

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2019

DELIVERED ON : 18 .01.2019

CORAM

THE HONOURABLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P (NPD) No.3959 of 2013

&

M.P.No.1 of 2013

The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.

.. Petitioner

Vs

1.V.Narayanan

2.Kumar

3.The Madras District Collector,
Singaravelar Building,
Chennai - 600 001.

4.The Tahsildar,
Mambalam-Guindy Taluk Office,
Chennai - 600 008.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 17.06.2013 passed in E.P.No.167 of 2010 in O.S.No.328 of 2007 by the learned IXth Assistant City Civil Court, Chennai.

For Petitioner : Dr.C.Ravichandran

For Respondent 1
Party in person : Mr.V.Narayanan

For Respondents 3 & 4 : Mr.M.Sri Charan Rangarajan
Special Government Pleader
(Civil Side)

ORDER

The instant case involves an unscrupulous litigant who has shown brazen disdain to the sanctity of orders passed by the Hon'ble First Bench of this Court and has scandalized the Judges of this Court. The litigant who himself is a lawyer has tarnished the image of the noble profession of lawyers by throwing it to the wind. The below mentioned facts undoubtedly proves the misconduct of the first respondent.

Brief facts leading to the filing of the instant revision under Article 227 of the Constitution of India:

2. The first respondent claiming to be the owner of the property being a private latrine situated at No.63, Sir Theyagaraya Road, adjacent to Lakshmikantham Street, within Mambalam-Guindy Taluk Office, VIIIth Zone of Chennai Corporation, Chennai filed a suit O.S.No.328 of 2007 before the XIIth Assistant Judge, City Civil Court, Chennai for declaration that he is the owner of the suit schedule

property and also for an injunction restraining the defendants in the suit from in anyway interfering with the possession of the suit schedule property by the plaintiff. The petitioner in this revision is the fourth defendant in the suit and the respondents 2 to 4 are the first, second and third defendants respectively in the suit. In the suit O.S.No.328 of 2004, no documentary evidence was produced by the first respondent/decreed holder to prove his ownership of the suit schedule property. The documents filed along with the plaint in O.S.No.328 of 2007 are as follows:

<i>Date</i>	<i>Particulars of Documents</i>
02.02.1945	Attested copy of Receipt executed by Murugesu Naicker infavour of Venkitasamy
10.08.1992	Kuthagai executed by Rajeswari in favour of Venkitasamy
05.01.2005	Undertaking executed by the shop keepers to enhance the daily rent
08.12.2002	Stopping License fee paid by the shop keeper
10.03.2006	Copy of Writ Petition and Affidavit in W.P.No.11629/06
25.06.2006	Copy of representation to the Commissioner, Chennai Corporation
.08.2006	Copy of Complaint to the Police against the 1 st defendant
	Copy of Police Receipt for the Corporation
	Originals of Power Deeds in all the shop keepers a Book for that
28.09.2006	Requisition to the Tahsildar

3. An *ex parte* decree dated 23.10.2007 came to be passed in favour of the first respondent/decreed holder in O.S.No.328 of 2007. After the decree was passed in O.S.No.328 of 2007, the Hon'ble First Bench of this Court in a batch of writ petitions in W.P.Nos.1049 of 2006, 4578 of 1996, 9954 of 2002 and W.A.Nos.1393 of 2003, 888 of 2000 and 175 of 1994 by order dated 28.11.2007 gave various directions in respect of the hawkers at various places within the city of Chennai and also directed the suit O.S.No.328 of 2007 filed by the first respondent/decreed holder before the learned XIIth Assistant Judge, City Civil Court, Madras to be withdrawn and transferred to the file of this Court. The suit schedule property is located in North Usman Road and Thiagaraya Road area (From Panagal Park to Pondy Bazaar) at Chennai.

4. In the aforesaid order dated 28.11.2007 of the Hon'ble First Bench of this Court, the civil suit O.S.No.328 of 2007 filed by the first respondent/decreed holder on the file of the learned XIIth Assistant Judge, City Civil Court, Madras was directed to be withdrawn from the file of the learned XIIth Assistant Judge, City Civil Court, Madras and transferred to the file of this Court and listed for hearing on 10.12.2007 along with W.P. Nos.33485, 32339 and 32490 of 2007. After the suit O.S.No.328 of 2007 was transferred from the file of the learned XIIth

Assistant Judge, City Civil Court, Madras to the file of this Court, it was renumbered as Tr.C.S.No.598 of 2008.

5. Despite directions given by the Hon'ble First Bench of this Court on 28.11.2007 that the suit O.S.No.328 of 2007 filed by the first respondent before the learned XIIth Assistant Judge, City Civil Court, Madras be withdrawn from the file of the learned XIIth Assistant Judge, City Civil Court, Madras and transferred to the file of this Court, an execution petition viz., E.P.No.167 of 2010 has been filed by the first respondent before the learned IXth Assistant Judge, City Civil Court, Madras to execute the *ex parte* decree dated 23.10.2007 passed in favour of the first respondent/decree holder. The execution petition was filed by the first respondent in E.P.No.167 of 2010 under Order XXI Rule 32 of the Code of Civil Procedure for arrest and for detention in civil prison of the petitioner/fourth judgment debtor for violation of the injunction decree by demolition of the suit property after the decree.

