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A.Nos.2955 & 2956 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.07.2025

PRONOUNCED ON: 01.08.2025

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN**

A.Nos.2955 & 2956 of 2025

in

E.P.No.15 of 2022

Preetika Kapur

Applicant in both Applications

Vs

1. Anu Kapur

2. Atul Kapur

Respondents in both Applications

**PRAYER in A.No.2955 of 2025:** This Application is filed under Order XIV Rule 12 of Original Side Rules r/w Section 151 of CPC, prayed to set aside the order dated 27.09.2024 passed in E.A.No.1446 of 2023 passed in E.P.No.15 of 2022 on the file of the learned Master of the Original Side of this Court.

**PRAYER in A.No.2956 of 2025:** This Application is filed under Order XIV Rule 8 of Original Side Rules r/w Section 151 of CPC, prayed to stay all further proceedings in E.P.No.15 of 2022 pending disposal of the appeal application.



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A.Nos.2955 & 2956 of 20



For Applicant : Mr.A.Saravanan  
For Ms.Rajeswari

For Respondents : Mr.A.Ramesh Kumar for R1  
: Mr.A.Palaniappan for R2

### **COMMON ORDER**

These two applications have been filed to set aside the order dated 27.09.2024 in E.A.No.1446 of 2023 in E.P.No.15 of 2022 passed by the learned Master of the Original Side of this Court and to stay all further proceedings in E.P.No.15 of 2022.

2.E.P.No.15 of 2022 had been filed by the 1<sup>st</sup> respondent, Mrs.Anu Kapur seeking execution of the decree dated 04.03.2016 in C.S.No.985 of 2004.

3.C.S.No.985 of 2004 had been filed by the 2<sup>nd</sup> respondent, Atul Kapur against (i) Arun Kapur his brother, (ii) Mrs.Vinay Kumari, his mother and (iii) Mrs.Anu Kapur W/o. Arun Kapur / 1<sup>st</sup> defendant, seeking a judgment and decree against the defendants for partition of the suit schedule property and to put the



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plaintiff in separate possession of 11014 / 28284 share of the plaintiff and for a further declaration that the release deed dated 01.04.2002 registered as Document No.646 of 2002 in the office of the Sub-Registrar, Periamet had been brought about by fraud and undue influence and for a permanent injunction restraining the 3<sup>rd</sup> defendant Mrs.Anu Kapur from interfering with the peaceful possession of the plaintiff of the pent house 9-A at No.52 Taylors Road, Kilpauk, Chennai – 600 010 and further restraining the defendants from alienating or encumbering the said property and for a further direction against the 1<sup>st</sup> defendant to render true and correct account of the income from the said property and from encumbering the pent house at 9-C and 9-E at No.52 Taylors Road, Kilpauk, Chennai – 600 010 and for costs of the suit.

4.By judgment dated 04.03.2016, a learned Single Judge of this Court had dismissed the suit and had directed the plaintiff, Atul Kapur, to handover the original documents within a period of three months to the 1<sup>st</sup> and 2<sup>nd</sup> defendants, Arun Kapur and Mrs.Vinay Kumari respectively and to handover possession of the pent house 9-A at No.52 Taylors Road, Kilpauk, Chennai – 600 010 to the



3<sup>rd</sup> defendant Mrs.Anu Kapur within three months from the date of receipt of a copy of the judgment.

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5.This judgment was taken up in appeal by the plaintiff in O.S.A.Nos.161 & 162 of 2016. By judgment dated 06.01.2020, the Division Bench of this Court had dismissed both the Original Side Appeals and confirmed the judgment and decree in C.S.No.985 of 2004, specifically also, the direction to the appellant/plaintiff to handover original documents and possession of pent house 9-A to the 3<sup>rd</sup> defendant, Mrs.Anu Kapur. The Hon'ble Supreme Court in S.L.P (C).No.14206 and 14207 of 2020 by judgment dated 12.01.2021 dismissed the SLP and further confirmed the decree.

