

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 06.08.2025

Order pronounced on : 29.08.2025

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

CRP.Nos.867 & 752 of 2025
& CMP.Nos.5114 & 4292 of 2025

Dhanraj N.Kochar

..Petitioner in both CRPs

Vs.

1.Hemant Raj
2.H.MFOUNDATIONS Private Limited,
Rep. by Mr.Hemant Raj,
No.32, Audiappa Naicken Street,
Sowcarpet, Chennai – 600 001

Goswami Krishna Chandraji (died)

3.Madhusudan Goswami
4.K.Vasantha
5.S.Kalyanasundaram
6.Krishnapriya
7.Muralimanohar
8.Krishnakant
9.Rama Goswami

..Respondents in both CRPs

*[Respondents 6 to 9 impleaded as
LRs of late Goswami Krishna
Chandraji by order dated
24.07.2003]*

Common Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 10.01.2025 passed in I.A.Nos.4 & 2 of 2024 in O.S.Nos.5418 of 1996 and 4978 of 1997 on the file of the XI Assistant City Civil Court, Chennai.



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(In both CRPs)

For Petitioner : Mr.Nithyesh Nataraj
for Mr.Anirudh A.Sriram

For Respondents : Mr.D.Saikumaran for RR1 & 2
Mr.S.Ramesh for R4
RR6 & 7 died
No appearance for RR3, 5, 8 & 9

COMMON ORDER

CRP.No.867 of 2025 has been filed challenging the order in I.A.No.4 of 2024 in O.S.No.5418 of 1996 on the file of the XI Assistant City Civil Court, Chennai.

2.CRP.No.752 of 2025 has been filed to set aside the order dated 10.01.2025 in I.A.No.2 of 2024 in O.S.No.4678 of 1997 on the file of the XI Assistant City Civil Court, Chennai.

3.I have heard Mr.Nithyesh Nataraj, learned counsel for Mr.Anirudh A.Sriram, learned counsel for the petitioner and Mr.D.Saikumaran, learned counsel for respondent 1 and 2, Mr.S.Ramesh, learned counsel for the 4th respondent in both revisions.



4.Mr.Nithyesh Nataraj, learned counsel for the petitioner would submit that O.S.No.4678 of 1997 has been filed by the revision petitioner seeking the relief of declaration that the Sale Deed dated 28.09.1988 is not legally enforceable and binding on the plaintiff, non-est and *void ab initio* and for permanent injunction to restrain the defendants from encumbering the suit property. In the said suit, I.A.No.2 of 2024 has been taken out by third parties, seeking to implead themselves as defendants 9 and 10. The said application was resisted by the revision petitioner. However, the Trial Court, by order dated 10.01.2025, has allowed the application, as against which, the revision in CRP.No.752 of 2025 has been filed.

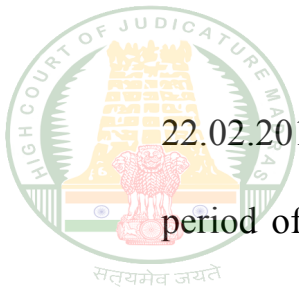
5.Insofar as CRP.No.867 of 2025, in O.S.No.5418 of 1996 filed by the revision petitioner herein for direction to the defendants to execute a registered Sale Deed and to deliver possession, an interlocutory application in I.A.No.4 of 2024 has been filed again by the very same proposed defendants seeking to implead themselves as defendants 9 and 10 in the said suit as well. The said application also came to be allowed by the Trial Court, as against which the petitioner/plaintiff has filed CRP.No.867 of 2025.

6.Mr.Nithyesh Nataraj, learned counsel for the petitioner would submit that the 1st respondent was the owner of the property to an extent of around 10



grounds in Aminjikarai, Chennai and there was a dispute between the 1st respondent and the 4th respondent, resulting in proceedings being initiated and in the said suit, on 02.12.1986, a compromise was entered into, in and by which, the 1st respondent agreed to sell the property of extent 10 grounds to the 4th respondent. The 4th respondent did not have sufficient funds to pay the sale consideration and hence, he approached the revision petitioner and it was agreed that the property would be purchased by both the 4th respondent and the revision petitioner. The learned counsel for the petitioner would further submit that the document was also executed and presented for registration, but however, the Sub-Registrar, noting discrepancy in the survey number, refused to register the document and the document was kept pending.