6. A counter affidavit was also filed by the petitioner/fourth judgment debtor in E.P.No.167 of 2010 in O.S.No.328 of 2007 stating that the suit schedule property absolutely belongs to the petitioner/fourth judgment debtor and it is also stated that the first

respondent/decree holder has played fraud upon the Court in obtaining an *ex parte* decree dated 23.10.2007 in O.S.No.328 of 2007 by suppressing the order dated 06.04.2006 passed by the Hon'ble First Bench of this Court in W.P.Nos.1049 of 2006 batch wherein the Hon'ble First Bench of this Court specifically directed as follows:

“It is hereby directed that this order will supersede the orders of the subordinate courts, if any, passed in the relevant matters relating to the area covered by the Scheme as accepted by this order”.

7. The petitioner has also stated in his counter that the first respondent/decree holder has deliberately suppressed the order dated 20.11.2006 passed in W.P.No.11629 of 2006 by the Hon'ble First Bench of this Court and in that order, the Hon'ble First Bench has held that the writ petition filed by another hawkers V.Rajeswari is vexatious and has been filed only with a view to prevent the petitioner/Corporation from evicting the first respondent/decree holder and other unauthorised occupants in the manner known to law. The petitioner has also stated that even though a copy of writ petition and an affidavit filed in support of W.P.No.11629 of 2006 was filed by the first respondent/decree holder, as plaint documents, the order dated 20.11.2016 passed in W.P.No.11629 of 2006 by the Hon'ble First Bench

of this Court has been suppressed by the first respondent/decreed holder in the suit and he has played fraud upon the Court by suppressing the material facts and non-production of vital documents namely a copy of the order dated 20.11.2006 in W.P.No.11629 of 2006 and therefore, according to the petitioner, the *ex parte* decree dated 23.10.2007 obtained by the first respondent/decreed holder in O.S.No.328 of 2007 is *non est* in law and *void ab initio*.

8. Despite a detailed counter affidavit having been filed by the petitioner/fourth judgment debtor in E.P.No.167 of 2010 filed by the first respondent/judgment debtor which will unequivocally establish that the Executing Court has got no jurisdiction to execute the *ex parte* decree dated 23.10.2007 passed in O.S.No.328 of 2007, in view of the withdrawal and transfer of the said suit from the file of the learned XIIth Assistant Judge, City Civil Court, Chennai to the file of this Court, the Executing Court namely the IXth Assistant Judge, City Civil Court, Madras by its order dated 17.06.2013 in E.P.No.167 of 2010 in O.S.No.328 of 2007 entertained the execution petition by passing the impugned order which reads as follows:

“ that the petition be and the same is hereby is allowed with condition that the DH is hereby directed to enforce the decree by an Attachment of the property belongs to the 4th

Respondent's office for the value to the tune of Rs.2,00,000/- and on filing Batta, the bailiff first up of all take the inventory list of the property attached and handed over to the DH for safe custody for the purpose of Auction sale to realize the amount beared by the DH for the construction of the Latrine, etc., after six months from the date of the Attachment and further, the DH and JD both are directed to follows the restrictions imposed in the provisions of Order 21 R.3 to 5 of CPC and further the DH is also directed to filed the schedule of property to be attached from the 4th Respondent/JD's office with value along with Batta for attachment.”

9. Aggrieved by the order dated 17.06.2013 passed in E.P.No.167 of 2010 in O.S.No.328 of 2007, the petitioner who is the fourth judgment debtor in E.P.No.167 of 2010 has preferred the instant revision.

10. Heard Dr.C.Ravichandran learned counsel for the Petitioner, Mr.Srisaran Rengarajan, learned Special Government Pleader (Civil Side) for the third and fourth respondents and Mr.V.Narayanan, the first respondent who appeared as party-in-person. Even though Mr.M.Baskaran and Mr.M.Lal Bagadur are the counsels on

<http://www.judis.nic.in> record for Mr.V.Narayanan, the party in person submitted to this Court that in view of the earlier order passed by another learned Single Judge

of this Court in a connected matter in CRP(PD).No. 3867 of 2010, passing strictures and referring the said Advocates to the Bar Council for initiating action against them, the counsels on record in this case have refused to appear in this matter.

Submissions of the learned counsels:

11. The learned counsel for the petitioner submitted that the Executing Court exercised its jurisdiction erroneously without considering the order dated 06.04.2006 and the subsequent order dated 28.11.2007 passed by the Hon'ble First Bench of this Court in W.P.No.1049 of 2006 batch. He drew the attention of this Court to the said Orders of the Hon'ble First Bench wherein the Hon'ble First Bench by its order dated 06.04.2006 has directed that all the grievances of the Hawkers in the city of Chennai shall be considered only by the implementation committee and no subordinate courts in the city shall take cognizance of any such complaint and the Hon'ble First Bench has also observed that its order will supersede the orders of the subordinate courts. He also drew the attention of this Court to the order dated 28.11.2007 of the Hon'ble First Bench of this Court wherein the Hon'ble First Bench has directed withdrawal and transfer of O.S.No.328 of 2007 filed by the first respondent/decreed holder to the file of this Court which was also renumbered as Tr.C.S.No.598 of 2008.

Therefore, according to the learned counsel, the executing court does

not have jurisdiction to entertain the execution petition filed by the first respondent/decree holder.