6.E.P.No.15 of 2022 had been filed on 07.01.2022 before the learned Master by the 3<sup>rd</sup> defendant, Mrs.Anu Kapur seeking delivery of possession of the property, pent house 9-A at No.52 Taylors Road, Kilpauk, Chennai – 600 010. Notice had been directed to the judgment debtor, Atul Kapur. The endorsement of the Assistant Registrar (Original Side) dated 03.03.2022 in the



Court records show that the Court notice had been returned unserved as “not available” and that the private notice had also been returned unserved as “refused”. The matter was then posted before the learned Master for further orders.

7.The proceedings before the learned Master is a classic example of the judgment debtor adopting novel techniques to frustrate execution of the decree. It must be immediately mentioned that the applications now under consideration had been filed by the daughter of the judgment debtor.

8.The original records had been called for and perused by this Court.

9.The first hearing date before the learned Master was on 16.03.2022 when the counsel entered appearance for the judgment debtor and sought time for filing counter. The counter was not filed on 27.04.2022 and 06.07.2022 and was finally filed in the Registry on 26.08.2022. Thereafter, the learned counsel for the decree holder argued the matter on 04.11.2022. It was then posted for



arguments by the learned counsel for the judgment debtor. Arguments were heard on 25.11.2022 and the execution petition was posted for orders on 21.12.2022.

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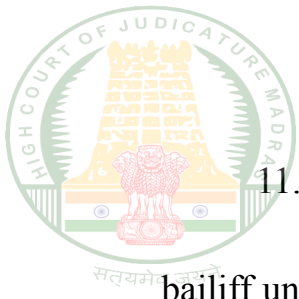
10.The following order was passed on 21.12.2022:

*“Orders pronounced. This execution petition has been taken to execute the decree for delivery of possession. The respondent / judgment debtor has filed a counter in which he stated that he is a senior citizen and he has no other property for his accommodation.*

*Further the judgment debtor stated that he is taking necessary steps to obtain sale deed from one Mr.Arun Kapur and this Court may please to defer the execution of the decree.*

*But this Court do not find any merit in the counter. This Court being an execution Court can execute the decree as it is, and it cannot travel beyond the decree. Therefore, this petition is allowed.*

*Delivery by 22.02.2022.”*

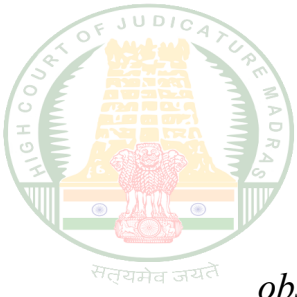


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11. The first warrant was issued on 04.01.2023 and was returned by the bailiff unexecuted. Thereafter, the decree holder filed A.Nos.890 & 891 of 2023 seeking a direction to the bailiff to break upon the lock in the premises 9-A at No.52 Taylors Road, Kilpauk, Chennai – 600 010 and to direct the bailiff to take necessary police aid from G-3 Kilpauk Police Station to execute the warrant for delivery of possession. Enquiry in these two applications continued and before orders could be passed, A.No.1446 of 2023 had been filed by the applicant herein under Order XXI Rule 97 of CPC to record obstruction. That application was clubbed along with A.Nos.890 and 891 of 2023 and hearing after hearing the counsel for the judgment debtor and for the obstructor took time to advance arguments. Finally, orders were passed on 06.03.2024 in A.Nos.890 & 891 of 2023. The order is as follows:

*“Both sides present. Both sides heard. Orders pronounced.*

*Applicant counsel states that the obstructors are in possession of the property. They are preventing the DH from taking delivery with the help of goons. Hence the applicant is seeking police aid and permission to break open the lock.*



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*Further it is stated that FIR has been registered against the obstructors.*

*The learned counsel for the obstructor stated that without admitting the criminal liability, the obstructor is ready to vacate the premises. He further stated that the obstructor is an aged person living in the premises for more than 20 years and if some gracious time is granted, he will vacate the property.*

*Both the submission s are considered. A grace time of two weeks time is granted to vacate the premises. The DH is directed to initiate the process after 2 weeks. With such direction permitted to break open the lock and concern police is directed to aid the bailiff while exercising delivery. Accordingly both these applications are allowed.”*

