



C.R.P.No.2804 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29..07..2025

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.No.2804 of 2025

and

C.M.P.No.15885 of 2025

B.Sheshaiah

..... Petitioner

-Versus-

M/s. Margadarsi Chits Private Limited,
Rep. by its Foreman P.Villasini,
No.302, Sam Complex, KSR Nagar,
MTH Road, Ambattur,
Chennai 600 053.

..... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 27.03.2025 made in E.A.No.3 of 2024 in E.P.No.122 of 2023 on the file of the learned X Assistant Judge, City Civil Court, Chennai.

For Petitioner : *Mr.R.S.Mohan*

For Respondent : *Mr.D.Shivakumaran*



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ORDER

This revision petition has been filed challenging the order dated 27.03.2025 passed by the learned X Assistant Judge, City Civil Court, Chennai, dismissing the application in E.A. No. 03 of 2024 in E.P. No. 122 of 2023, filed by the revision petitioner/judgement-debtor under Order XXI Rule 105(3) of the Code of Civil Procedure, seeking condonation of a delay of 468 days in filing the application to set aside the ex parte order dated 27.06.2023 passed in E.P. No. 122 of 2023.

2. The respondent is the decree-holder. There are three other judgement-debtors.

3. On 04.02.2020, in the arbitration proceedings in A.R.C. No. 25 of 2018 initiated by the respondent chit company, the Arbitrator, Central Chennai Chit Fund Cases Court, Chennai, passed an award directing recovery of a sum of Rs.20,85,337/- together with interest at 24% per annum from the date of the arbitration proceedings till the date of realization in full, and costs of Rs.1,09,657/-, from the judgement-debtors jointly and severally. The revision petitioner is stated to be a guarantor for the said chit loan. As the award amount



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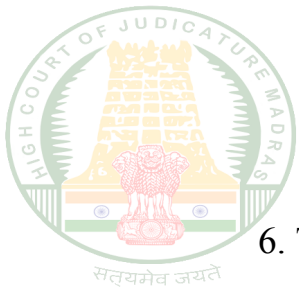
was not paid despite demand, the respondent initiated execution proceedings in

WEB COPY E.P. No. 122 of 2023 to enforce the award dated 04.02.2020 made in A.R.C.

No. 25 of 2018 against D. Hazarathaiah (1st judgment-debtor), V. Adinarayana (2nd judgment-debtor), B.Sheshaiah (3rd judgment-debtor and revision petitioner herein), and D.K. Venkatesan (4th judgment-debtor). However, the decree was sought to be executed only against the 3rd judgment-debtor, the revision petitioner herein, and an order for his arrest was passed.

4. At that stage, the revision petitioner/3rd judgment-debtor filed an application in revision seeking condonation of a delay of 468 days in filing the application under Order XXI, Rule 105(3) of the Code of Civil Procedure, to set aside the ex parte order dated 27.06.2023 made in E.P. No. 122 of 2023. The Executing Court dismissed the said application on the ground that the revision petitioner had not disclosed the nature of the illness suffered, the period of treatment undergone, and had not properly explained the delay.

5. This Court heard Mr. R.S. Mohan, learned counsel for the revision petitioner, and Mr. D. Shivakumaran, learned counsel for the respondent.



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6. The learned counsel for the revision petitioner submitted that there was no delay in filing the application to set aside the ex parte order, as no notice was served on the revision petitioner in the execution petition. He was set ex parte solely on the basis of substituted service by way of newspaper publication.

7. Further, according to the learned counsel, the application to set aside the ex parte order was filed within twenty days of his knowledge of the same. However, the Registry required the delay to be computed from the date of the ex parte order, as contemplated under Order XXI Rule 105(3) of the Code of Civil Procedure. Hence, the delay was calculated as 468 days.

8. Per contra, the learned counsel for the respondent submitted that the delay had not been properly explained, and the Executing Court had rightly dismissed the application.

