



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:21.01.2026

Pronounced on: 30.01.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP. No.984 of 2025

Mr.A.Rajendran

Petitioner(s)

Vs

Mr.Subhash

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order dated 15.06.2024 passed in EP. No.21 of 2024 by the learned Commercial Court at Egmore, Chennai and direct the Commercial Court to issue precept attachment warrant as prayed for in the above EP.

For Petitioner : Mr.N.Nagusah

For Respondent : No Appearance

ORDER

The decree holder is the revision petitioner and aggrieved by the dismissal of [EP.No.21](#) of 2024, by order dated 15.06.2024, has filed the present revision petition.

2. I have heard Mr.N.Nagusah, learned counsel for the revision petitioner.



The notices sent to the respondent have returned unclaimed, there is no appearance on the side of the respondent either in person or through counsel.

Therefore, the respondent is called and set exparte. I have proceeded to hear Mr.Nagusah, learned counsel for the revision petitioner. I have also gone through the records, including the impugned order passed by the Commercial Court, dismissing the Execution Petition.

3. Mr.Nagusah, learned counsel for the revision petitioner would state that the petitioner has obtained a decree for recovery of a sum of Rs.3,01,964/-, together with interest at 24% per annum, on Rs.1,91,116/-, payable from the date of plaint, till the date of decree and thereafter, at the rate of 6% per annum and also costs of Rs.15,215/-. However, according to Mr.Nagusah, learned counsel for the revision petitioner, when the decree was put to execution, despite the Execution Petition also having been numbered as [EP.No.21](#) of 2024, the Executing Court, without even ordering notice to the respondent/ judgment debtor has dismissed the Execution Petition, on the ground that the decree holder has not established that the property which is sought to be attached and sold by way of Execution, belongs to the respondent/judgment debtor.

4. Mr. Nagusah, learned counsel for the petitioner would state that such a reasoning of the Executing Court is wholly unsustainable and it is for the judgment debtor to come forward to state his objections, if at all the property



described in the schedule did not belong to him. It is therefore the submission of the learned counsel for the petitioner, Mr.Nagusah that the Court ought not to have dismissed the Execution Petition without even ordering notice to the respondent.

5. I find force in submissions made by learned counsel for the petitioner Mr. Nagusah. Pursuant to the decree being passed in favour of the petitioner, EP.No. 21 of 2024 has been laid for recovering the amounts due and payable under the decree. In the Execution Petition, the petitioner has sought for attachment of the movable properties described in the schedule, available at the premises of the respondent/judgment debtor and for issuance of a precept through Sub-Court, Alandur under Section 46 of CPC. In the schedule to the Execution Petition, the petitioner has set out the list of movable properties together with their respective values. If at all the Executing Court had any objection with regard to the description of property, such objections should have been raised before numbering of the Execution Petition. Having numbered the Execution Petition and accepting the Execution Petition as filed, including the schedule portion, the Executing Court clearly fell in error in not ordering notice to the respondent/judgment debtor and to proceed with the Execution Petition in accordance with law.



6. The Executing Court ought not to have unilaterally taken up the mantle or role of the judgment debtor and called upon the decree holder to prove that the properties belong to the judgment debtor. In my considered opinion such findings were in fact premature. Even when an order of attachment is passed by the Court, the said order will have to be executed through the Court bailiff and if the Court bailiff finds that the schedule, in the present case, movable properties, are either not available or that they do not belong to the judgment debtor, then the warrant would be returned to the Court. It would then be open to the decree holder to take further steps to see how the decree in his favor can be executed. Therefore, the dismissal of the Execution Petition on the ground that the petitioner/decreed holder has not proved that the schedule properties belonged to the judgment debtor is clearly unsustainable and hence liable to be set aside.

7. In view of the fact that notice, when returned as unclaimed, can be treated as proper service as held by the Honble Supreme Court in *Priyanka Kumari vs Shailendra Kumar*, reported in 2023 livelaw (SC) 904, though the service of notice on the respondent remains incomplete, in view of the fact that the notice sent has returned with the endorsement 'unclaimed' and also taking into account the fact that, I am not passing any adverse orders and the Execution Petition will be decided only after putting the respondent/judgment



debtor on notice, I am deciding this revision in the absence of the respondent.

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8. In light of the above, this Civil Revision Petition is allowed and the order dated 15.06.2024 dismissing [EP.No.21](#) of 2024 is set aside. The Executing Court shall issue notice in the Execution Petition to the respondent/judgment debtor and invite his objections, if any, before proceeding further to dispose of the Execution Petition, on merits in accordance with law. No costs.

30.01.2026

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Neutral Citation Case : Yes/No

Internet: Yes/No

Index : Yes/No

To:

The Judge, Commercial Court at Egmore, Chennai.

P.B.BALAJI, J.,

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Pre-delivery order in
CRP. No.984 of 2025

30.01.2026