



WEB COPY



C.R.P.No.951 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2024
PRONOUNCED ON : 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.951 of 2024
and
C.M.P.No.4757 of 2024

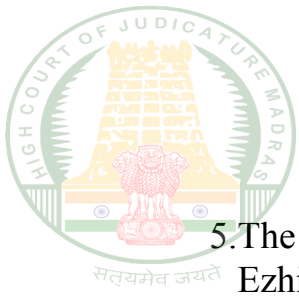
Bharat Petroleum Corporation Limited,
7, Kodambakkam High Road,
Madras-34
Now functioning at
No.1, Ranganathan Gardens,
Off 11th Main Road,
Anna Nagar, Chennai – 600 040.

... Petitioner

Vs.

Phoolvathi Dharambir Aggarwal (Died)
1.Arunkumar Dharambir Aggarwal
2.Pawankumar Dharambir Aggarwal
Represented by Power of Agent
Arunkumar Dharambir Aggarwal
3.Executors of the Estate of
Late Dharambir Hansraj Aggarwal

4.M/s.Dharambir Manoharlal Limited,
having address at 1, Quay Street,
Darukhana, Mazagaon,
Mumbai – 400 010.



C.R.P.No.951 of 2024

WEB COPY

5. The Collector of Madras,
Ezhilagam,
Kamarajar Salai, Madras – 9.
Now functioning at
Singaravelar Maligai,
Rajaji Salai, Chennai – 600 001.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 03.02.2024 passed in E.P.No.4206 of 2010 in L.A.O.P.No.3 of 1991 on the file of the VI Assistant City Civil Court, Chennai.

For Petitioner : Mr.Krishna Srinivasan, Senior Counsel
for S.Ramasubramaniam & Associates

For Respondents-1 to 4 : Mr.M.S.Subramaniam

For Respondent-5 : Ms.Amrita Dinakaran,
Government Advocate

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order, dated 03.02.2024 in E.P.No.4206 of 2010 in L.A.O.P.No.3 of 1991 on the file of the VI Assistant City Civil Court at Chennai.

2.The petitioner herein is the judgment debtor and the respondents herein are decree holders/claimants in L.A.O.P.No.3 of 1991.



WEB COPY

3.The petitioner/Bharat Petroleum Corporation Limited is the beneficiary of the acquisition. A notification under Section 4(1) of the Land Acquisition Act 1 of 1894 (In short 'Act') was published on 27.05.1987 followed and an Award passed by the 5th respondent on 23.11.1990 acquiring 227.15 grounds in Tondiarpet. The compensation of the land was fixed at Rs.54,153/- per ground as per Section 23(1) of the Act along with other statutory benefits and also awarded 12% interest on the market value from 27.11.1987 till the date of publication *i.e.*, on 23.11.1990 for 1093 days and the total compensation arrived was Rs.3,62,01,455/-. Thereafter, the Reference Court *vide* Award, dated 29.04.1994 granted compensation at the rate of Rs.2,25,000/- per ground and awarded Rs.5,11,08,750/- along with statutory benefits. The State of Tamil Nadu as well as the petitioner and the beneficiaries/claimants filed appeal before this Court separately. In all three appeals, this Court rendered a judgment on 22.11.2009 enhancing the compensation from Rs.2,25,000/- to Rs.3,00,000/- and in respect of other statutory components payable to the claimants, the order of the Reference Court confirmed. A Review Applications filed before this Court. Finally, the petitioner filed appeal before the Hon'ble Apex Court in



C.R.P.No.951 of 2024

WEB COPY

S.L.P(Civil)No(s).30495-30498 of 2011. The Hon'ble Apex Court by judgment, dated 18.10.2023 held that the claimants are entitled to compensation of Rs.2,50,000/- per ground with all statutory benefits under the Act and directed the compensation deposited by the petitioner as on that day, to be transferred to the Reference Court within ten weeks and the same to be immediately disbursed to the claimants and further clarified that if the full amount of compensation not deposited by the petitioner, the same to be done within ten weeks and thereafter be disbursed to the claimants along with interest as per Section 34 of the Act within a period of eight weeks. In view of the same, the respondents/deGREE holders/claimants filed the execution proceedings in E.P.No.4206 of 2010 in L.A.O.P.No.3 of 1991 seeking entitlement for the total amount of Rs.50,07,68,392/- and relied upon the judgment of Hon'ble Apex Court in the case of “**Sunder v. Union of India** reported in (2001) 7 SCC 211” and “**Gurpreet singh v. Union of India** reported in (2006) 8 SCC 457” and 2010 12 SCC 387 and “**The Executive Engineer & Administrative Officer, Erode Housing Unit Vs. K.P. Natarajan and Ors.**, reported in 2016-5-LW. 391” and submitted that the award including all components viz., market value, solatium and



