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CRP.No.4573 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:18.11.2025

Pronounced on:28.11.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.4573 of 2025
and CMP. No.23211 of 2025**

Mr.P.Rasalraj

Petitioner(s)

Vs

Mr.V.Israel Jeyakumar

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in E.A.SR. No.7342 of 2023 in E.P. No.304 of 2022 in O.S. No.63 of 2014 dated 05.04.2025 on the file of the Principal District Court at Chengalpattu is liable to be dismissed as unsustainable and devoid of merits.

For Petitioner : Mr.P.M.Subramanian,
Senior Counsel for
Mrs.Kanimozhimathi
For Respondent : Mr.R.Thiagarajan

ORDER

The judgment debtor is the revision petitioner, challenging the order in E.P. No.304 of 2022 on the file of the Principal District Court, Chengalpattu, rejecting an Application under Section 47 of the Code of Civil Procedure Code, 1908 (in short 'CPC').



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2. I have heard Mr.P.M.Subramaniam, learned Senior Counsel for Mrs.Kanimozhi Mathi, learned counsel for the petitioner and Mr.R.Thiagarajan, learned counsel for the respondent/decree holder.

3. The brief facts that are necessary for understanding the scope of the present revision petition are as hereunder:

3(a).The revision petitioner is the owner of properties bearing Plot Nos.64, 65, 74 and 75 measuring 9,600 sq.ft. having purchased the same under sale deed dated 19.01.2000. Planning permission has been obtained for the individual plots on 08.04.2010. The respondent filed O.S. No.917 of 2012 for permanent injunction against the revision petitioner to restrain the revision petitioner from interfering with the respondent's peaceful possession and enjoyment and also from alienating or encumbering the suit property.

3(b). Pending settlement of disputes between the parties, the revision petitioner was set exparte on 14.03.2013. However, the suit came to be dismissed on 12.04.2013. The respondent filed A.S. No.37 of 2013, challenging the dismissal of the suit, the appeal was allowed and the matter was remitted to the Trial Court, along with applications for receiving additional documents which were taken out at the appellate



stage. The revision petitioner filed his written statement, contending that the respondent had violated the planning permission. The respondent filed a reply statement, denying the said allegations made regarding violation of the planning permission and building approval.

3(c). Thereafter, the respondent filed O.S. No.63 of 2014 for specific performance of the oral joint venture agreement between the petitioner and the respondent. The said suit came to be decreed on 11.04.2018 directing the revision petitioner to pay Rs.3,43,40,646/-, together with interest at 9% per annum, from the date of decree, till the date of realization. A charge was created on the property for the said decree amount. Costs of Rs.29,22,159/- was also ordered and directed to be paid by the revision petitioner. Both the petitioner and the respondent challenged the decree in the said suit. The appeal filed by the respondent/decreed holder was allowed, modifying the decree regarding payment of interest from the date of plaint, instead of the date of decree. The appeal filed by the petitioner was dismissed. The petitioner challenged the judgment in the appeals before the Hon'ble Supreme Court in SLP. No.11677 -11678 of 2020 and the Special Leave Petitions were dismissed on 03.08.2022.



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3(d) In view of the above proceedings, the money decree in favour of the respondent has become final. The respondent therefore filed EP. No.304 of 2022. Pending the EP, the petitioner also took out applications for appointment of Advocate receiver and also to bring prospective purchasers and Bank officials to ascertain the market value of the property. The Commissioner was appointed and report has also been filed after taking the assistance of the Valuer and Engineer. The petitioner also filed an Application in SR. No.6977 of 2022 for directing the respondent to produce the original planning permission, building approval and related payments. Yet another applications were filed in E.A. SR. No.7340 and 7341 of 2023 for appointment of an Advocate Commissioner to inspect the property along with CMDA Planning Engineer and for stay of the EP proceedings, pending filing of the report as sought for. The petitioner also filed E.A.SR.No.7342 of 2023 under Section 47 of CPC. The said application was returned and the same has been complied on 02.08.2023, stating that the schedule of property which is shown in the Execution Petition is different from the property which is reflected in the decree and that the Advocate Commissioner has pointed out in his report dated 25.03.2023 that the decree holder has constructed buildings in violation of the approved building plan and therefore, the



decree itself is a nullity. The said application even at the stage of numbering has been enquired into in detail by the Executing Court and ultimately the said application has been dismissed. The present revision petition has been filed challenging the dismissal of the said Section 47 Application.

4. Mr.P.M.Subramaniam, learned Senior Counsel appearing for the revision petitioner would submit that the decree cannot be executed in view of the fact that the respondent/decree holder has violated the planning permission and put up one consolidated structure in contrast to four distinct planning permissions obtained from the CMDA and that the decree speaks only about vacant land whereas admittedly, building has been put up as one composite structure over all the four plots and therefore, according to the learned Senior Counsel, the petition under Section 47 of CPC, ought to have been entertained and also allowed by the Execution Court. In support of his contentions, the learned Senior Counsel relies on the decision of the Hon'ble Supreme Court in *Canara Bank Vs. K.L.Rajgarhia (D) through LRs*, reported in 2025 INSC 1278, where the Hon'ble Supreme Court held that an agreement would be unenforceable, if it is in violation of building laws.



