

WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2026

PRONOUNCED ON : 01.06.2026

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

CRP No.1183 of 2026

and

CMP No.6000 of 2026

A.S.Jahangir,
S/o.Kaji Abdul Sathik,
No.12/145, Thirukovilur Main Road,
Elavanssurkottai Village and Post,
Ulundurpet Taluk,
Kallakurichi District – 607 202.

....Petitioner(s)

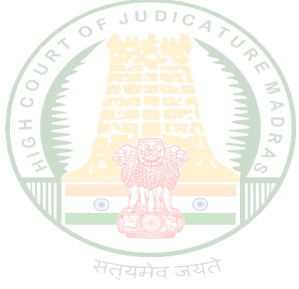
Vs

1.M/s.Operating Lease and Hire Purchase
Company Limited, 'Vairams',
Rep. by its Director,
N.D.Achaiah
No.112, Sir Thyagaraya Road,
T.Nagar, Madras-17.

2.M/s.Balaji Garment Processing,
Rep. by its proprietor,
M.S.Balaji,
No.025, Industrial Estate,
Guindy, Madras- 32.

... Respondent(s)

Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the fair order passed in E.A.No.3 of 2025 in E.P.No.688 of 2020 dated 30.01.2026 on the file of the XXVIII Assistant City Civil Court, Chennai and allow the Civil Revision Petition.



For Petitioner(s) : Mr.C.B.Muralikrishnan

For Respondent(s): Mr.V.P.Raman
for R1

WEB COPY

ORDER

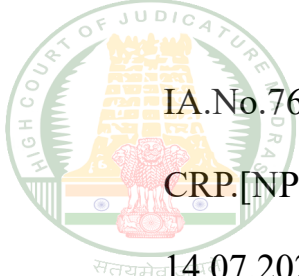
(1)The Civil Revision Petition is filed challenging the order dated 30.01.2026 in EA.No.3/2025 in EP.No.688/2020, on the file of the learned XXVIII Assistant Judge, City Civil Court, Chennai, dismissing the petitioner's petition filed under Order 21 Rule 23 of CPC, seeking the dismissal of the Execution Petition filed by the respondent.

(2)The parties will be referred to as per their ranking in the Civil Revision Petition.

(3)By consent of both the learned counsels, the main civil revision petition is taken up for final disposal.

Facts in brief:-

(4)The respondent filed a money suit in CS.No.874/2001 before this Court for recovery of a sum of Rs.12,53,964/- @ 36% interest. Since the petitioner failed to contest the suit, an ex-parte decree was passed on 23.06.2009, for a sum of Rs.29,79,848.86p. The petitioner thereafter filed an application to set aside the exparte decree in the suit. Meanwhile, due to the change in the pecuniary jurisdiction of this Court, the suit was transferred to IV Additional City Civil Court, Chennai, and renumbered as OS.No.83/2017. In the said OS, the petitioner filed two applications, IA.No.7606/2017, for condoning the delay in seeking to set aside the exparte decree and IA.No.7605/2017, for setting aside the exparte decree.

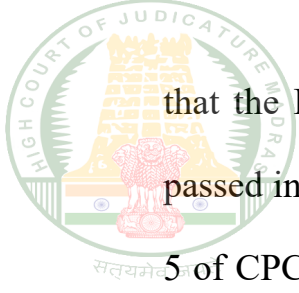


IA.No.7606/2017 was dismissed and the petitioner challenged the dismissal in CRP.[NPD].No.680/2021 before this Court. This Court, by order dated 14.07.2022, dismissed the Civil Revision Petition. Pending CRP before this Court,

WEB COPY

the respondents filed the execution petition in EP.No.688/2020 on 20.01.2020, for execution of the decree dated 23.06.2009. In the EP, the petitioner filed his counter on 26.03.2020. Later, the petitioner filed EA.No.2/2023, under Order 47 of CPC, on 30.11.2022, to dismiss the EP, however, the Executing Court, on 21.02.2023, dismissed EA.No.2/2023 and so, the petitioner filed CRP.no.1455/2023, challenging the dismissal of EA.No.2/2023. Thereafter, the petitioner filed EA.No.3/2023, under Order 21 Rule 23 of CPC, objecting to the execution of the decree *inter alia*, on the ground that EP was filed in violation of the provisions of Order 21 Rule 11[A] of CPC. The Executing Court found no merits in the EA and hence, dismissed it by the impugned order dated 30.01.2026. Aggrieved by the same, the petitioner has filed the above Civil Revision Petition.

