



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-03-2025

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**THE HONOURABLE DR JUSTICE ANITA SUMANTH
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**OSA Nos.107 & 68 of 2025
and CMP.Nos.6313 & 4627 of 2025**

Ru-Ah Ministries,
Rep. By its, Managing Trustee,
Mr.Alwin Thomas,
No.20/28, Dr.Ambedkar Main Road,
Samiyar Madam Bus Stop,
(Opp. HDFC Bank and behind Madras Kitchen),
Kodambakkam, Chennai-600 024.

... Appellant in
both OSAs

Vs

Mr.B.Anand Raja Durai
Good Shepherd Square,
Door No.82, Kodambakkam High Road,
Nungambakkam, Chennai-600 034.

... Respondent in
both OSAs

COMMON PRAYER: Appeals filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent to set aside the impugned order dated 25.10.2024 in A.Nos.3114 and 4667 of 2024 in E.P.No.110 of 2023 respectively.

For Appellant(s): Ms. S.P. Arthi

For Respondent(s): Ms.R.V.Rukmani
for M/s.P.B.Ramanujam Associates



COMMON JUDGMENT

WEB COPY (Judgment of the Court was delivered by Anita Sumanth J.)

These two appeals challenge order dated 25.10.2024 passed in Application Nos.4667 and 3114 of 2024, which have been filed at the instance of the Decree Holder/claimant in the arbitration proceedings.

2. The appellant was a tenant in the premises belonging to the respondent and proceedings for arbitration had been initiated by the respondent in respect of rental arrears as well as other arrears, such as maintenance dues etc. in respect of the property at Good Sheperd Square, Door No.82, Kodambakkam High Road, Nungambakkam, Chennai – 600 034 ('property'/'property in question').

3. We do not see the need to refer to the details of disputes inter se the parties, simply for the reason that award dated 23.10.2019 has, admittedly, been accepted by the appellant herein. We have specifically posed a question to Ms.S.P.Arthi, learned counsel for the appellant in this regard and she would, on instructions, confirm the position that award dated 23.10.2019 has not been challenged by the appellant and the appellant is thus bound to comply with the directions thereunder.

4. The award was passed directing the appellant to pay a sum of Rs.1,05,41,427/- with 12% interest per annum from the date of filing of claim petition till the date of realisation. In addition to the aforesaid amount, there has been a quantification of other charges including Arbitrator's fee, in all amounting to a



sum of Rs.1.80 Crores (approx.) along with interest till date of realisation.

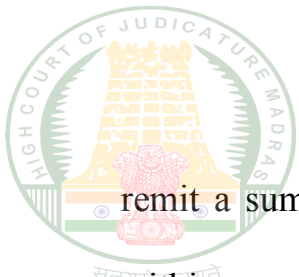
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5. Not a single naya paisa has been paid by the appellant, as a result, the respondent had approached the Court by way of Execution Petition bearing No.110 of 2023 quantifying the amounts at a sum of Rs.1,67,60,869/- + costs of Rs.3,36,900/- along with interest till date of realisation of the same. At column 11, the field in regard to the person as against 'whom the award is to be executed' contains the name of the appellant as follows:

The Respondent RU-AH Ministries, Rep. by its Managing Trustee, Mr.E.Alwin Thomas, NO.20/28, Dr.Ambedkar Main Road, Samiyar madam Bus Stop, (Opp. HDFC Bank and behind Madras Kitchen), Kodambakkam, Chennai – 600 024 and having present Office at No.82 Jawaharlal Nehru Salai, Vadapalani, Chennai – 600 026.'

6. According to the appellant, the summons in respect of the Execution Petition was not received by the appellant at all. It is in such circumstances that the appellant did not appear before the Master who proceeded to decide the Execution Petition by ordering arrest, renewed by an order directing issuance of fresh warrant of arrest on 19.06.2024.

7. As against those orders, the appellant had moved A.Nos.3114 and 4667 of 2024 before this Court seeking to set aside order dated 23.8.2024 issuing warrant of arrest and seeking to stay all further proceedings pending disposal of the application. Those applications had come to be decided by order dated 25.10.2024, wherein this Court has set aside the order of arrest subject to the condition that the appellant shall



remit a sum of Rs.25.00 lakhs, representing 25% (approx.) of the award amount, within a period of twelve weeks from date of receipt of a copy of that order, failing which, the petition would stand dismissed.

8. Conditional upon the aforesaid amount being remitted within the time, the learned Master was permitted to proceed to dispose the Execution Petition within a period of 12 weeks from date of expiry of the time frame fixed supra. The applications have thus, in fact, come to be allowed in favour of the appellant.

9. The present appeals have been filed by the appellant aggrieved by the condition imposed to remit a sum of Rs.25.00 lakhs. The submissions of the learned counsel for the appellant turn around the provisions of Section 51 of the Code of Civil Procedure, 1908 (CPC), particularly in relation to the requirement that the respondent ought to have proved that the Judgment Debtor has '*means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.*'

10. We are taken through the entirety of the pleadings as well as various provisions of the CPC to establish that nowhere has the respondent made such an averment, that the Judgment Debtor (appellant) has the means to pay the award amount. Learned counsel would also argue that there has been no attempt by the respondent to establish before the Court by production of any material that would reveal that the Judgment Debtor is in possession of necessary assets to make payment



of, at least, a substantial part of the award amount, let alone the entirety of the amount awarded.