C.R.P.No.951 of 2024

WEB COPY

additional amount and further submitted that the execution Court can grant and hold that the interest is payable from 19.09.2001. The Execution Court placed its finding relying upon the calculation memo submitted by the respondents and held that the respondents/claimants are entitled for interest at the rate of 9% from 23.11.1990 to 22.11.1991 and thereafter 15% from 23.11.1991 till the date of deposit of the amount and finally allowed the execution petition permitting the respondents/claimants to withdraw the compensation amount of Rs.24,15,24,220.63/- towards principal and sum of Rs.25,92,44,171.36/- interest gained, altogether a total sum of Rs.50,07,68,392/-. Against which, the present civil revision petition filed by the petitioner/judgment debtor.

4.The learned Senior Counsel appearing for the petitioner/2nd respondent in execution proceedings submitted the Land Acquisition Officer award includes attendant benefits as per Section 23 of the Act. The Reference Court in L.A.O.P.No.3 of 1991 by judgment and decree, dated 29.04.1994 determined the land value at the rate of Rs.2,25,000/- per ground for 227.15 grounds and determined the compensation amount of



C.R.P.No.951 of 2024

Rs.5,11,02,750/- and compensation towards the structure and electrical fittings determined as Rs.95,15,915.37/- totalling Rs.6,06,24,665/- plus compensation awarded. After deducting already paid compensation amount of Rs.3,62,01,455/-, the petitioner to pay the remaining amount of Rs.2,44,23,210/- and further ordered Rs.1,81,87,339/- as solatium at the rate of 30% from the total amount of compensation and additional compensation of 12% for the period of 1093 days commencing from 27.11.1987 ending upto 23.11.1990 i.e., from the date of notification to the Award and further, Rs.1,72,500/- was ordered towards expenses incurred for development and the petitioner to pay the respondents/claimants at the rate of 9% from 23.11.1990 till 22.11.1991 i.e., the date of the compensation. Thereafter, the respondents are entitled to be paid interest at the rate of 15% from 23.11.1991 till the entire amount is paid to them. Challenging the Reference Court judgment and decree, dated 29.04.1994, appeal filed before this Court and this Court enhanced the compensation to Rs.3,00,000/- by judgment, dated 22.12.2009, but not awarded any interest to be paid on the solatium. The Hon'ble Apex Court modified the compensation from Rs.3,00,000/- to Rs.2,50,000/- by judgment, dated 10.05.2023. In the



WEB COPY

absence of exclusive grant of interest to be paid on solatium, the claimant computed interest on the solatium in terms of Clause 5 of the decree, dated 29.04.1994 in L.A.O.P.No.3 of 1991.

5.In support of his submissions, the learned Senior Counsel relied on the judgment of Hon'ble Apex Court in ***Sunder*** case (cited above) wherein this Court held that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of Section 23 but the remaining sub-sections thereof as well. Section 34 expression “awarded amount” would mean the amount of compensation worked out in accordance with the provisions contained in Section 23 including all sub-sections thereof.

6.Further placed reliance on the Hon'ble Apex Court in the case of ***Gurpreet Singh*** (cited above), wherein it had held that it is open to the Execution Court to consider and direct payment of interest on solatium only in pending execution proceedings. In the present case, the Reference was concluded in the year 1994 and no execution proceedings pending on the date when the decision in ***Sunder*** case rendered. It is only in the pending

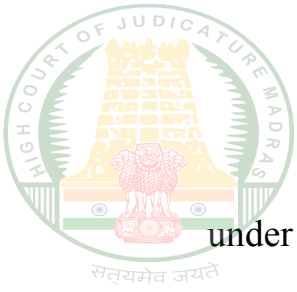


WEB COPY

execution proceedings, the Executive Court can award interest to be paid on solatium and in such cases also interest would be payable only from the date of judgment in ***Sunder*** case *i.e.*, on 19.09.2001. The calculation thus submitted by the claimants is erroneous, not in consonance with the decision of the Hon'ble Apex Court.