(5)The learned counsel for the petitioner submitted that the Executing Court failed to note that there was procedural non-compliance of the provisions of Order 21 Rule 11[A] of CPC, inasmuch as the respondent failed to file proper affidavit of assets/means. The learned counsel submitted that the Executing Court failed to appreciate that the execution proceedings affecting personal liberty, including arrest, must strictly comply with the statutory safeguards. The learned counsel further submitted that issue of limitation was jurisdictional in nature and therefore, it could be raised in execution proceedings also. The learned counsel submitted



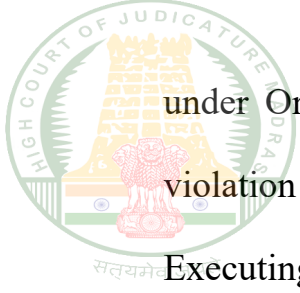
that the Executing Court failed to consider the objection that the exparte decree passed in the suit was not in accordance with the provision of Order 20 Rule 4 and 5 of CPC. The learned counsel submitted that the impugned order deserved to be

set aside as the Court without even considering the above genuine objections, dismissed the petition on an erroneous view that it was filed only to drag on the proceedings.

(6)The learned counsel for the respondents submitted that the Executing Court on thorough examination of the materials on record and for cogent reasons, dismissed the petitioner's application and hence, the impugned order called for no interference.

(7)Heard both sides counsels and perused the materials placed on record.

(8)The facts are undisputed and therefore, for the sake of brevity they are not traversed in detail. Suffice it to state that the earlier endeavour of the petitioner to set aside the exparte decree, failed up to this Court and, consequently, the exparte decree attained finality. Armed with the exparte decree, dated 20.01.2020, the respondents filed EP.No.688/2020 for execution of the same. The petitioner filed his counter to the EP on 26.03.2020. Thereafter, the petitioner filed EA.No.2/2022 under Section 47 of CPC and the same was dismissed by the Executing Court on 21.02.2023. Against the rejection of his Section 47 petition, the petitioner preferred CRP.No.1455/2023 and the same was dismissed on 08.07.2025. He did not challenge the dismissal order passed in CRP and hence the order in EA.No.2/2022 attained finality. Subsequently, the petitioner filed EA.No.3/2025



under Order 21 Rule 23 of CPC, to dismiss the EP among other grounds, for violation of mandatory statutory provisions of Order 21 Rule 11[A] of CPC. The Executing Court, having dismissed the petition, the petitioner is before this Court challenging the dismissal order.

(9)The Executing Court, on appreciation of the materials on record found that the exparte decree in the suit attained finality pursuant to the dismissal of CRP.No.680/2020 and therefore, it was bound by the decree and it had no power to go behind the decree. The Executing Court taking note of the dismissal of EA.No.2/2023, filed by the petitioner, u/s.47 of CPC, by it on 21.02.2023, and its subsequent confirmation by this Court on 08.07.2025 in CRP [NPD].No.1455/2023, held that the present petition was filed only to drag on the proceedings.

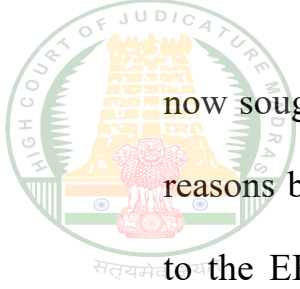
(10)The learned counsel for the petitioner mainly contended that the means affidavit as mandated by Order 21 Rule 11[A] of CPC was not filed along with the EP and therefore, there was a procedural violation of statutory requirement. The petitioner in the typed set of papers in the present CRP has enclosed the execution petition and the means affidavit filed by the respondent. Both the execution petition and the means affidavit are dated 20.01.2020. While so, this Court finds no fault in the finding of the Executing Court that the means affidavit was filed with the execution petition. It is pertinent to note here that in the counter filed in EP.No.688/2020, the petitioner did not raise the issue of violation of the mandatory provisions of Order 21 Rule 11[A] of CPC. This Court is therefore of