12. The learned counsel for the petitioner further submitted that the first respondent/decree holder has deliberately suppressed the order dated 20.11.2006 passed by the Hon'ble First Bench of this Court in W.P.No.11629 of 2006 filed by another hawkers/authorised occupant V.Rajeswari wherein this Court has dismissed the writ petition observing that the writ petition is completely vexatious and is a bogus claim. According to the learned counsel for the petitioner, the first respondent has played a fraud upon the petitioner by suppressing the order dated 20.11.2006 passed in W.P.No.11629 of 2006 and has also obtained an *ex parte* decree dated 23.10.2007 in his favour which is *non est* in law and *void ab initio*.

13. The learned counsel for the petitioner further submitted that despite the petitioner filing a detailed counter affidavit in E.P.No.167 of 2010 giving the full details of the case and the orders passed by the Hon'ble First Bench of this Court, the Executing Court has not considered the averments contained in the counter affidavit, has not passed a reasoned order and has not adverted to the contentions raised in the counter affidavit filed by the petitioner. According to him,

the Executing Court has committed an error apparent on the face of the record in accepting the memo for compensation filed by the first respondent/deGREE holder, without any evidence for proving the quantum of compensation and also without affording opportunity to the judgment debtors.

14. The learned counsel for the petitioner also drew the attention of this Court to the following judgments of the Hon'ble Supreme Court:

(a) *Kiran Singh and Others Vs. Chaman Paswan and other* reported in **AIR 1954 SC 340** for the proposition that a decree passed by the Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings.

(b) *S.P.Chengalvaraya Naidu (dead) by Lrs. vs. Jaganath(Dead) by Lrs and anothers* reported in **(1994) 1 SCC 1** for the proposition that a judgment or a decree obtained by fraud is a nullity and non-disclosure of relevant material documents with a view to obtain advantage amounts to fraud.

(c) *Zarina Siddiqui vs. A.Ramalingam alias R.Amarnathan*

reported in **(2015) 1 SCC 705** for the proposition that the parties must come before the Court with clean hands and suppression of material facts and making distorted statements will bar the discretionary relief in favour of the party who has suppressed material facts and has made distorted statements.

15. Per contra, Mr.V.Narayanan party in person, who is also an advocate submitted his written arguments before this Court which is reproduced hereunder:

The decree is in force and the E.P. is filed on the basis “obitter dicta” order in contempt petition in Diary No.25409 of 2008 dated 08.12.2008 by the First Bench to file this E.P.

2.The quoted scheme of I, XXVI, and XXVIII dated 06.04.2006 in W.P.No.1049 of 2006 cases are not applicable as on that date this property is not a Hawking Zone Property, but it became Hawking Zone Property only after the approval order dated 28.11.2007 by recommendation of Chairman to change it Hawking Zone Property which is only after decree on 23.10.2007 by which the First Bench has committed contempt of civil court order while exercising the writ jurisdiction against Supreme Court decision.

3. There are serious attack by this respondent for the First Bench order in W.P.No.11629 of 2006 as obtained fraud though the petitioner with

the counsel were absent the First Bench passed an order on merit as if they were appeared and argued which is proved in the light of affidavit in W.M.P.No.18887 of 2006 of Late Rajeswari relevant u/s 32 of Evidence Act while conveying the fact by Traffic Ramasamy about the Judge called Rajeswari in 3 times in court.

4.The orders of the First Bench after decree amounts to be violation of Supreme Court decided by 9 Judges Mrikkar case and also against the provision under Art 226(3) of Constitution of India and Article 300A of the Constitution of India though it is for a portion, it is in middle of the property cannot be separated identified. Hence by invoking Section 39 the Evidence Act is applicable to the whole property.

5. This petitioner has filed a petition to reject the E.P. by stating the First Bench order which was dismissed. Then filed Section 47 petition which was also dismissed without preferring any appeal against such order this petitioner has no right to object in this E.P.

6.It is unfortunate the counsel represented for defendant in lower court is now sitting judge, who threatened the lower judge and counsels after showing the First Bench order who exaggerated the fair and bonafide allegation against the former Chief Justice which was declared as “proper Statement” particularly the former Chief Justice is not responsible in calling

the disposed suit to High Court and gave approval for charging this suit property as Hawking Zone Property, to demolish, to construct and allot in violation of decree against the Supreme Court version in Mrijkar case and also caused the justice to Eclipse and the subsequent Judge unable to find a finality for the former judge proceeding as after the condonation delay petition the setting aside exparte petition remained with neither allowed or dismissed for the past 10 years as the period to eclipse of Justice and about the order in W.P.No. 11629 of 2006 as fraudulently obtained though the petitioner and counsel were absent passed order as they were appeared and argued. Moreover the tenant proceeding is not applicable to the landlord. Despite that explanation and the argument of the Corporation and after came to know the owner of the property is V.Narayanan, why they have not given any notice to him while their alleged removal of encroachment as violative of Article 300A or to allot any shop as this respondent is a Hawker why they have not provided a shop, the declared owner for all the shopkeepers.

7.It is necessary to discuss about the proceeding of justice Lordship P.T.Asha who directed counsel to represent for her with her order who along with this court counsel bombarded this respondent and show her very much hatred with this respondent's counsel only to take vengeance against the counsel, and this respondent, she exaggerated the bonafide

averments in all the proceeding as she has stated all these proceeding as vexatious and frivolous against the fact it is based on decree and the First Bench while exercising the writ jurisdiction violated the civil court decree and Supreme Court decision. Hence all the allegation are bonafide.