7.The learned Senior Counsel reiterated that the Reference Court did not award any interest to be paid on solatium in the absence of any exclusive grant of interest to be paid on solatium. The claimants erred in computing interest on solatium in Clause 5 of the decree, dated 29.04.1995 in L.A.O.P.No.3 of 1991. In ***Sunder*** case, the Hon'ble Apex Court held that the solatium would also form part of the compensation, hence, the interest on solatium cannot be claimed and not payable.

8.The learned Senior Counsel further submitted that the respondents/claimants are claiming the payment of interest on solatium without seeking modification/clarification of the Award passed by the Reference Court, dated 29.04.1994 either before this Court when the Appeal



WEB COPY

under Section 54 of the Act heard or before the Hon'ble Apex Court when the SLP was finally disposed of. The lower Court failed to see that the order of Reference Court, dated 29.04.1994 did not award interest on solatium as the law prevailing as on that day did not mandate the award of interest on solatium. The lower court holding that the compensation awarded would include not only the total sum arrived as per Section 23(1) but also sums under the remaining sub-sections of Section 23 as per **Sunder** Case, is not proper. The Award of the Reference Court is dated 29.04.1994 and the judgment of the **Sunder** case was referred on 19.09.2001. In the case of **Gurpreet Singh**, it is clarified that interest on solatium can be claimed only in pending execution and not in closed execution proceedings and the Execution Court is entitled to permit its recovery from the date of judgment in **Sunder** case *i.e.*, on 19.09.2001 and not for any prior period.

9.On a demurrer, the learned Senior Counsel submitted that the Execution Court utmost could have directed the payment of interest on solatium only for the period after judgment of **Sunder** case. The Execution Court cannot go behind the decree and award interest that too when the



C.R.P.No.951 of 2024

WEB COPY

award of the Reference stood modified only to the extent of the value of the land under Section 23(1) of the Act. The finding of the lower Court that interest on solatium was payable from 23.11.1990 is against the dictum of the Hon'ble Apex Court. In the present case, the appeal orders passed by this Court on 22.12.2009 and 27.06.2011 were modified to the extent of reducing market value of land from Rs.3,00,000/- per ground to Rs.2,50,000/- per ground. The lower Court without considering the objections made therein accepted the calculation memo of the respondents, which claimed interest on solatium separately that too for the prior period. This is clearly against the dictum of the Constitutional Bench of the Hon'ble Apex Court.

10.He further placed reliance on the judgment of the Hon'ble Apex Court in the case of “*Tamil Nadu Housing Board v. Abdul Salam Sarkar and others* reported in (2021) 17 Supreme Court Cases 823” wherein it had held that as per decision in *Gurpreet Singh* case the claimants would be entitled for interest on solatium from date of judgment in *Sunder* case i.e., on 19.09.2001. Thus, the calculation memo submitted by the

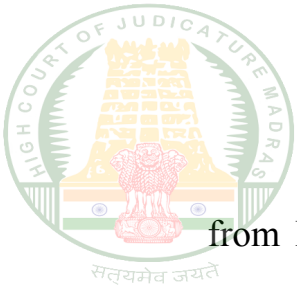


C.R.P.No.951 of 2024

WEB COPY

respondents/claimants is not proper, based on which, the Execution Court passed the impugned order, is not sustainable. Hence, he prays for setting aside the impugned order.