WEB COPY

the view that the objection is raised only as an afterthought and that too, without any basis. One more aspect that is to be noted is that in the proceedings dated 11.10.2020, in EP.No.688/2020, the Executing Court, following the judgment of the Hon'ble Supreme Court in ***Rahul S.Shah Vs. Jinendra Kumar Gandhi*** reported in ***2021 SCC OnLine SC 341*** and invoking powers under order 21 Rule 41 of CPC, directed the petitioner to file an affidavit disclosing the particulars of his movable and immovable assets and adjourned the matter for filing the same to 15.11.2022. Immediately thereafter, the petitioner filed EA.No.2/2022 under Section 47 of CPC, claiming that the suit claim was discharged. The said EA was dismissed on 21.10.2023. The petitioner filed CRP.No.1455/2023 against the dismissal of EA No.2/2022. The said CRP was also dismissed on 08.07.2025 and thereafter, the petitioner filed the present EA.No.3/2025. In view of the above proceedings, this Court finds absolutely no infirmity in the finding of the Executing Court that the present petition has been filed only to drag on the proceedings. Even in the counter filed in the EP, none of the grounds raised in the present EA, are raised. The petitioner was directed to submit an affidavit disclosing his movable and immovable assets as early as on 11.10.2022, but the petitioner has failed to submit the same. All these facts establish that the petitioner's real intention is to deprive the 1st respondent the fruits of the decree obtained by him in the suit.

(11) One more vital aspect that emerges from the facts of the case is that, at the time of filing of EA.No.2/2022, under Section 47 of CPC, all the grounds which are

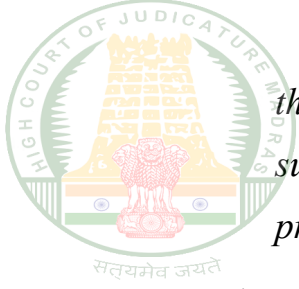


now sought to be urged were very much available to the petitioner. However, for reasons best known to him, the said grounds were not raised either in the counter to the EP or in the earlier proceedings in EA.No.2/2022. Since EA.No.2/2022

came to be dismissed on merits, this Court is of the considered view that the present execution application is clearly barred by principles of constructive res judicata and is therefore, liable to be dismissed.

(12) That the principles of res judicata and constructive res judicata are equally applicable to execution proceedings is too well settled to require further elaboration. Nevertheless, useful reference may be made to the judgment of the Hon'ble Supreme Court in ***Pradeep Mehra Vs. Harijivan J.Jethwa [Dead] through LRs*** reported in **2023 INSC 958**. The Hon'ble Supreme Court in the said case, referred to the judgment in ***Barkat Ali and Another Vs. Badrinarain [Dead] by LRs*** reported in **2008 [4] SCC 615**, and held as follows:-

"....the principles of res judicata are not only applicable in respect of separate proceedings but the general principles of res judicata are also applicable at the subsequent stage of the same proceedings and therefore the same court will be precluded to go into that question which has already been decided, or deemed to have been decided by it in the earlier stage. In other words, it will be barred by the principle of res judicata, or at least by the principle of constructive res judicata. The logic here is that an execution proceeding works in different stages and if the judgment debtors have failed to take an objection and have allowed the preliminary stage to come to an end and the matter has moved to



the next stage, the judgment debtors cannot raise the objection subsequently, and revert back to an earlier stage of the proceeding...."

(13)The Executing Court even though has not specifically referred to the principles of res judicata, has dismissed the application by taking note of the fact that the petitioner's earlier application under Section 47 of CPC was dismissed.

(14)In view of the above discussions, this Court finds no merit in the Civil Revision Petition and hence, the same is dismissed. No costs. Consequently the connected miscellaneous petition is closed.

01.06.2026

Index : Yes

Internet: Yes

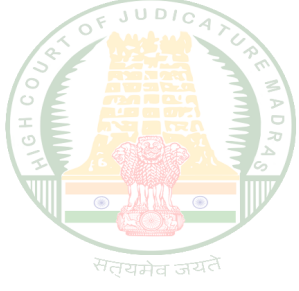
Speaking order: Yes

Neutral Citation: Yes

dsn / AP

To

The XXVIII Assistant Judge,
City Civil Court, Chennai.



WEB COPY

CRP No.1183 of 2026



N.MALA,J.

Dsn / AP

ORDER IN
CRP No.1183 of 2026

01.06.2026