8.The allegation by the counsel for this revision petitioner is wrong as the E.P. Court has passed order of compensation against the law but as in Order XXI Rule 32 provides the execution is either by arrest or attachment, so the judge in order to bar the arrest of a public servant u/s 82 of CPC opted for attachment by calculating the loss he forced this respondent to file a memo for loss, but this respondent is always stick on to arrest him with the clearing the way for free access to the decreed property.

9.This Corporation has suppressed the fact that this entire property of 10 grounds and 250 square feet was sold by Corporation by auction sale to Venkata Rao in the year 1938 from whom only this respondent claiming his right.

10.This revision petitioner has no right to object in this E.P. Without approaching to set aside the decree in that court or before the Appellate Court. But there is an eclipse in Justice unable to proceed for the past 10 years.

Hence it is prayed that this Hon'ble Court

may be pleased to dismiss the revision petition after paving the way to free access for the suit property and thus render justice.

16. Per contra, learned counsel for the third and fourth respondents reiterated the submissions made by the learned counsel for the petitioner and submitted that he is sailing with the petitioner. Apart from reiterating the submissions made by the learned counsel for the petitioner, the learned counsel for the third and fourth respondents would further submit that the demolition of the buildings in which the subject property is also situated was demolished only pursuant to the order passed by this Court in W.P.No.19337 of 2008. He has also submitted that the allegations made by the first respondent/deGREE holder against the Judges of this Court amounts to contempt of court and the first respondent/deGREE holder is liable for criminal prosecution.

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17. The learned counsel for the third and fourth respondents also drew the attention of this Court to the order dated 27.11.2018 in the connected CRP(PD).No. 3867 of 2010 which has passed strictures against the first respondent/deGREE holder and his Advocates for abuse of process of Court, for making scurrilous attack against the Judges and

for scandalizing the judiciary. He also submitted that the Hon'ble First Bench of this Court in its order dated 20.11.2006 in W.P.No.11629 of 2006 has categorically held that the petitioner corporation is the absolute owner of the suit property. According to him, the first respondent/decree holder has suppressed the order dated 20.11.2006 passed in W.P.No.11629 of 2006 before the Executing Court and played fraud upon the Court.

18. The learned counsel further submitted that in the order dated 27.11.2018 passed in CRP(PD).No.3867 of 2010 the learned Single Judge of this Court has held that the plaint filed in O.S.No.328 of 2007 by the first respondent/decree holder is filled with false averments and bald allegations which are not substantiated by any records or documentary evidence. He also submitted that the Court while passing the final orders has observed the conduct of the counsel and the first respondent which amounts to abuse of professional privileges and has referred the first respondent/decree holder as well as his counsels Mr.M.Baskaran and Mr.M.Lal Bagadur to the Bar Council of Tamil Nadu to take appropriate action against them and has also directed the first respondent/decree holder to pay Rs.50,000/- to the Chief Justice Relief's fund within a period of three weeks from the date of that order. He also submitted that the learned Judge has also directed the

registry of this court to place the matter before the Division Bench of this Court for initiating criminal contempt against the first respondent and his counsels.

Discussion:

19. The subject matter of this revision is also the subject matter of another revision viz., CRP.(PD).No.3867 of 2010, in which the first respondent is the petitioner. Despite strictures passed by the learned Single Judge of this Court in her order dated 27.11.2018 passed in the connected CRP.(PD).No.3867 of 2010, against the first respondent, for his contumacious conduct and for scandalizing the judiciary, the first respondent has continued to be defiant to the orders of this Court by repeating the same contumacious submissions made before another learned Single Judge of this Court to this Court also.

20. The learned Single Judge of this Court by her Order dated 27.11.2018 in CRP(PD).No.3867 of 2010 has suo moto initiated Criminal Contempt against the first respondent as well as his counsels Mr.M.Baskaran and Mr.M.Lal Bagadur under Section 15 of the Contempt of the Courts Act and directed the registry to place the matter before the Division Bench hearing Criminal Contempt matters for abuse of process of law and Courts and for scandalizing the Judges. The dispute

involved in CRP(PD).No.3867 of 2010 which was disposed of on 28.11.2018 by the learned Single Judge of this Court also pertains to the same property which is the subject matter of the instant dispute also.

21. The learned Single Judge of this Court by her Order dated 27.11.2018 in CRP(PD).No.3867 of 2010 has elaborately dealt with the vexatious litigation viz., O.S.No.328 of 2004 which is the subject matter of this revision and also the connected suit O.S.No.870 of 2008 which is the subject matter of CRP(PD).No.3867 of 2010. Therefore, this Court does not want to repeat once again the chain of events deprecating the conduct of the first respondent and his counsels narrated in the Order dated 27.11.2018 passed in CRP(PD).No.3867 of 2010. The chain of events narrated in the order dated 27.11.2018 passed in CRP(PD).No.3867 of 2010 holds good for this revision also, excepting for the fact that this revision has been filed under Article 227 of the Constitution of India for abusing the process of Court by the first respondent/decree holder for executing the *ex parte* decree dated 23.10.2007 passed in O.S.No.328 of 2007, despite the fact that the said suit was withdrawn and transferred to the file of this Court, pursuant to the Order dated 20.11.2016 passed in a batch of writ petitions in W.P.No.11629 of 2008 and connected matters by the Hon'ble First

Bench of this Court.

