



C.R.P.No.3384 of 2025

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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 25.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P. No. 3384 of 2025

and

C.M.P.No. 18548 of 2025

V.Syed Abdhaeer

... Petitioner

Vs

Margadarsi Chits Private Limited,
Represented by its Foreman,
C.Sivasankar,
No.A1, Senthil Tower,
2nd Floor, 1st Avenue, Ashok Nagar,
Chennai – 600 083.

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 C.P.C., to call for the records of the lower Court and set aside the order in E.P.No.4166 of 2022 in A.R.C.No.24 of 2018 dated 01.07.2025 by the XXVII Assistant City Civil Court, Chennai and allow this revision petition.

For Petitioner : Mr.K.Subramani

For Respondent : Mr.D.Shivakumaran



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ORDER

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This Civil Revision Petition has been preferred challenging the order dated 01.07.2025 passed in E.P.No.4166 of 2022 in A.R.C.No.24 of 2018 on the file of the XXVII Assistant City Civil Court, Chennai.

2. On the arbitration case in A.R.C.No.24 of 2018 filed by the respondent herein against the petitioner herein and others, the Registrar of Chits, Chennai, passed an Award on 07.01.2019 for recovery of sum of Rs.9,37,255/- along with interest at the rate of 24% from the date of filing of the case till the date of realization along with costs and also attached the properties of respondents 1 and 3 therein. As the Award amount has not been paid by the principal debtor/Judgment Debtor-1(JD), the respondent/decreed holder filed E.P.No.4166 of 2022 under Order XXI Rule 48A C.P.C., seeking to attach the salary of petitioner herein/JD-2 payable by the Garnishee of JD2 for realizing the EP claim amount. After hearing, the Execution Court found that there is no impediment to proceed with the execution proceedings and *vide* order dated 01.07.2025, allowed the execution petition and attached 1/3rd

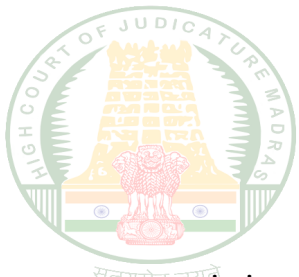


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salary of the petitioner herein/JD2 for a period of 24 months or until satisfaction of Award and as against the said attachment of salary, the petitioner/JD-2 is before this Court.

3. It is the contention of the learned counsel for the petitioner that the Arbitral Award was passed on 07.01.2019 and the Execution petition in E.P.No.4166 of 2022 was filed on 29.08.2022. As per Section 71 of the Chit Funds Act, 1982, execution petition has to be filed within a period of 3 years from the date of passing of Award, whereas, in the present case, E.P.No.4166 of 2022 was filed beyond the period of 3 years and therefore, the execution petition is hit by Section 71 of the Chit Funds Act, 1982. The petitioner herein is only a guarantor of the principal debtor/JD-I. It is settled law that the co-sureties for the same debt are also equally liable to contribute the debt, which remains unpaid by the principal debtor. In the present case, the creditor/decreed holder, without initiating action against the principal debtor or other guarantors, has filed the execution petition only against the petitioner herein/guarantor/JD2 seeking to attach the salary of the petitioner. The learned Judge, without considering the facts, attached 1/3rd salary of the petitioner alone, which



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is impermissible under law.
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4. It is the further contention of the learned counsel for the petitioner that the immovable properties of the principal debtor have already been attached by the Arbitrator in the Award dated 07.01.2019, subsequently, steps have been taken in respect of the said attachment order by the respondent herein in E.P.No.4168 of 2022 for sale proceedings before the very same Court below and hence, parallel attachment of salary of the petitioner/guarantor/JD2 is not sustainable. As against the Arbitral Award dated 07.01.2019, the petitioner preferred an appeal under Section 70 of the Chit Funds Act, 1982 and it has been taken on file, *vide* No.8183478/G/2024. Hence lis-pendency of appeal is bar to continue the execution proceedings and hence, attachment of salary of the surety/guarantor is not maintainable and the same is liable to be set aside.