12.Delivery was directed by 17.04.2024. Warrant was issued on 27.03.2024 and the warrant was returned as unexecuted along with the letter of the Inspector of Police, G-3 Police Station, Kilpauk and thereafter time was



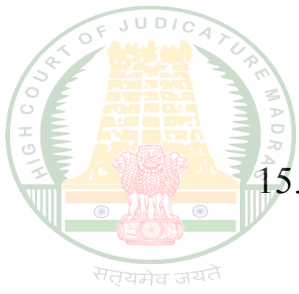
extended for delivery till 21.06.2024. A fresh warrant was issued on 29.05.2024.

The warrant was returned as unexecuted again on 21.06.2024. It was noted by the learned Master as follows, *“Since police were not assisted, delivery was not executed. Hence delivery by 28.06.2024.”*

13. Thereafter, in A.No.1446 of 2023, the following order was passed namely, *“Inquiry by 28.06.2024”. The Registry is directed to issue warrant after disposal of A.No.1446 of 2023.*

14. On 28.06.2024, there was no representation by the counsel for the obstructor / applicant in A.No.1446 of 2023. The following order was passed in A.No.1446 of 2023:

*“No representation for the applicant. Respondent / DHC is before this Court. At the time of taking delivery with the help of police aid, this application has been taken to defer the process of delivery. The applicant is not ready to argue and simply dragging the matter. Hence for non prosecution this application is dismissed.”*



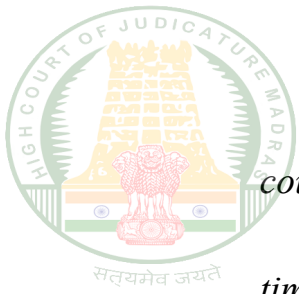
15. In the execution petition, the following order was passed:

*“The Registry is directed to issue necessary warrants for police aid and break open the lock as per orders passed in A.No.890 & 891 of 2023. Delivery by 12.07.2024.”*

16. The warrant was issued on 03.07.2024 and was returned as unexecuted by the bailiff. Thereafter, A.No.3440 of 2024 was filed by the obstructor to set aside the order dated 28.06.2024. The following order was passed in the said application on 16.07.2024:

*“The learned counsel for the DH/respondent argued that the applicant / 3<sup>rd</sup> parties are protracting the proceedings for the past 1 year and if the Court intends to allow, to allow this application on exemplary cost. Further the counsel put an endorsement to that effect.*

*On perusal of records it is stated that delivery was ordered on 21.01.2022, thereafter this application in 1446 of 2023 is taken and from 06.10.2023, though the DH counsel insisted till now the applicant has dragged the proceedings. Even today the*



*counsel is not ready to argue in A.No.1446 of 2023 and seeks time.*

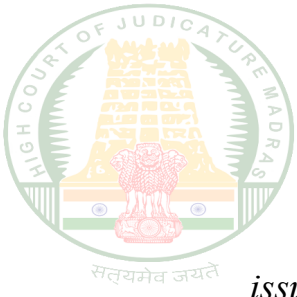
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*Considering the circumstances this application is allowed on payment of cost of Rs.5,000/- (Five Thousand only) to be paid by the applicant to the respondent within 5 working days. List for compliance by 25.07.2024. ”*

17.On 05.08.2024, a memo for payment of costs was filed and recorded and A.No.1446 of 2023 was restored to file. It was then posted for inquiry in the said application. On 11.09.2024 the following order was passed:

*“Both sides heard. DH states that the Master has been dragged by this 3<sup>rd</sup> party though delivery is ordered in the main EP.*

*On the other hand the 3<sup>rd</sup> party counsel says that the applicant is one of the co-sharers who is in possession of the property and without her consent, the property was sold. A suit has been filed and pending. Petition filed by this DH for rejection of plaint was dismissed that prima facie case was made out.*



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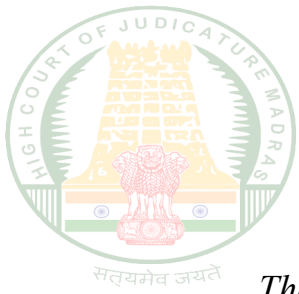
*Without adjudicating this dispute, delivery warrant cannot be issued. Therefore the applicant is directed to submit the material evidence to prove his title and interest.*

*List the mater on 18.09.2024.”*

18. Thereafter, on 18.09.2024, the following order was passed, “*Both sides heard. For orders by 27.9.2024*”.

19. Written arguments were filed on 26.09.2024. Orders were passed on 27.09.2024 dismissing A.No.1446 of 2023 and directing delivery by 23.10.2024. A detailed order had been passed by the learned Master on 27.09.2024.