11.The learned counsel for the respondents submitted that the contention of the petitioner is not sustainable both on law and on facts. In this case, the respondents/claimants' lands were acquired under the Act and compensation awarded at the rate of Rs.54,153/- per ground and totally 227.15 grounds were acquired. Aggrieved over the same, Reference under the Act was made and the Reference Court in L.A.O.P.No.3 of 1991 determined the land value at the rate of Rs.2,25,000/- per ground along with statutory benefits *vide* judgment, dated 29.04.1994. Challenging the same, the respondents/claimants preferred appeal before this Court and this Court in A.S.No.1109 of 1994 enhanced the compensation to Rs.3,00,000/- by judgment, dated 22.12.2009 and thereafter review applications were filed by the petitioner which was finally dismissed on 27.06.2011. Against which, Civil Appeal Nos.9369-9372 of 2013 preferred by the petitioner before the Hon'ble Apex Court. The Hon'ble Apex Court modified the Award amount



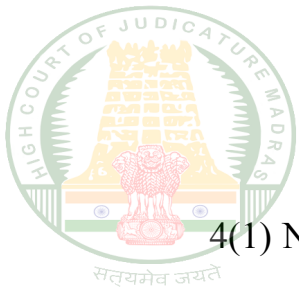
C.R.P.No.951 of 2024

from Rs.3,00,000/- to Rs.2,50,000/- by judgment dated, 10.05.2023. The

WEB COPY

respondents/claimants are entitled interest at the rate of 9% from 23.11.1990 to 22.11.1991 for one year period and thereafter 15% interest from 23.11.1991 to the date of deposit. On 18.10.2013, 50% of the amount was directed to be deposited by the petitioner giving liberty to the respondents to withdraw the amount.

12.He further submitted that as per Section 28 of the Act, if the Court is of opinion that the Award passed by the Collector is less and excess amount has been ordered by the Court, the Award Court to direct the Collector to pay the interest on the excess amount as stated above. The Reference Court in clause 5 of the decree, dated 29.04.1994 directed the petitioner to pay the claimants at the rate of 9% for one year from 23.11.1990 *i.e.*, from the date of handing over the possession till 22.11.1991 and thereafter at the rate of 15% from 23.11.1991 till the entire amount is paid to the claimant. In Clause 3, it had directed the petitioner to pay additional compensation at 12% out of the compensation for a period of 1093 days commencing from 27.11.1987 from the date of publication of



4(1) Notification and till the date of Award. The interest awarded in Clause

5 of the decree is on the total amount of all amounts mentioned in clause 1

to 4. The decree of the Reference Court was taken up in appeal by the Land

Acquisition Officer, and the beneficiary. The respondents/claimants are

entitled to compensation at the rate of Rs.2,50,000/- per ground along with

the statutory benefits under the Act. The Hon'ble Apex Court held that the

claimants are entitled to compensation along with all statutory benefits.

Further it had held that the amounts to be disbursed to the

respondents/claimants along with interest as per Section 34 of the Act

within a period of eight weeks. Hence, the contention of the petitioner that

the claimants are entitled for interest only from the date of judgment of

Sunder (19.09.2001) is not sustainable. The decree of the Reference Court

and the High Court have merged with the Apex Court judgment and

therefore, all statutory benefits under the Act would include the interest

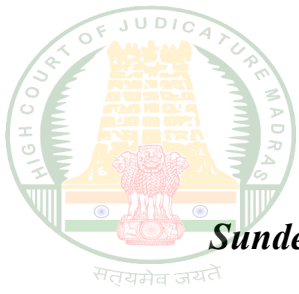
payable on the compensation amount including solatium.

13.It is further submitted that as per Section 11 of the Act, the Land Acquisition Officer determines the compensation payable which consists of



WEB COPY

three components (i)Market value and other damages provided under Section 23(1), (ii)12% additional amount under Section 23(1)A and (iii)Solatium under Section 23(2). Under Section 31 of the Act, on making such Award, the Collector shall tender payment of the compensation awarded amount by him. As per Section 34, claimants are entitled for interest if such compensation is not paid or deposited on or before taking possession of the land at 9%. If such compensation is not deposited within one year from the date of possession is taken, 15% interest shall be payable from the date of expiry of the one year on the amount of compensation. The Reference Court under Section 18 if enhancement is granted, such enhanced amount interest is payable under Section 28 of the Act. Thus, the Land Acquisition Officer as well as the Reference Court under Section 23(1), 23(1-A), 23(2) and 34 of the Act, can Award interest. The Hon'ble Apex Court in **Gurpreet Singh** (cited above) held that the decree holder would be entitled to claim interest with solatium in execution though it is not specifically granted by the decree, when the Reference Court or the Appellate Court does not specifically refer to the question of interest on solatuim, it would be open to the Execution Court to apply the ratio of