5. Per contra, the learned counsel for the respondent/decreed holder submitted that there are two provisions to execute the Award passed by



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the Registrar of Chits. If the decree holder chooses to execute the Award under the provisions of the Revenue Recovery Act, 1890, the application for execution shall be made within a period of three years from the date fixed in the order. Suppose, if the decree holder chooses to execute the Award invoking the Code of Civil Procedure, the period of limitation would be 12 years for filing the execution petition. In the present case, the respondent/decreed holder, invoking Order XXI Rule 48 A of C.P.C., filed the execution petition to attach the salary of the petitioner/JD2. Therefore, it cannot be countenanced that the execution petition is barred by limitation. Further, it is settled law that execution petition can be proceeded with while an appeal is pending, unless there is a specific order of stay from the appellate Court. In the case on hand, there is no impediment to proceed with the execution proceedings, and the Court below allowed the petition and attached the salary of JD2 for a period of 24 months. Learned counsel further submitted that the liability of the surety is co-extensive with that of the principal debtor. It is for the decree holder to choose to recover the amount either from the principal debtor or from the surety/guarantor. Therefore, the grounds taken by the



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petitioner are not legally sustainable.

6. In support of his contentions, the learned counsel for the respondent placed reliance of the judgment of the Hon'ble Apex Court in the case of ***Ramesh Babu and Others Vs. Margadarsi Chits (P) Ltd.*** reported in ***2012 (0) Supreme(Mad) 2344***.

7. I have heard the submissions of the learned counsel for the petitioner and the learned counsel for the respondent and have perused the materials available on record.

8. Admittedly, the petitioner herein is one of the judgment debtors in arbitration proceedings in A.R.C.No.24 of 2018 and has also a guarantor of the principal debtor. The respondent herein obtained an Award in A.R.C.No.24 of 2018. After obtaining the Arbitral Award in A.R.C.No.24 of 2018, the respondent/decreed holder filed the execution petition in E.P.No.4166 of 2022 against the petitioner/JD2 for attachment of his salary. Though the petitioner/JD2 is the guarantor of the principal



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debtor and Arbitral Award is binding against him, the Court below ordered attachment of the salary of the petitioner. It is for the decree holder to choose the mode of recovery either under the Revenue Recovery Act or under the Code of Civil Procedure and the limitation period for executing the Award under Revenue Recovery Act, it is 3 years and under Code of Civil Procedure, it is 12 years from the date of decree of the Award as the case may be.

9. It is to be noted that the decree holder filed the execution petition invoking Order XXI Rule 48 C.P.C, and therefore, the contention of the petitioner/JD2 that the execution petition is filed beyond the period of limitation and is hit by Section 71 of Chit Funds Act, is not acceptable. Further, the liability of the principal debtor and guarantor are co-extensive. It is for the creditor/decreed holder to choose the mode, either, he can realize the debt from the principal debtor, or from the guarantor. In case, the decree holder takes steps against the guarantor to realize the debt amount, the guarantor has got every right to recover the same from the principal debtor for whom he stood as guarantor. Therefore, the



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petitioner/guarantor is always having a relief of subrogation. Further, the decree holder may realize the debt amount independently from the principal debtor, in case, he is not able to realize the same from him, he can take steps to recover the amount from the guarantors. Since the Arbitral Award is binding against the petitioner/guarantor, he is liable to pay the defaulted amount at the first instance to the respondent/decreed holder and later, the petitioner can recover the same from the principal debtor/JD1 by invoking the principles of subrogation.

10. Under the above circumstances, this Court does not find any merit in the present revision and the same is liable to be dismissed. Accordingly, the revision petition is dismissed with costs. Consequently, connected miscellaneous petition is closed.

25.08.2025

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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To

1. The XXVII Assistant Judge,
City Civil Court, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J

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