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11. Our attention is also drawn to Order 21 Rule 41 dealing with examination of the Judgment Debtor as to his property and the grievance expressed is that there was liberty therein for the Decree Holder to have applied to the Court for an order that the Judgment Debtor be orally examined as to whether any or what other debts are owing to the Judgment Debtor and whether the Judgment Debtor has any property to satisfy the decree. This, according to the appellant, was never sought.

12. She has made reference to the following decisions in support of her submissions:

1. *Jolly George Varghese and Another v. The Bank of Cochin*¹

2. *M.M.Saleem v. R.Praveen Kumar Reddy*²

3. *Ramasamy v. Pushpa*³

13. Per contra, Ms.Rukmani, learned counsel for the respondent, would draw our attention to the various provisions of the CPC highlighting additionally the conduct of the appellant before the Court. In the application filed by the appellant seeking to set aside the exparte decree, the appellant has set out firstly that the arbitration award was not received by it which is, according to the respondent, is clearly incorrect.

1 (1980) 2 SCC 360

2 2010 SCC OnLine Mad 3907

3 2017 SCC OnLine Mad 14445



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14. It is also stated that he has no knowledge of the award having been passed which also, according to the respondent, is incorrect. Moreover, the respondent would allege that the appellant is constantly shifting his address from one location to another and hence could be taken to be attempting to abscond from the premises in order to escape from the clutches of the award passed.

15. At paragraph 9 of the application, the applicant alleges that the arbitration award is forged, which clearly points to the malafide intentions of the appellant who has no intention to abide by the award. For the aforesaid reasons and also referring to the provisions of Order 21 Rules 30 and 37 of CPC, she would submit that impugned order has no flaws and must be sustained.

16. We have heard both learned counsel and have also studied the case law relied upon.

17. Before advertng to the facts, we refer to the case law cited by the learned counsel for the appellant. In *Jolly George Varghese* (supra), the Hon'ble Supreme Court had considered the report of the Central Law Commission dealing with Section 51 of the CPC regarding arrest as a mode of execution. The question raised was as to whether the arrest as a mode of execution of decrees should be retained in the Statute book in view of international covenants prohibiting imprisonment for non-performance of contracts. We do not think that this case is relevant, seeing as the order of arrest has, in fact, been set aside by the learned Judge.



18. In *M.M.Saleem* (supra), the Court considered Order 21 Rule 37 of the CPC to highlight that the burden to establish '*means*' would fall on the Decree Holder, which, in the present case and according to the appellant, has not been so discharged.

19. Then again in the case of *Ramasamy* (supra), our attention is drawn to the findings that the Execution Court must record a clear cut finding on the aspect that the Judgment Debtor has sufficient *means* to satisfy the decree/award.

20. We are of the categorical view that the above decisions would not apply to the facts of the present case. This is simply for the reason that the order impugned does not lay down any positive or categorical finding in respect of the *means* of the appellant at all. The learned Judge has, in conclusion, directed the learned Master to hear the Execution Petition, in the course of which, doubtless, the question of means will be decided as well.

21. The appellant is categorically bound by the directions under award dated 23.10.2019 and is thus bound to satisfy the directions in a timely manner. Though the appellant would aver that he was not in receipt of the summons in the Execution Petition, this remains to be established before the Court in the hearing of the Execution Petition.

22. We do agree with the respondent that some of the averments in the application seeking to set aside the *exparte* decree are not in good taste. The



allegation that the arbitration award was forged has been made in a casual manner and does not figure in any other pleading. The very admission of the appellant that the award has become final and the appellant intends to comply with the directions, would establish the aforesaid falsity.

23. That apart, we agree that the shifting of the location of the trust office from one place to another could legitimately lead to apprehension on the part of the Decree Holder that the appellant intends to abscond. It is common practice that when a person, particularly a Public Trust, shift its location, the Post Office in that locality must be informed of the new address in order that the communications be forwarded to the onward new address. This is not been done.

24. We are thus of the considered view that there is nothing untoward in the impugned order and the directions issued thereunder. We also do not see the necessity to advert in detail to the various provisions under the CPC referred to by learned counsel, as the procedure set out thereunder may be canvassed by the parties before the Court in the hearing of the Execution Petition.

25. At this juncture, learned counsel for the appellant would seek some more time to remit the amount as directed by the learned Judge and time is extended by four (4) weeks from date of uploading of this order on the website of this Court.



OSA Nos.107 & 68 -----

26. These Original Side Appeals and the connected Miscellaneous Petitions

are dismissed with no order as to costs.

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[A.S.M.,J] [C.K.,J]

20.03.2025

Index:Yes
Speaking order
Internet:Yes
Neutral Citation:Yes
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OSA Nos.107 & 68 -----

Dr.ANITA SUMANTH,J.
and
C.KUMARAPPAN,J.

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OSA Nos.107 & 68 of 2025

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O.S.A.Nos.107 & 68 of 2025



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OSA Nos.107 & 68 -----

and CMP.Nos.6313 & 4627 of 2025
and M.P.No.1 of 2014

Dr.ANITA SUMANTH,J.
and
C.KUMARAPPAN,J.

*(Order of the Court was made by
Dr.ANITA SUMANTH.,J.)*

This matter has come up under the caption 'for being mentioned', in light of office note dated 24.06.2025, wherein there is a mention to CMP.SR.No.71804 of 2025 filed by the appellant in the Original Side Appeal.

2.Hence, the present file be placed along with CMP.SR.No.71804 of 2025, to be listed in due course.

[A.S.M.,J] **[C.K.,J]**
07.07.2025

VS