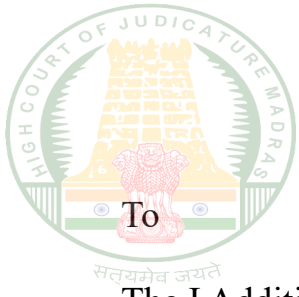
12. Though, this Court was dealing only with EA.No.15 of 2022 taken out by the petitioner herein, the same question of whether documents filed on behalf of the respondents 1 and 2 as Exs.P1 to P5 could be looked into, in the absence of proof affidavit being filed or documents being marked through the witness has been elaborately considered and the contention of the petitioner has been rejected. In such view of the matter, I am unable to see any interference being warranted with the well considered order of the trial Court in EA.No.6 of 2021.

13. The trial Court has rightly distinguished the ratio laid down in *D.Komala's case*, which has also been relied on before it, on facts of the present case. The trial Court also referred to Rule 143 of the Civil Rules of Practice, which does not mandate recording of oral evidence in execution proceedings. For the foregoing reasons, I would not find any merit in the revision petition and the revision petition deserves to be dismissed.

14. In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

10.07.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

The I Additional District Court, Tiruvallur.

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P.B.BALAJI.J,

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Pre-delivery order made in
CRP.No.3462 of 2026
& CMP.No.15063 of 2026

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