7.It is the further case of the learned counsel for the revision petitioner that though the revision petitioner had taken effective steps to correct the survey number, the respondent refused to come forward to execute the sale deed, which resulted in filing of O.S.No.5418 of 1996. In the meantime, the 1st respondent has sold the property to 5th respondent, as a result of which, O.S.No.4698 of 1997 has been filed to declare the sale deed executed in favour of the 5th respondent, as null and void and for the consequential relief of permanent injunction. He would further state that the 1st respondent has claimed under a sale agreement with the tenant and the tenant's husband dated



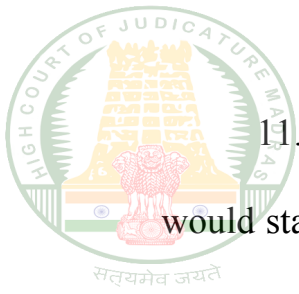
22.02.2010 for a sale consideration of Rs.9,91,00,000/- and after fixing the period of 18 months, an advance of mere Rs.1,00,000/- has been paid. In the meantime, the 5th respondent, who had purchased the property from the 1st respondent, had once again alienated and encumbered the property in the year 2018, which has resulted in the 1st respondent filing C.S.No.65 of 2022 to declare the said sale deed as null and void.

8.The learned counsel for the petitioner would further state that the plaintiff is not a party in the said suit in C.S.No.65 of 2022 and after lapse of 37 years, the 1st respondent has sought to implead himself based on the 2010 sale agreement in his favour. He would further state that it is for the plaintiff, to have felt it appropriate to implead any third parties and the Trial Court ought not to have allowed the application for impleadment at such a belated stage and also when no right were vested with the 1st respondent. Though one of the contentions taken is that subsequent to the application being ordered, the revision petitioner has received costs that was ordered by the Trial Court for allowing the application, the learned counsel for the petitioner would contend that the amount was received by way of Demand Draft, but however, the Demand Draft has not been encashed and it is still with the petitioner. Therefore, it cannot be termed as an acceptance of the costs and on that ground, non suit the revision petitioner, cannot be non-suited.



9.As regards the other contention of the respondents that the revision petitioner has also carried out the amendment, the learned counsel for the petitioner would submit that only because of High Court's circular that whenever amendments are ordered, the same should be carried out without any delay, the petitioner was constrained to carryout amendment and therefore, it also would not operate as a bar or estoppel against the petitioner, from filing the present revision petitions. He would therefore pray for the revisions being allowed.

10.Mr.D.Saikumar, learned counsel for the respondents 1 and 2 would contend that they are bonafide purchasers for value and the matters went up to Hon'ble Supreme Court and the respondents have cleared subsisting bank loans and safeguarded the property by settling the dues of the Bank. He would further state that the impugned order was passed on 12.01.2025, but costs were received on 13.01.2025 and amendment was also carried out on 07.02.2025. He would therefore state that there is nothing to adjudicate in the revision as the order in challenge had already been accepted by the revision petitioner, by not only receiving costs, but also carrying out amendment to the plaint pursuant to the orders passed in the impleading applications.



11. Mr. S. Ramesh, learned counsel appearing for the respondents 4 and 5 would state that it is only the petitioner who had played fraud. According to the learned counsel, the petitioner is a financier from whom, the tenants borrowed money to meet the sale consideration. However, when they noticed that the revision petitioner had inserted his name, as a buyer they refused to go ahead to complete the registration formalities. He would also state that having received the costs, the revision petitions itself are not maintainable.

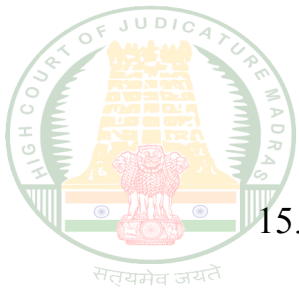
12. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in *Gurmit Singh Bhatia Vs. Kiran Kant Robinson and Others*, reported in 2019 SCC Online SC 912, where, the Hon'ble Supreme Court held that in a suit for specific performance, the plaintiff, being *dominus litis*, cannot be forced to add parties against whom, he does not want to litigate unless it is a compulsion of the rule of law. He would also rely on the decision of the High Court of Delhi in *Naresh Kumar Vs. Anita Singh and Another* in CM(M) 1241/2023 & CM APPL.39586/2023 dated 28.08.2023, where the Delhi High Court, following the ratio in *Gurmit Singh Bhatia's case*, held that the plaintiff being *dominus litis*, cannot be forced to contest the claims against the proposed parties. He would also place reliance on the decision of this Court in *K. Raju Vs. Kuthalingam and Others*, reported in 2022 (2) CTC 78, where in a partition suit, right of a pendente lite purchaser deprived from the



defendant being sub serving to the rights of parties in litigation and in view of the recognized principles that the plaintiff is *dominus litis*, cannot be forced to implead the third party purchaser. This Court held that the plaintiff cannot be forced to act against the litigant whom he does not want to file.