20. In these applications which are now under consideration the applicant / obstructor has sworn to a false affidavit claiming that the Master had passed only the following order:



*“This Court do not find any merit in this application.*

*Therefore this application is dismissed.”*

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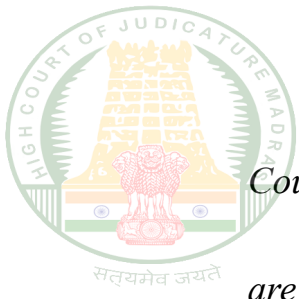
21.As a matter of fact, a detailed order had been passed considering all points taken by the obstructor / applicant but, to deliberately mislead this Court, that fact had been suppressed by the obstructor / applicant.

22.Even before going any further, it should be noted that the Hon'ble Supreme Court had held that suppression is fraud.

23.In ***S.P.Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) By LRs*** and others reported in ***(1994) 1 SCC 1***, the Hon'ble Supreme Court held as follows:

*“6. .... A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another.*

*It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. .... A litigant, who approaches the*



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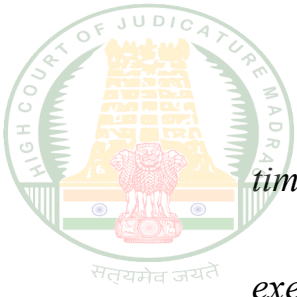
*Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.”*

24.The matter however proceeded before the learned Master since he had to record delivery of possession. After orders were passed on 27.09.2024 warrant was issued on 09.10.2024. The warrant was returned unexecuted. Time was further granted. Another warrant was issued on 25.10.2024. Again it was returned unexecuted. A fresh warrant was further issued on 04.12.2024.

25.The decree holder then filed A.No.6680 of 2024 seeking directions to the jurisdictional police to assist the bailiff to effect delivery. The following order was passed on 03.01.2025:

*“This application has been taken by the DH to issue direction to the jurisdictional police to assist the bailiff to execute delivery.*

*The decree holder counsel expresses his grievance that nearly 6 or 7*



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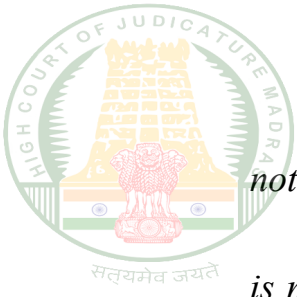
*times he went to the schedule property, but warrant could not be exercised. Further it is stated that the police is not extending their cooperation to effect delivery. Therefore, this application has been taken to issue suitable direction to the police.*

*This court can understand the grievance of the DH. A decree is passed only to execute and DH shall be allowed to enjoy the fruits of the decree. A mere paper decree in the hands of the DH is of no use.*

*Therefore the Inspector of Police G3 Police Station, Chennai is directed to provide necessary protection and aid to bailiff and the DH while effecting delivery on 21.01.2025 to execute the decree. It is further directed that a compliance report shall be filed by the Inspector of Police. Accordingly ordered. Delivery by 29.01.2025.”*

26.The warrant was again issued and again could not be executed. On 29.01.2025, it was noted by the learned Master as follows:

*“Delivery not recorded. It is stated that concerned police is*



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*not cooperating and obeying the order of the Court. Bailiff's report*

*is not available. Bailiff is directed to file his report and steps if any*

*by 07.03.2025."*

27.These applications then came to be filed before this Court. The obstructor continues to be merrily in possession.

28.It is to be noted that the decree in C.S.No.985 of 2004 was passed on 04.03.2016 more than nine years back, directing the father of the applicant herein to handover vacant possession of the suit schedule property.