22. As seen from the records, the first respondent/decreed holder has suppressed before the Executing Court in E.P.No.167 of 2010 that the suit O.S.No.328 of 2007, in which an *ex parte* decree was passed, was directed to be withdrawn and transferred to the file of this Court, pursuant to the Order dated 28.11.2007 passed by the Hon'ble First Bench of this Court in a batch of writ petitions in W.P.Nos.1049 of 2006, 4578 of 1996, 9954 of 2002 and W.A.Nos.1393 of 2003, 888 of 2000 and 175 of 1994 which reads as follows:

“ As per the scheme all 628 hawkers in this area are to be accommodated in the existing market after re-construction. The occupants of the market have filed Writ Petition No.48194 of 2006, the same is pending, and there is no interim order against the Corporation in the said writ petition. There is also a suit filed by one of the hawkers in O.S.No.328 of 2007 on the file of the XII Assistant Judge, City Civil Court, Madras. In that suit, injunction has been granted against the Corporation. The said suit is directed to be withdrawn from the file of XII Assistant Judge, City Civil Court, Madras and transferred to this Court.”

23. The Hon'ble First Bench of this Court by the aforesaid order dated 28.11.2007 directed withdrawal of O.S.No.328 of 2007 and transferred the said suit to the file of this Court which was also renumbered by the registry of this Court as Tr.C.S.No.598 of 2008. But the execution petition was filed by the first respondent/deGREE holder to execute the *ex parte* decree passed in O.S.No.328 of 2007 only in the year 2010. In such circumstances, the execution petition E.P.No.167 of 2010 filed by the first respondent/deGREE holder before the learned IX Assistant Judge, City Civil Court, Madras is not maintainable and is *non est* in law and *void ab initio*, since the suit has already been transferred to the file of this Court and renumbered as Tr.C.S.No.598 of 2010.

24. The first respondent has also suppressed the order dated 20.11.2006 passed by the Hon'ble First Bench of this Court in W.P.No.11629 of 2006. The said writ petition was filed by one V.Rajeswari, another hawker/unauthorised occupant, claiming to be an occupant of another property in the same Hawker Zone was dismissed on 20.11.2006 on the ground that the writ petition is completely vexatious and a bogus claim has been made by her. Even though the first respondent was aware of the order dated 20.11.2006 passed in W.P.No.11629 of 2006 and had filed the affidavit in support of the writ

petition as a suit document, he has suppressed the said material fact before the executing court in E.P.No.167 of 2010. The relevant portion of the order passed in W.P.No.11629 of 2006 is extracted hereunder:

“ 3. This writ petition is completely vexatious and filed with bogus claim made by the petitioner not only on her behalf but on behalf of the other alleged shop-keepers in the said premises. According to the petitioner, she is in possession of the premises as a lessee under one Venkitasamy, who acquired title and possession of the property by purchase in the year 1945 from one Murugesu Naicker, who was a Horse Chariot operator under Englishman, and the Land was assigned to him for maintaining the Horse Shed in the year 1925 and all the shop-keepers are in possession of independent electric and sewerage connections. According to the petitioner, the shop-keepers are under fear that their shops may be set on fire and the politicians are entering into their premises. In support of her claim, several representations made by vendors collectively and individually are enclosed in the typed set of papers.

4. However, the learned Government Pleader submits that the entire area belongs to the Corporation and the petitioner and the other persons whom she is representing, are all encroachers and are not paying any rent to the Corporation. In any event, the averments made in the affidavit filed in

support of the writ petition are all false and this petition has been filed only with a view to prevent the Corporation from evicting the petitioner and the other vendors in a manner known to law.”

25. The executing court has not considered both the above mentioned orders passed by the Hon'ble First Bench of this Court and has passed the following impugned order dated 17.06.2013 in E.P.No.167 of 2010:

“ that the petition be and the same is hereby is allowed with condition that the DH is hereby directed to enforce the decree by an Attachment of the property belongs to the 4th Respondent's office for the value to the tune of Rs.2,00,000/- and on filing Batta, the bailiff first up of all take the inventory list of the property attached and handed over to the DH for safe custody for the purpose of Auction sale to realize the amount beared by the DH for the construction of the Latrine, etc., after six months from the date of the Attachment and further, the DH and JD both are directed to follows the restrictions imposed in the provisions of Order 21 R.3 to 5 of CPC and further the DH is also directed to filed the schedule of

property to be attached from the 4th Respondent/JD's office with value along with Batta for attachment.”

26. There is total non-application of mind on the part of the Executing Court to entertain the execution petition, despite the fact that the suit O.S.No.328 of 2007 has already been withdrawn and transferred to the file of this Court, pursuant to the orders passed by the Hon'ble First Bench of this Court on 28.11.2007 and the Hon'ble First Bench of this Court in its order dated 20.11.2006 passed in W.P.No.11629 of 2006 filed by the first respondent/decreed holder has also observed that the writ petition is abuse of process of Court and is completely vexatious. In the order dated 20.11.2006 in W.P.No.11629 of 2006 passed by the Hon'ble First Bench of this Court, this Court has observed that the claim of the petitioner in W.P.No.11629 of 2006 who is also one of the unauthorised occupants in the Pondy Bazaar flower market at No.35, Sir Thiagaraya Road is false and the writ petition has been filed only to prevent the Corporation from evicting the petitioner in W.P.No.11629 of 2006 as well as other occupants in the manner known to law.

