



A.No.4171 of 2025

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2025

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

A. No. 4171 of 2025 in
T.O.S. No. 4 of 2023

M.Saraswathi

...Applicant

Vs.

S.Arumugam

...Respondent

For Applicant : Mr.R.Balaramesh
For Respondent : Mr.J.D.Srikanth Varma

ORDER

This application has been filed by the defendant in TOS No.4 of 2023 seeking a direction to arrest with the aid of police and produce Mr.Vaiyapuri, aged about 43 years, residing at New No.16, Old No.61, Balakrishna Naicken Street, West Mambalam, Chennai 600 033, to depose evidence as witness for the applicant/defendant in TOS No.4 of 2023.

2.In the affidavit filed in support of the Judges Summons, it had



A.No.4171 of 2025

WEB COPY

been stated that TOS had been filed seeking grant of Letters of Administration with the Will annexed of the deceased M.Shanmugam Pillai. It had been stated that the grand father of the applicant has executed a Will on 10.10.1994 and after nearly about two decades later, OP No.757 of 2021 had been filed seeking Letters of Administration. The applicant had stated that she has serious objections over the grant of recognition to the Will and had therefore filed a caveat and consequently, OP No.757 of 2021 had been converted as TOS No.4 of 2023. It is contended that the witness to whom summons had been issued, M.Vaiyapuri is the brother of the applicant and had been avoiding answering the summons issued. It had been stated that the Bailiff had given a report that though he had went to the residence, the tenants refused to tell about the whereabouts of M.Vaiyapuri. In those circumstances, this application has been filed.

3.The learned counsel for the respondent/plaintiff is also present and he contended that when the matter was pending as Original Petition, M.Vaiyapuri was represented by a counsel. However, he did not



A.No.4171 of 2025

WEB COPY

file any caveat and therefore, he is not a party to the TOS. Order 16 Rule 10 CPC applies to whom subpoena had been issued and refused to attend the Court. Order 16 Rule 10 CPC is as follows:

10.Procedure where witness fails to comply with summons.- (1) *Where a person has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court-*

(a) shall, if the certificate of the service officer has not been verified by the affidavit, or if service of the summons has affected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified.

examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service or of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material , and that such person has, without



WEB COPY



A.No.4171 of 2025

lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12.

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

4.It is thus seen that warrant can be issued with or without bail for the arrest of such person and an order could also be made for



A.No.4171 of 2025

WEB COPY

attachment of his property.

5.In the instant case, the Bailiff had given a report in A.No.5422 of 2024 which had been earlier taken by the applicant herein to execute the warrant of arrest for the appearance of M.Vaiyapuri. He had expressed his inability to execute the warrant without the aid of the police. This Court had also noted the same fact even when the earlier order was passed. By an order dated 25.04.2025, Registry was directed to issue warrant to M.Vaiyapuri for deposing evidence before the learned Additional Master III on 20.06.2025. But, however, he did not appear. In those circumstances, this particular application has been filed.

6.This application is a consequence to the earlier order and therefore, directions are issued to take assistance of the jurisdictional police to produce the said M.Vaiyapuri S/o.Muthuperumal, aged about 43 years, residing at New No.16, Old No.61, Balakrishna Naicken Street, West Mambalam, Chennai 600 033, to depose and tender evidence in TOS No.4 of 2023 in the Court of the learned Additional Master – III on



A.No.4171 of 2025

WEB COPY

22.09.2025. Necessary steps in this regard to be taken by the applicant and a direction is issued to the jurisdictional police to extend co-operation in ensuring the presence of M.Vaiyapuri on 22.09.2025 to tender evidence.

7. Accordingly, this application stands allowed.

29.08.2025

sli



WEB COPY



A.No.4171 of 2025

C.V.KARTHIKEYAN, J.

sli

A. No. 4171 of 2025 in
T.O.S. No. 4 of 2023

29.08.2025