9. This court has considered the rival submissions and perused the records carefully.

10. A perusal of the available records reveals that, in the execution proceedings, no notice was served on the revision petitioner. The executing court proceeded further based only on substituted service by way of paper

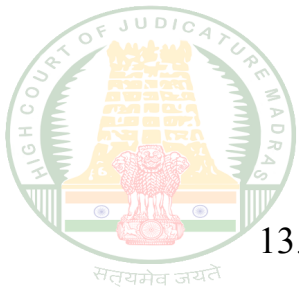


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publication in “*Makkal Kural*”, a Tamil daily newspaper, after being satisfied with the substituted service. However, the said newspaper does not have wide circulation in the locality.

11. Be that as it may, even prior to effecting substituted service, the executing court failed to advert to or comply with the mandatory procedures prescribed under Order XXI, Rule 25 of the Code of Civil Procedure. The substituted service by publication was, therefore, effected without adherence to the requisite procedure.

12. Rule 25(2) of Order XXI makes it abundantly clear that when a process has not been executed by the serving officer, the Court shall, if it deems fit, examine the officer regarding his inability to serve the notice. The Court may also summon and examine witnesses concerning such inability, and shall record its findings. These provisions mandate that before declaring that there has been valid service, particularly in cases involving refusal to receive notice, the executing court must satisfy itself – either upon an affidavit filed by the process server (Amin) or by examining the process server in person.



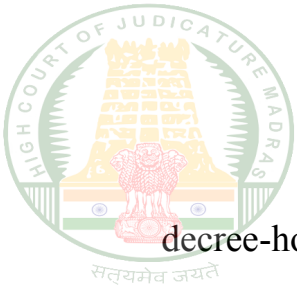
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13. The present case is also of a similar nature. As in *Sellaravutha Gounder v. M.Chinna Gounder* [2024 (6) CTC 327], where the Court set aside an ex parte order for delivery of possession due to failure in effecting proper service, the instant matter too suffers from non-compliance with the mandatory provisions of the Code of Civil Procedure. In both cases, the Amin neither filed an affidavit nor was examined before the Court to establish proper service, as required under Order XXI, Rules 24 and 25 of the CPC. Hence, when such fundamental procedural safeguards are disregarded, the resulting order cannot be sustained in law. Accordingly, the impugned order is liable to be set aside on the ground of improper service, resulting from non-compliance with the mandatory provisions of the Code of Civil Procedure.

14. After setting the revision petitioner ex parte, the executing court directly ordered his arrest without conducting any further enquiry into the means or assets of the judgment-debtor. Such action is in flagrant violation of the procedure prescribed under law.

15. In such view of the matter, as the application was filed within the limitation period from the date of the ex parte order and particularly within thirty days as per Order XXI, Rule 106 of the CPC, the executing court ought to have allowed the application and proceeded on merits to determine whether the



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decree-holder had established that the judgement-debtor had sufficient means to satisfy the decree and had wilfully defaulted in making payment. Only upon such a finding, the judgement-debtor could have been ordered to be arrested and detained in civil prison. Without resorting to such a recourse, the executing court casually dismissed the application and ordered the arrest of the revision petitioner, which, in the considered opinion of this Court, is improper and not sustainable in law. The impugned order is therefore liable to be set aside.

16. In light of the above discussion, the impugned order and the decretal order are set aside. The application in E.A. No. 3 of 2024 in E.P. No. 122 of 2023 on the file of the learned X Assistant Judge, City Civil Court, Chennai, is remitted back to the executing court for fresh disposal. The executing court shall first decide whether the judgement-debtor has sufficient means to satisfy the decree and whether he has deliberately evaded payment. Only upon such enquiry, if the executing court is satisfied that arrest is warranted, it may pass appropriate orders. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

17. In the result, this civil revision petition is allowed with the above directions. No costs. Consequently, the connected CMP is closed.



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To

1.The X Assistant Judge, City Civil Court, Chennai.



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N.SATHISH KUMAR.J.,
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