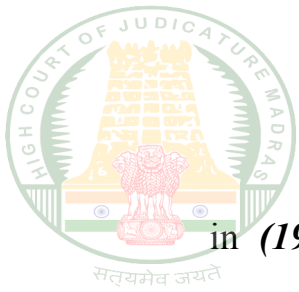


WEB COPY

Sunder case and say that the compensation awarded including the solatium otherwise interest on solatium can be claimed. In this case, the interest has not been negatived, but in the award of the Reference Court and confirmed by the Apex Court, the statutory benefits includes the interest payable. In the decree of Reference Court in Clause 5, interest on the entire amount to be paid to the claimant and that would make it clear that the claimant are entitled for interest for solatium.

14.He further submitted that the Hon'ble Apex Court directed the disbursement of amounts immediately, but the petitioner is causing delay for withdrawal of the amount. The Hon'ble Apex Court clearly held that the claimants would be entitled to all the statutory benefits including the interest under Section 34. The petitioner's contention that interest has been solatium is unsustainable.

15.In support of his submissions, the learned counsel for the respondent relied on the respondent relied on the judgment of the Hon'ble Apex Court in “*State of T.N and others v. L.Krishnan and others* reported



C.R.P.No.951 of 2024

WEB COPY

in *(1996) 1 Supreme Court Cases 250*” and “*Prem Nath Kapur and another v. National Fertilizers Corpn. of India* reported in *(1996) 2 Supreme Court Cases 71*” and decision of this Court in “*The Executive Engineer & Administrative Officer, Erode Housing Unit Vs. K.P. Natarajan and Ors.*, reported in *2016-5-LW. 391*” for the point that Proviso to Section 23 is to compensate the owners of the land for raise in prices during pendency of the land acquisition proceedings. It is a measure to offset the reflects of inflation and the continuous raising in value of the property over the last three decades and appears to be more beneficial to the claimants. Further, as per Section 23(2) in addition to market value “as provided in Section 23(1) solatium becomes payable”. This Court held that the Reference Court awarded interest on compensation amount including on solatium, then the claimants are entitled to claim interest as per the award passed by the Reference Court and not from the date of judgment made in *Sunder* case. Thus, the claimants are entitled for interest on solatium without any cut off date. Hence, he prays for dismissal of the revision.



WEB COPY

16.Considering the submissions made on either side and on perusal of the material, it is seen that the learned V Assistant Judge, City Civil Court, Chennai by order dated 03.02.2024, in E.P.No.4206 of 2010 in L.A.O.P.No.3 of 1991, had accepted the calculation memo submitted by the petitioner, which needs reconsideration. The Lower Court failed to look into the decision of the Hon'ble Constitution Bench of the Apex Court in the case of ***Gurpreet Singh vs. Union of India*** reported in ***(2006) 8 SCC 457***, wherein, it is held as follows:

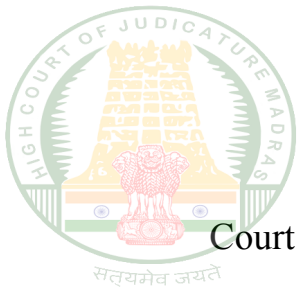
“....That question is whether in the light of the decision in Sunder vs. Union of India reported in (2001) 7 SCC 211, the awardee/decreed holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution Court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate Court, the execution Court will have necessarily to reject the claim for interest on solatium based on Sunder case on the ground that the execution Court cannot go behind the decree.”



WEB COPY

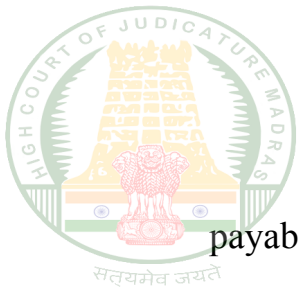
17.From the above decision, it is clear that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. It is also clarified that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution Court will be entitled to permit its recovery from the date of the judgment in ***Sunder vs. Union of India*** reported in ***(2001) 7 SCC 211*** (19.09.2001) and not for any prior period. Further the clarification has been given in exercise of powers under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question.