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5. Per contra, Mr.R.Thiagarajan, learned counsel for the respondent/decree holder would submit that the revision petitioner has exhausted all his legal remedies up to the Apex Court and the decree passed in favour of the respondent has not only been confirmed by the Hon'ble Supreme Court, but also the petitioner has been directed to pay interest from the date of suit, that is March 2014.

6. The learned counsel would further submit that the petitioner has invested substantial sums of money and though the suit was filed to enforce the agreement, but only for recovery of money that is lawfully due and payable and incurred by the respondent. He would therefore state that the issue now raised by the petitioner that the building has been constructed in violation of the sanction plan cannot be a ground available to challenge the executability of the decree under Section 47 of CPC. The learned counsel would further state that the Executing Court has rightly considered all facts and circumstances and found that Section 47 petition is not maintainable. He would therefore pray for dismissal of the revision petition.



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7. I have carefully considered the submissions of the learned Senior Counsel for the petitioner and learned counsel for the respondent. I have also gone through the order of the Executing Court dismissing the Application under Section 47 CPC.

8. The primordial ground on which the revision has been argued is that the respondent has committed fraud by violating the building plan approval and therefore, the decree is in-executable. The petitioner cannot dispute the fact that he has suffered a decree, which is sought to be executed before the Executing Court. Though the suit was filed for enforcement of the contract, the Trial Court did not grant the relief of specific performance but only directed refund of amounts advanced by the respondent, together with interest. Initially, the Trial Court directed payment of interest only from the date of decree, however, the First Appellate Court has modified the said direction and awarded interest even from the date of plaint. The appeal filed by the petitioner was dismissed confirming the award of the monetary relief in favour of the respondent. The challenge before the Hon'ble Supreme Court was also unsuccessful. The Executing Court has found that the petitioner is only attempting to evade payment and protract the Execution Proceedings and



that the violation of the sanction plan has got nothing to do with the claim in the Execution Petition and consequently, dismissed the Section 47 petition.

9. Even before this Court, there were attempts to settle the matter amicably. The learned Senior Counsel submitted that they are willing to comply with the decree, but however, unless the property is sold for the best price, it would not be possible for the petitioner to settle the amounts that are now due and payable to the respondent, the same having also become final. It is only in order to secure the best price, the petitioner sought for the co-operation of the respondent and respondent also yielded to the said request. Though several adjournments were granted to enable to parties to reach an amicable settlement, till the date of my hearing in the arguments and reserving orders viz., 18.11.2025, the parties have not been able to reach any settlement. Though the learned Senior Counsel contended that the settlement was in the offing and also promising, however, I indicated to the learned Senior Counsel that I would wait for a week before pronouncing orders to enable the petitioner to have one more opportunity at a shot at settlement. There has been no settlement reported in the matter, I am therefore, left with no other option but to



decide the revision on merits.

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10. Section 47 of CPC entitles a judgment debtor to file an Application relating to execution, discharge or satisfaction of the decree to be determined by the Court executing the decree and not by a separate suit. It is settled law that the Executing Court cannot go behind the decree and even in the written statement, the petitioner has categorically admitted to the fact that an apartment complex has been constructed as a composite building. It has not been the case of the defendant in the earliest instance, viz., the written statement that the plaintiff has violated the planning permission and put up one building instead of four independent buildings in the four respective plots. Therefore, the defendant has acquiesced to the act of the respondent in putting up construction. Further, such massive construction cannot be put up overnight and at no point of time, the defendant has raised even his eyebrows with regard to any alleged violation of the planning permission. Therefore, it can only be presumed that the petitioner had no quarrel with regard to the nature of construction that has been put up by the respondent.



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11. Even before the Appellate Court, in the Appeal Suits in A.S. No.641 & 681 of 2018, which were disposed of by the Division Bench of this Court as well, it has not been the contention of the petitioner that the respondent has put up construction in violation of sanction plan. In fact, it is the categorical case of the petitioner that the respondent was engaged only for the purposes of putting up construction for the benefit of the petitioner. Further, even before the Trial Court an Advocate Commissioner was appointed to ascertain the market value of the building to enable the Court to quantify the amount payable to the respondent. Therefore, having not raised the said issue which is now being projected in the Section 47 petition and having taken up the matter upto the Hon'ble Supreme Court and also having been unsuccessful, it is not open to the petitioner to now turn around and accuse the respondent of having violated the sanction plan.

12. In *A.V.Hanifa Vs. Salima Dhanu*, reported in *AIR 1992 Mad III*, this Court held that though Section 47 CPC provides for determination of questions arising between the parties to the suit, in which a decree has been passed and relating to execution, discharge or satisfaction of the decree, a wide interpretation cannot be given to the



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scope of Section 47 and that if a question ought to have been raised by a party before the Trial Court at the stage of trial, having been omitted to be raised, then it cannot be raised under Section 47 of CPC before the Executing Court. The ratio laid down would squarely apply to the facts of the present case especially, in view of the foregoing discussions.

13. In the light of the above, there is no merit in the revision petition. The order passed by Executing Court dismissing the Section 47 petition does not require interference. Accordingly, this Civil Revision Petition is dismissed. Connected Miscellaneous Petition is also dismissed. No costs.

28.11.2025

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Index : Yes / No

Internet : Yes / No

To:

The Principal District Court at Chengalpattu.



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P.B.BALAJI, J.,

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Pre-delivery order in
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