



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-03-2025

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THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

**CRP No. 911 of 2025
and CMP No.5296 of 2025**

1. N.K.A. Wahab & Co.,
Rep. by its partner, K.A. Sulthan Hameed,
S/o. N.K. Abdul Wahab,
No.10/380, Palakad Main Road,
Kuniyamuthur, Coimbatore District - 641 008.

Petitioner

Vs

1. D. Senthilkumar
Rep. by Power Agent, D. Selvam.
2. S. Srinivasan
3. Nirmala
4. Ramesh
5. Kemburaj
6. Sheela
7. G. Madhan
8. G. Prasanth
9. M/s.Indian Oil Corporation Limited,
Having registered office at No.G9,
Ali Yavar Jung Marg, Bandra East, Mumbai – 400 051.
Divisional Office at Indian Oil Bhavan,
No.8/1079, Avinashi Road, Coimbatore District.

Respondents



PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code pleaded to set aside the docket order dated 28.01.2025 made in E.A.No.1 of 2025 in E.P.No.111 of 2024 in O.S.No.329 of 2016 on the file of the learned III Additional District Judge, Coimbatore.

For Petitioner : Mr.A.M.Packianathan Easter
For R9 : Mr.R.Sreedhar

ORDER

This Civil Revision Petition has been filed against the docket order passed by the III Additional District Court, Coimbatore, in E.A.No.1 of 2025 in E.P.No.111 of 2024 in O.S.No.329 of 2026, on 28.01.2025.

2. The brief fact of the case is as follows :-

2.1. Respondents 1 to 8 had filed a suit in O.S.No.329 of 2016 for ejectment against the 9th respondent. The suit was resisted by the 9th respondent and he had filed a counter claim along with the written statement. In the written statement, the 9th respondent has taken a plea of non-joinder of the petitioner, who is a dealer of the 9th respondent running a petrol bunk, as a necessary party, however, the suit came to be decreed by a judgment dated 02.06.2023.

2.2. Against the same, the 9th respondent has preferred appeals in A.S.Nos.622 & 369 of 2024 before this Court. In A.S.No.622 of 2024, the



petitioner has filed a miscellaneous petition in C.M.P.No.27878 of 2024 seeking to implead him in the proceedings. However, the Division Bench of this Court, by orders dated 27.01.2025, dismissed the appeals as well as the impleading petition.

2.3. While so, respondents 1 to 8 have filed an execution petition in E.P.No.111 of 2024 before the III Additional District Court, Coimbatore, seeking to vacate and deliver vacant possession of the property.

2.4. The petitioner, who being the dealer under R9 running a Petrol bunk in the said property, had filed an application under Order XXI Rule 97 of CPC in E.A.No.1 of 2025 seeking to record the resistance/obstruction raised by the petitioner, to adjudicate the same and to dismiss the execution proceedings. However, the Executing Court, after numbering the petition, has rejected the same on 28.01.2025 holding that the petitioner has not right to invoke Order XXI Rule 97 of CPC. Challenging the same, the present Civil Revision Petition has been filed.

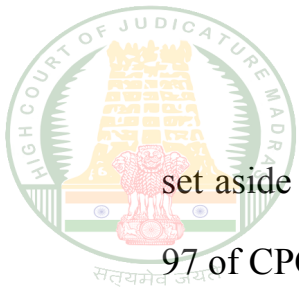
3. Learned counsel appearing for the petitioner submitted that the court having numbered the petition ought to have adjudicated the same on merits, whereas, the executing Court, after numbering the petition, rejected the petition, which is against law. He further submitted that the petitioner is running a petrol



bunk since 1971 holding the dealership under the 9th respondent and the petitioner is also taking steps to challenge the order passed by the Division Bench of this Court in C.M.P.No.27878 of 2024 in A.S.No.622 of 2024 before the Hon'ble Apex Court. He also submitted that the executing Court by a cryptic and unreasoned order rejected the petition in violation of the procedure contemplated under the CPC. He further submitted that the petitioner has got a good case on merits and he is facing the threat of eviction without any hearing and thereby, he prayed to set aside the docket order passed by the executing court in E.A.No.1 of 2025 dated 28.1.2025 and to direct the executing court to hear and dispose the same on merits by following the procedure.

4. Mr.R.Sreedhar, learned counsel takes notice for the ninth respondent submitted that the ninth respondent is also taking steps to file SLP before the Hon'ble Apex Court, against the common judgment passed by the Division Bench of this Court in A.S.Nos.622 & 329 of 2024 on 27.01.2025.

5. Having heard the learned counsel appearing for both the petitioner and 9th respondent and perused the materials available on record, this Court is of the view that the executing Court, having numbered the application, ought to have adjudicated the application in accordance with the provisions under Order XXI Rule 97 of CPC, whereas, the executing Court, without following the same, has rejected the application, which is not proper. Therefore, this Court is inclined to



set aside the docket order rejecting the application filed under Order XXI Rule 97 of CPC.

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6. Accordingly, the Civil Revision Petition stands allowed. The docket order passed by the learned III Additional District Judge, Coimbatore on 28.1.2025 in E.A.No.1 of 2025 in E.P.No.111 of 2024 in O.S.No.329 of 2016, is hereby set aside and the matter is remitted back to the Executing Court. The learned III Additional District Judge, Coimbatore, shall decide the application in E.A.No.1 of 2025 in accordance with law following the procedures contemplated under the Civil Procedure Code. Consequently, miscellaneous petition is closed. No costs.

05-03-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

Note : Registry is directed to issue order copy by 06.03.2025 and return the original papers to the petitioner's counsel forthwith.

To

1. The III Additional District Judge, Coimbatore.
2. The Section Officer, VR Section, High Court of Madras
3. The Section Officer, ER Section, High Court of Madras



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A.D.JAGADISH CHANDIRA J.

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