27. The Hon'ble First Bench of this Court by order dated 06.04.2006 passed in W.P.No.1049 of 2006 batch has also directed that all the grievance of the hawkers in the city of chennai shall be

considered only by the implementation committee and no subordinate courts in the city shall take cognizance of any such complaint and the Hon'ble First Bench of this Court has also observed that its order will supersede the orders of the subordinate courts. The first respondent/deGREE holder is also one of the hawkers claiming to be an occupant of the suit schedule property. The suit O.S.No.328 of 2007 was filed by the first respondent in the year 2007 whereas the order barring the subordinate courts in the city from taking cognizance of any complaints was passed on 06.04.2006 in W.P.No.1049 of 2006 batch by the Hon'ble First Bench of this Court. Therefore, it is the considered view of this Court that the ex parte decree passed in O.S.No.328 of 2007 is a nullity as the court did not have jurisdiction to pass a decree on that date. The Judgment relied upon by the learned counsel for the petitioner reported in **AIR 1954 SC 340** squarely applies to the instant case.

28. It is also clear from the above facts that the first respondent/deGREE holder has played fraud upon the Court by obtaining a decree suppressing material facts which bars the Trial Court from entertaining any suit relating to the suit schedule property which is claimed to be owned by the petitioner/Corporation. The decree obtained by the first respondent/deGREE holder in O.S.No.328 of 2007 is a nullity, as it has been obtained by fraud and suppression of material

facts namely the order dated 06.04.2006 passed in W.P.No.1049 of 2006 batch and the order dated 20.11.2006 passed in W.P.No.11629 of 2006 and the order dated 28.11.2006 passed in W.P.No.1049 of 2006 batch by the Hon'ble First Bench of this Court.

29. The written submissions filed by the first respondent/decree holder before this Court which has been verbatim reproduced in this order in paragraph 15 shows the defiant attitude of the first respondent/decree holder. In his written submissions, despite the strictures passed by the learned Single Judge of this Court in the connected civil revision petition viz., CRP(PD).No.3867 of 2010, the first respondent has continued to make scandalous, derogatory and scurrilous remarks against the judges and the orders passed by the Hon'ble First Bench of this Court as well as the order passed in the connected civil revision petition viz., CRP(PD).No.3867 of 2010. In his written submissions, the first respondent/decree holder has not denied that he was aware of the orders dated 06.04.2006, 20.11.2006 and 28.11.2007 passed by the Hon'ble First Bench of this Court which barred the subordinate courts from entertaining any complaint raised by hawkers in the city of chennai before any of those Courts. In his written submissions, the first respondent/decree holder has submitted that the Hon'ble First Bench of this Court has committed contempt of the civil

court while exercising their jurisdiction. The first respondent/decreed holder in his written submissions has also made scandalous and scurrilous remarks against the learned Single Judge of this Court who passed the order in the connected civil revision petition viz., CRP(PD).No.3867 of 2010. The first respondent/decreed holder has not shown any regret, despite the strictures passed against him in CRP (PD).No.3867 of 2010

30. The purpose of law in society is to preserve the moral sanctity that binds the society. The legal profession is considered a noble profession as it is the upholder and protector of law. It is a service oriented profession which aims to serve society. Lawyers are considered to be social engineers who bring about social change and development. In numerous Supreme Court judgments such as ***Indian Council of Legal Aid and Advice vs. Bar Council of India*** reported in **(1995) 1 SCC 732** where the Hon'ble Apex Court enunciated that the duty of the lawyer is to assist the court in the administration justice, the practice of law has a public utility favour and therefore, he must strictly and scrupulously abide by the code of conduct behoving the noble profession.

31. The Bar Council of India has also framed rules under

Section 49(1)(C) of the Advocates Act, 1961 read with proviso thereto with regard to standards of professional conduct and etiquette. Section 1 of the said rules which deals with the duty of the lawyer to the court is reproduced hereunder:

“SECTION I - DUTY TO THE COURT

1. An Advocate shall, during the presentation of his case and while otherwise acting before a Court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

2. Advocate shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

3. Advocate shall not influence the decision of a Court by any illegal or improper means. Private communications with a judge relating to a pending case are forbidden.

4. Advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the Advocate himself ought not to do. An Advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a

mere mouth-piece of the client, and shall exercise his own judgement in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.

5. Advocate shall appear in Court at all times only in the prescribed dress, and his appearance shall always be presentable.

6. Advocate shall not enter appearance, act, plead or practise in any way before a Court, Tribunal or Authority mentioned in Section 30 of the Act, if the sole or any member thereof is related to the Advocate as father, grandfather, son, grand-son, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in law.

For the purposes of this rule, Court shall ban a Court, Bench or tribunal in which above mentioned relation of the Advocate is a Judge, Member or the Presiding Officer.

7. Advocate shall not wear bands or gown in public places other than in Courts except on such ceremonial occasions and at such places as the Bar Council of India or the Court may prescribe.