13.The learned counsel for the petitioner would also rely on the proceedings in *R.O.C.No.70467-A/2025-F1 (P.Dis.No.71/2025)* dated 01.08.2025, where the Registrar General of this Court has directed all Principal District Judges in the State of Tamil Nadu and Pondicherry, to not insist on separate petitions to carryout amendment and further directing that once amendment petition is allowed, the amendment should be carried out without any further procedure being required.

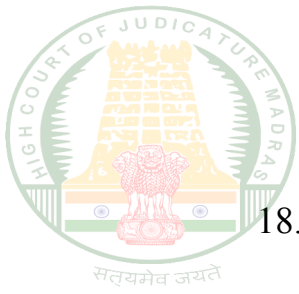
14.Therefore, relying on the said circular, the learned counsel for the petitioner would state that the plaintiff was called upon to carryout amendment and apprehending that the suit may be dismissed, the revision petitioner has proceeded to carryout amendment. He would therefore state that the receiving of costs and carrying out amendment cannot be put against the revision petitioner as the Hon'ble Supreme Court has clearly held that the plaintiff being *dominus litis* cannot be compelled if litigate against the party against whom the plaintiff does not intend to pursue the litigation.



15. On the side of the respondents, the learned counsel for the respondents 4 and 5 has relied on the decision of this Court in *M/s. Fast Cool Services by Partners and Others Vs. P. Shanthakumari*, reported in (2000) 3 CTC 257, where this Court held that when costs was ordered and it was received without prejudice, even then the principles of estoppel would apply and the person receiving the costs under protest or without prejudice also would be estopped from challenging the order subsequently.

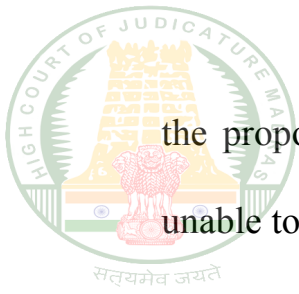
16. Firstly, let me deal with the issue of maintainability of the revision petition, which has been raised by the counsel for the respondents. The maintainability is attacked on two grounds, namely, the revision petitioner has received the cost ordered by the Court and secondly, even the amendment has been carried and therefore it is not open to the petitioner to challenge the said order directing impleadment of the proposed parties.

17. With regard to the first limb of argument regarding maintainability, it is an admitted position that the revision petitioner has received the costs. It is however the contention of the revision petitioner that though the Demand Draft has been received, it has not been sent for collection and the original Demand Draft is still with the revision petitioner and therefore, in such scenario, it cannot be contended that the costs have been received.



18. In *M/s. Fast Cool Services by Partners's case*, this Court placed reliance on the decision of the Division Bench of the Punjab and Haryana High Court in *Amar Singh Vs. Perhlad and Others*, reported in *AIR 1989 P & H 229*, where costs ordered in an amendment petition had been received under protest, the Division Bench held that there being no compulsion for acceptance of costs which was ordered only to compensate the petitioner for the inconvenience caused, and by acceptance of costs, the petitioner has accepted the order as correct. Therefore, when it would amount to having taken benefit of the order and thereafter the party cannot turn around and say that he will also challenge the order. This Court taking note of the ratio laid down by the Hon'ble Division Bench, held that whether costs were received with or without prejudice to challenge the order, would not make any difference and principle of estoppel would apply to such cases.

19. Though the learned counsel for the petitioner would submit that the facts of the case before this Court in *M/S. Fast Cool Services by Partners*, was an application to condone the delay in seeking to set aside the ex-parte order and the same had no relevance to the present case which was relating to impleadment of proper and necessary parties and that in view of the dictum of the Hon'ble Supreme Court, the plaintiff cannot be compelled to litigate against

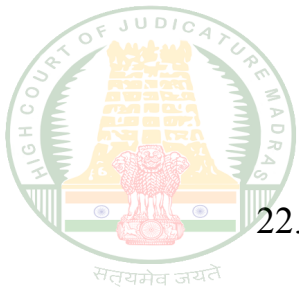


the proposed parties and reliance cannot be placed on in this decision, I am unable to countenance the said submissions.

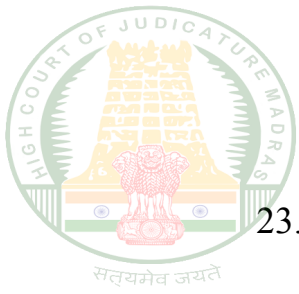
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20. In fact, in *M/s. Fast Cool Services's case*, it was an application seeking to set aside the ex parte order and delay in filing the said application which had far more serious ramifications than permitting a third party to be impleaded in the proceedings. Even in the said case, this Court held that having received the costs, it would not be open to the petitioner to challenge the said order. The principle laid down by the Punjab and Haryana High Court and followed by this Court is that whenever an application is allowed on condition and such condition is attempted to be fulfilled by the applicant who sought for reliefs in the interlocutory application and the costs were received by the respondent with or without protest/prejudice, then it is not permissible for the party who received the costs to thereafter turn around and state that he will also challenge the order.