18.In this case, the respondents/decreed holders referring to clause 5 of the decree passed in L.A.O.P.No.3 of 1991 dated 29.04.1994 claimed interest on compensation to the solatium. It is to be seen that the Reference Court did not award any interest to be paid on solatium. In the absence of the same, there cannot be excessive grant of interest to be paid on solatium. The claimant had computed the interest on solatium in terms of clause 5 of the decree dated 29.04.1994. The Hon'ble Constitution Bench of the Apex



Court in ***Sunder*** case rendered an order on 19.09.2001 holding that solatium would also form part of the compensation. Hence, on solatium payable, further clarified by the another Constitution Bench of the Apex Court in **Gurpreet Singh** case.

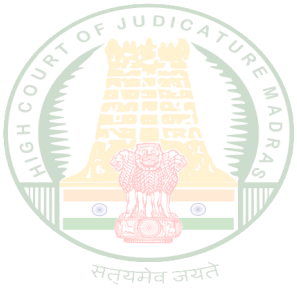
19. In the present case Reference was concluded in the year 1994, no execution proceedings pending as on date. In ***Sunder*** case, it is clearly held that only in pending execution proceedings, the Execution Court can award interest to be paid on the solatium. Even in such cases, interest would be payable only from the date of judgment, i.e. from 19.09.2001. Further, as per the award of the Reference Court in clause 5 of the decree, interest at the rate of 12% cannot be valued on the sum of Rs.1,72,500/-, which is towards the value of improvements. The value of improvement cannot be included to claim interest payable under Section 23(1A) of the Land Acquisition Act. As per ***Sunder*** case, the compensation awarded would include not only total sum arrived as per Section 23(1A) of the Act but also the sum arrived under the remaining sub-section of 23 of the Act. The learned V Assistant Judge, City Civil Court ought not to have inferred that interest on solatium was



C.R.P.No.951 of 2024

payable from 23.11.1990, when the judgment of Constitution Bench of the Apex Court in **Gurpreet Singh** case has clearly laid down that payment of interest on solatium will arise only in those cases when such interest is not referred to or impliedly, specifically rejected by the Reference Court or the Appellate Court. In the present case, the law as on date of the award did not envisage the payment of interest on solatium and therefore, the same cannot be claimed.

20.In the appeal, the Apex Court modified the award and included the interest on solatium. The Lower Court without considering the judgment of the Hon'ble Constitution Bench of Apex Court both in **Sunder** and **Gurpreet Singh** cases, referring to the order dated 10.05.2023 in Civil Appeal Nos.9369 to 9372 of 2013 and passing the impugned order that the respondent/claimants are entitled to compensation at the rate of Rs.2,50,000/- per ground along with all statutory benefits under the 1894 Act, is not proper. The Constitution Bench of the Apex Court laid guidelines that the solatium form part of the compensation.



C.R.P.No.951 of 2024

WEB COPY

21. In view of the above, this Court set aside the order dated 03.02.2024 passed in E.P.No.4206 of 2010 in L.A.O.P.No.3 of 1991 on the file of VI Assistant City Civil Court, Chennai and directs the Lower Court to re-work the calculation memo submitted by the judgment debtor and the decree holder in the light of the guidelines given by the Hon'ble Constitution Bench of Apex Court in **Sunder** and **Gurpreet Singh** case, more particularly in **Gurpreet Singh** case, the Apex Court had passed the order in exercise of Articles 141 and 142 of Constitution of India. The above said exercise to be completed within a period of 30 days from the date of receipt of a copy of this order.

22. With the above directions, this Civil Revision Petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

29.07.2024

Speaking Order/Non Speaking Order
Neutral citation : Yes/No
Index : Yes/No
Internet : Yes
vv2/rsi



WEB COPY



C.R.P.No.951 of 2024

M.NIRMAL KUMAR, J.

vv2/rsi

To

The VI Assistant Judge,
City Civil Court, Chennai.

PRE-DELIVERY ORDER IN
C.R.P.No.951 of 2024
and
C.M.P.No.4757 of 2024

29.07.2024