8. Advocate shall not appear in or before any Court or Tribunal or any other authority for or against an Organisation or an institution, society or corporation, if he is a member of the Executive

Committee of such Organisation or institution or society or corporation. “Executive Committee”, by whatever name it may be called, shall include any Committee or body of persons which, for the time being, is vested with the general management of the affairs of the Organisation or institution, society or corporation.

PROVIDED that this rule shall not apply to such a member appearing as “ amicus curiae” or without a fee on behalf of a Bar Council, Incorporated Law Society or a Bar Association.

9. Advocate should not act or plead in any matter in which he is himself pecuniarily interested.

Illustration:

I. He should not act in a bankruptcy petition when he himself is also a creditor of the bankrupt.

II. He should not accept a brief from a company of which he is a Director.

10. An Advocate shall not stand as a surety, or certify the soundness of a surety for his client required for the purpose of any legal proceedings.”

32. The conduct of the first respondent leads to the unequivocal conclusion that he has scandalized the Judges and the judiciary as a whole for which he is liable to be punished.

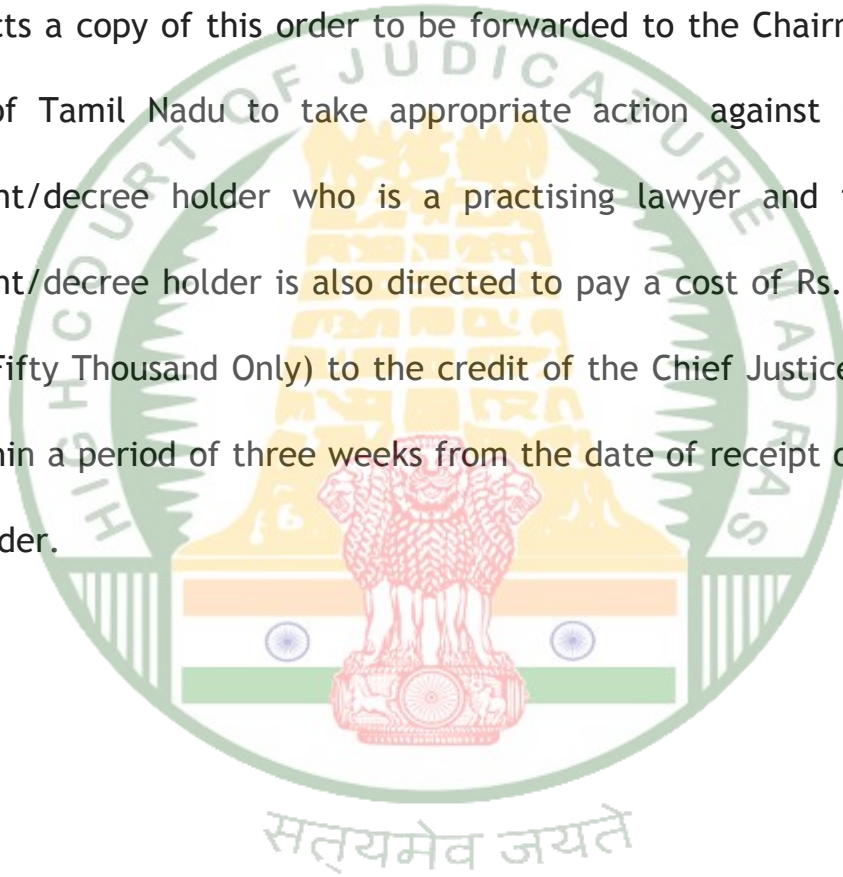
33. The first respondent who himself is a lawyer has clearly violated the rules framed by the Bar Council relating to standard of professional conduct and etiquette for lawyers. The first respondent has abused the process of law and courts by filing an execution petition, despite the withdrawal and transfer of the suit by orders of the first bench of this Court to the file of this Court. The Executing Court without application of mind has entertained the execution petition and has also recklessly awarded compensation to the first respondent/decreed holder based on the memo filed by the first respondent which in the considered view of this Court is patently illegal and an erroneous order passed by total non-application of mind.

Conclusion:

34. In the result, the order dated 17.06.2013 passed in E.P.No.167 of 2010 in O.S.No.328 of 2007 on the file of the learned IXth Assistant City Civil Court, Chennai is hereby set aside and the decree dated 23.10.2007 passed by the learned VIII Assistant Judge, City Civil Court, Chennai in O.S.No.328 of 2010 without jurisdiction is declared to be a nullity, in view of the bar imposed by the Hon'ble First Bench of this Court by its order dated 28.11.2007 passed in W.P.No.1049 of 2006 batch for entertaining such suits. Accordingly, the instant Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is

closed.

35. As directed by another learned Single Judge of this Court by her order dated 27.11.2018 in CRP(PD).No.3867 of 2010, this Court also directs a copy of this order to be forwarded to the Chairman, Bar Council of Tamil Nadu to take appropriate action against the first respondent/decreed holder who is a practising lawyer and the first respondent/decreed holder is also directed to pay a cost of Rs.50,000/- (Rupees Fifty Thousand Only) to the credit of the Chief Justice's Relief Fund within a period of three weeks from the date of receipt of a copy of this Order.



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36. The registry is also directed to place the order passed by this Court along with suo moto criminal contempt initiated by another learned Single Judge of this Court by her order dated 27.11.2018 in CRP(PD).No.3867 of 2010 and place the matter before the Division Bench hearing the said criminal contempt, as and when it is listed for hearing.