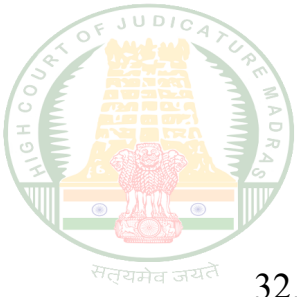
29.It is the case of the applicant that she had filed a suit in O.S.No.4916 of 2020 before the XV Assistant City Civil Court, Chennai, seeking permanent injunction restraining the defendants therein who also included the decree holder from interfering with her peaceful possession of the property. It had been contended before the learned Master that since the suit is pending, the decree of the High Court in C.S.No.985 of 2004 should not be executed. This contention



had been rightly rejected by the learned Master. The Assistant City Civil Court being subordinate to the High Court cannot override a judgment and decree of the High Court in C.S.No.985 of 2004 which had been confirmed by the Division Bench in O.S.A.Nos.161 and 162 of 2016 and further confirmed by the Hon'ble Supreme Court in S.L.P (C).No.14206 and 14207 of 2020 by judgment dated 12.01.2021.

30.It is the further contention of the applicant / obstructor that the property belonged to her grandfather and that she was unaware of the legal proceedings in C.S.No.985 of 2004. This contention has to be rejected as a false statement.

31.The main ground on which the order of the learned Master is sought to be set aside was pendency of O.S.No.4916 of 2020 on the file of the XV Assistant City Civil Court Chennai. A perusal of the case status of the suit pending in the City Civil Court Chennai shows that O.S.No.4916 of 2020 had been filed by one Kannammal and five others against Amirtham and six others.

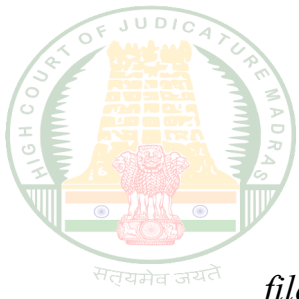


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32.In A.No.2955 of 2025 the applicant had given the suit number as O.S.No.4916 of 2020 in paragraph Nos.8 and 9 and in ground Nos.1 and 2. Again the applicant has deliberately misled this Court and has committed fraud on the Court. In the affidavit filed by the applicant / obstructor in A.No.2956 of 2025, the applicant had given the suit number filed by her O.S.No.4916 of 2020 in paragraph No.2.

33.In both these applications, the applicant had again falsely stated that E.A.No.1446 of 2023 had been filed under Section 47 CPC while a perusal of the records show that it has been filed under Order XXI Rule 97 CPC. The applicant has to be categorized as having a deep affinity for falsehood.

34.In the order dated 27.09.2024, the learned Master had observed the statement of the applicant that the number of suit which she had filed was O.S.No.4976 of 2020 and that the suit was filed for partition. The learned Master had however observed as follows in his order:

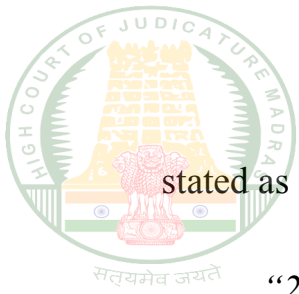


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*“5. .... Though it is stated that O.S.No.4976 of 2020 is filed for partition, the copy of the plaint filed in the typed set of papers reveals that it is only a suit for bare injunction under Section 27(C) of Tamil Nadu Court Fees and Suits Valuation Act, 1955. .... ”*

35.The learned Master, had further observed that the suit filed by the applicant before the City Civil Court and the application filed before him was not for adjudication of any right or interest but only with intention to protract the proceedings.