21. As held by the Punjab and Haryana High Court, receipt of costs amounts to acceptance of the order, as the costs itself was being awarded only to compensate the other party. As held by the Hon'ble Division Bench, once the petitioner takes benefit under the said order and therefore, he is clearly estopped from subsequently challenging the said order.



22. Additionally, in the present case, it is contended that the Demand Draft has not been encashed and therefore it cannot be said that the petitioner has accepted the costs. On going through the memorandum of grounds in the revision petitions, I find that there is not even a whisper that the petitioner has received the Demand Draft, which was tendered in compliance with the conditional order and that the said Demand Draft has not been sent for collection. Even in the affidavit filed in support of the stay application, the revision petitioner has not mentioned about the tendering of costs by the respondents and receipt of the Demand Draft. Even if the Demand Draft had been received by the counsel for the petitioner, if the petitioner was intending to challenge the order under which costs were imposed, then the counsel for the petitioner should have immediately taken steps to return the Demand Draft, stating that they are not receiving it as the order is being challenged by way of revision. No such steps have been taken in the instant case. Therefore, at this length of time, it is not open to the petitioner to contend that the Demand Draft is still lying with the petitioner and he is willing to return it. It is another matter that with passage of time, the said Demand Draft has also become stale. There is also nothing on record to even show that the Demand Draft was not sent for collection, except the submissions made by the learned counsel for the petitioner.



23. One another relevant circumstance which is also material is that not only the Demand Draft has been received and not returned to the respondents, but the learned counsel for the petitioner has also chosen to proceed to amend the plaint and give effect to the order directing impleadment of the proposed parties. The reliance placed on in the ROC proceedings issued by this Court is of no avail. The said circular was not in connection with any directions to the Trial Courts to not grant time to carryout amendment. The circular was issued only for the purposes of not insisting on a separate petition to carryout amendment when legal heir petitions, declare major petitions or amendment petitions are allowed and the amendment should be permitted soon after the first application is allowed. This circular was only with regard to doing away with a formal application seeking permission of the Court to carryout amendment. Therefore, there was no compulsion on the part of the revision petitioner to carryout amendment, especially if the revision petitioner had intended to challenge the order.

24. In the light of the above, having received the costs and not returned it, even assuming it was received inadvertently, or without instructions from the revision petitioner, regarding his intention to challenge the said order and not returning the same immediately thereafter and not even bringing it to the notice



of this Court in the grounds of the revision as well as the affidavit in support of stay application, I am constrained to hold that the petitioner is not entitled to challenge the order since the order has been accepted and also given effect to by the petitioner himself.

25. Even otherwise, on the merits as well, when the case of the proposed respondents is that the Trial Court has found that in view of pendency of C.S.No.65 of 2022 filed by the petitioner and his claim that he has a registered agreement of sale with the defendants 3 and 4 and the factum of having cleared all the litigation in respect of Indian Bank, arising under loan obtained by the defendants 3 and 4, by parting huge amounts, the Trial Court in its discretion felt that the proposed defendants are proper and necessary parties.

26. No doubt, the Hon'ble Supreme Court in *Gurmit Singh Bhatia's case*, has held that the plaintiff being *dominus litis* cannot be forced to add the parties against whom he does not want to fight, unless it is a compulsion of the Rule of Law. The ratio was laid down with reference to the fact that it was a suit for specific performance of a contract to sell and in such a case, it was a matter between the vendor and the agreement holder alone and it was not open to the Court to decide whether any other party had acquired any title and possession of the contracted party. However, the present suits are for reliefs of declaration



and injunction which have already been set out herein above and therefore, the test applied by the Hon'ble Supreme Court to see whether the proposed party is necessary or not in a suit for specific performance, cannot be applied to the facts of the present case. Therefore, even on merits, I do not see that there is any error or infirmity in the order of the Trial Court permitting the impleadment of third parties.

27. In view of the foregoing, having found that the revision petitions are not maintainable in the first place, the orders passed in I.A.No.4 of 2024 in O.S.No.5418 of 1996 and I.A.No.2 of 2024 in O.S.No.4978 of 1997 on the file of the XI Assistant City Civil Court, Chennai, do not require any interference in these revisions under Article 227 of Constitution of India.

28. In fine, the Civil Revision Petitions are dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.

29.08.2025

Speaking/Non-speaking order
Index : Yes/No
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To

The XI Assistant City Civil Court, Chennai.



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CRP.Nos.867 & 752 of 2025



P.B.BALAJI.J.

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Pre-delivery order made in
CRP.Nos.867 & 752 of 2025
& CMP.Nos.5114 & 4292 of 2025

29.08.2025