18.01.2019

Index: Yes/No

Speaking orders / Non speaking orders

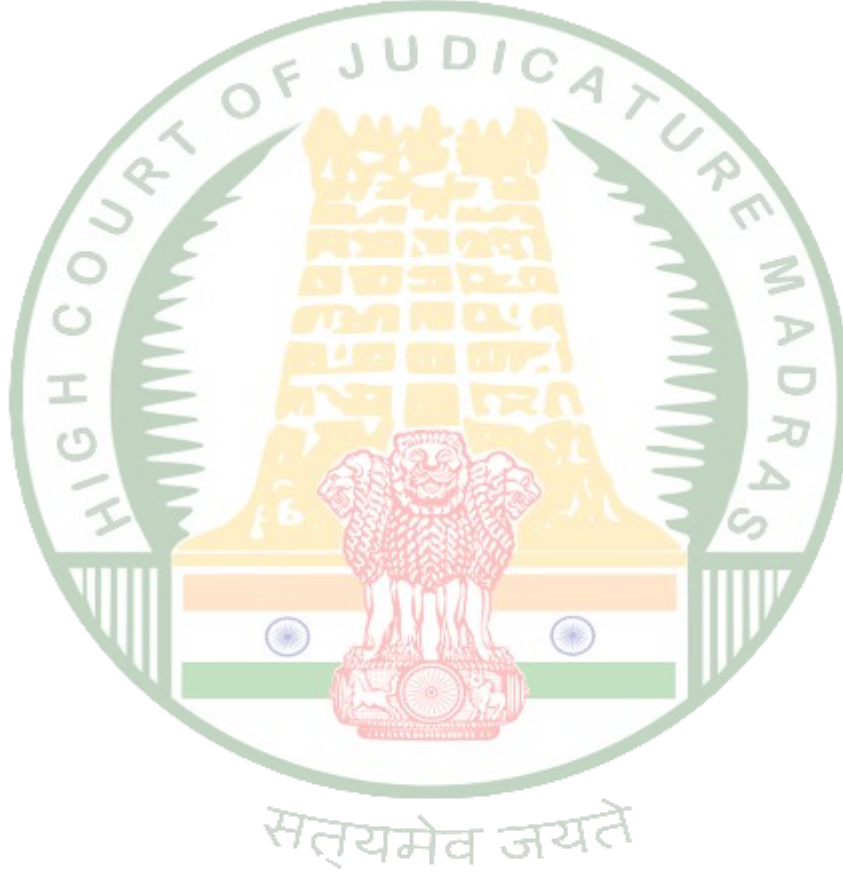
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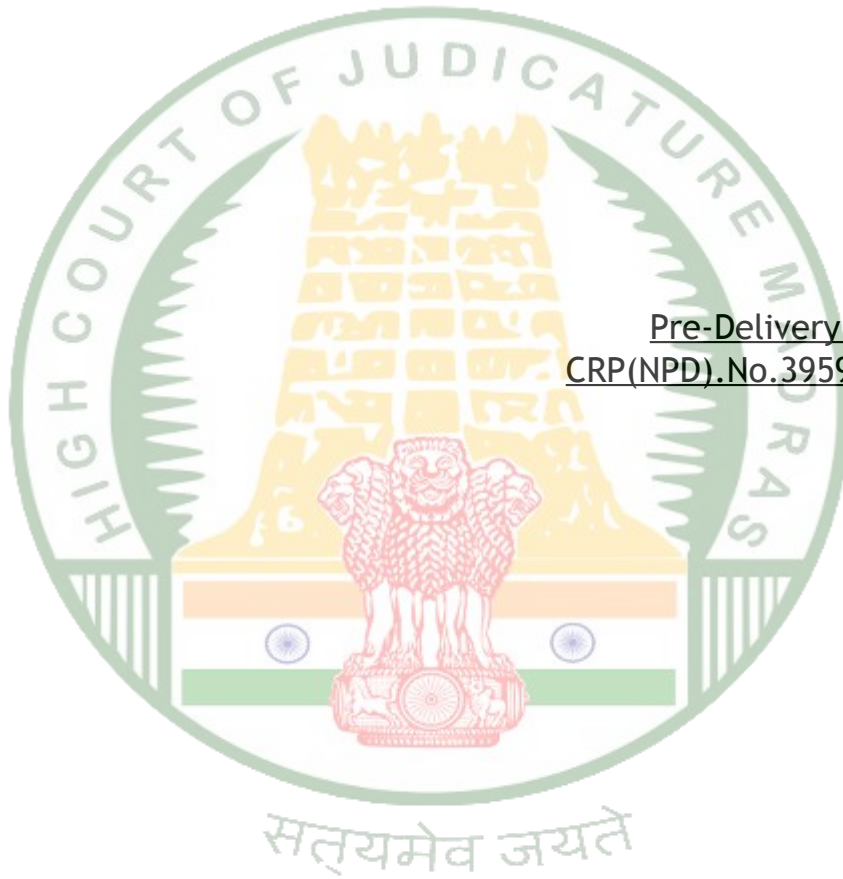
1. The IXth Assistant City Civil Court, Chennai.
2. Bar Council of Tamil Nadu and Puducherry,
High Court Campus, Chennai.



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ABDUL QUDDHOSE, J.

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Pre-Delivery Order in
CRP(NPD).No.3959 of 2013

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18.01.2019