36.In the decision of the Honourable Supreme Court reported in ***AIR 1977 SC 2421 1 (T.Arivanandam Vs. T.V.Satyapal)***, the father had contested the eviction proceedings, lost it, appealed against it, lost again, moved a revision, suffered rejection of the revision petition and after that, his son re-litigated by filing a suit seeking that the eviction order has been obtained by fraud and collusion. In the said decision, the Honourable Supreme Court had



stated as follows:-

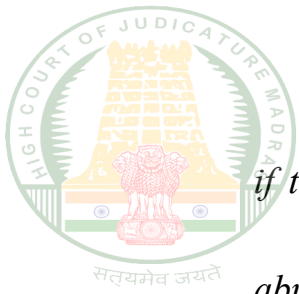
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*“2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction.*

*The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. ..”*

37.In **1998-3-SCC-573 (K.K.Modi Vs. K.N.Modi)**, the Honourable Supreme Court had stated as follows:-

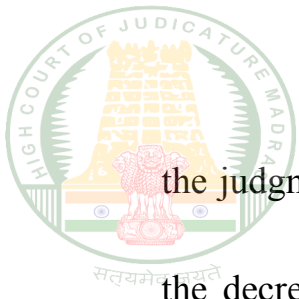
*“ 44. One of the examples cited as an abuse of the process of the court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. The re agitation may or may not be barred as res judicata. But*



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*if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.”*

38.It is thus seen that the applicant has effectively frustrated execution of the decree. There are no merits in the contentions raised. She is the daughter of



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the judgment debtor. She cannot claim any independent right. She is bound by the decree of this Court which specifically directed the judgment debtor, her father, to handover delivery and possession of the suit property. Further, she had come to Court with falsity ringing in every paragraph in the affidavits filed. She had claimed that the learned Master had passed a non-speaking order whereas the records shows that a detailed order had been passed on 27.09.2024. She had claimed that her earlier suit was O.S.No.4916 of 2020 whereas, this Court had to make further search of the records to find out that the correct number O.S.No.4976 of 2020. She had claimed before the learned Master that the said suit had been filed for partition while a perusal of the plaint revealed that it had been filed only for bare injunction. She cannot claim ignorance of the decree of this Court directing her father to hand over vacant possession. More alarmingly the bailiff of the Court had returned the warrant which had been issued without executing the same atleast on seven separate occasions. The Inspector of Police, G-3 Police Station Kilpauk, Chennai, had also not provided effective assistance. This only shows the clout of the applicant and the family members of the judgment debtor. This Court cannot turn a blind eye to the deliberate steps



taken to frustrate delivery of possession and execution of the decree which had been confirmed by the Hon'ble Supreme Court.

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39.In view of above reasonings, these applications stand dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand) in each one of the two applications. The total cost of Rs.1,00,000/-(Rupees One Lakh) to be paid to the decree holder within a period of three weeks from this date. The decree holder is at liberty to take necessary steps in accordance with law to recover the costs, if the direction to pay costs is not complied.

40.A direction is given to the learned Master to ensure that the decree in C.S.No.985 of 2004 dated 04.03.2016 is executed forthwith.

41.The Registry is directed to forward a copy of this order to the Commissioner of Police, Chennai City.

42.A direction is issued to the Commissioner of Police, Chennai City, to ensure that Rule of Law is upheld by the Inspector of Police and by other police personnel at G-3 Kilpauk Police Station, Chennai, and provide effective assistance to the bailiff of the Court towards execution of the decree in



C.S.No.985 of 2004 dated 04.03.2016 which had been confirmed in

O.S.A.Nos.161 & 162 of 2016 and further confirmed by dismissal of SLP (C)

No.14206 & 14207 of 2020 by the Hon'ble Supreme Court dated 12.01.2021.

43.A direction is also given to the learned Master that if there is no proper assistance by the police personnel or if he is of the opinion that the bailiff of the Court are deliberately avoiding execution of the warrant for delivery of possession, he may refer the matter back to this Court and this Court will not hesitate to issue notices of contempt to the Commissioner of Police, Chennai City and to the concerned bailiff / staff of the High Court for deliberate failure to discharge duty.

01.08.2025

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Index:Yes/No

Speaking/Non-speaking order

Neutral Citation:Yes/No



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A.Nos.2955 & 2956 of 20



**C.V.KARTHIKEYAN J.**

smv

Pre-Delivery Order made in  
A.Nos.2955 & 2956 of 2025  
in  
E.P.No.15 of 2022

01.08.2025