



WEB COPY

A No. 1955 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 14-05-2026**

CORAM

**THE HON'BLE MR.JUSTICE N.SENTHILKUMAR**

**APPLICATION No. 1955 of 2026  
in E.P.No.105 of 2018 in C.S.No.334 of 2017**

D.V.Karunakar

..Applicant(s)

Vs

1. TAS.Jawahar Ayya alias C.Jawahar Anand
2. Ozone Homes Private Limited,  
Rep.by its Authorized Signatory K.Krishnan.

..Respondent(s)

Prayer : To permit the Applicant to withdraw a sum of Rs.3,29,08,932.30 (Rupees Three Crores Twenty Nine Lakhs eight thousand and nine hundred and thirty two only) along with accrued interest, from the amount lying in the credit of the present E.P.No.105 of 2018, by issuing a cheque in favour of the applicant/decreed holder Mr.D.V.Karunaakar.

For Applicant(s): Ms.Anukriti Anand

For Respondent(s): Mr.S.Abubacker Sidhic  
for R1- Judgment Debtor

### **ORDER**

This Application is filed by the plaintiff, who is the Decree Holder.

According to the plaintiff, a sum of Rs.50.00 lakhs was borrowed by the first



respondent/defendant/judgment debtor and a money suit was filed for recovery of the same.

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2. According to the first respondent-judgment debtor, the property is worth about 90.00 crores, however, the property was sought to be auctioned and the sale was confirmed in the auction and sale certificate was also issued in favour of the auction purchaser.

3. Learned counsel for the applicant/plaintiff submits that the first respondent-defendant did not appear in the proceedings and he was set ex parte on 28.02.2025. The learned counsel relied upon a decision of the Hon'ble Supreme Court in *Ram Karan Gupta v. J.S.Exim Limited and Others*, (2012) 13 Supreme Court Cases 568, wherein it was held as follows :

*“22. We notice, in this case, there was no reference at all to the provisions of Order 21 Rule 89 in the application filed by the appellant on 1-12-2010, be that it may, even then the appellant had not complied with the mandatory requirements of depositing the amount. Clause (a) of sub-rule (1) of Rule 89 of Order 21 requires the applicant to deposit in Court 5% of the purchase money for payment to the auction-purchaser. Deposit of the requisite amount in the Court is a condition precedent or a sine qua non to an application for setting aside the execution of sale and such a amount must be paid within the period specified in the rule and if the deposit is made after the time-limit, the application must be dismissed. The deposit made under Rule 89 of Order 21 CPC should be unconditional and unqualified and the decree-holder or the auction purchaser should be able to get the amount at once.*



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23. *We have already indicated that the rule is in the nature of a concession shown to the judgment-debtor, so he has to strictly comply with the requirements thereof and a sale will not be set aside unless the entire amount specified in sub-rule (1) is deposited within 60 days from the date of the sale and, if it is beyond 60 days, the Court cannot allow the application. We have already found that the appellant-judgment-debtor did not pay the amount within the stipulated time and he only made an application on 1-12-2010 without depositing the amount and hence the Court cannot entertain such an application and bound to confirm the sale which, in this case, the Court did on 23-10-2010.”*

In the above decision, the Hon’ble Supreme Court has categorically held that the judgment-debtor has to comply with the requirement of Clause (a) of sub-rule (1) of Rule 89 of Order 21 CPC within 60 days from the date of sale and if it made beyond 60 days, the application filed to set aside the execution of sale cannot be entertained by the High Court.

4. That being so, the claim made by the respondent/judgment-debtor cannot be taken entertained at this distant point of time.

5. Learned counsel for the applicant/plaintiff submits that the applicant has suffered an accident and undergone surgery and therefore he is badly in need of money. By so saying, the learned counsel requests this Court that a cheque for a sum of Rs.2.00 crores be issued by this Court from the amount lying to the credit of E.P.No.105 of 2018, at the earliest.



6. Considering the above facts and circumstances, the Registry is directed to issue a cheque for a sum of Rs.50.00 lakhs to the applicant-plaintiff from the amount lying to the credit of E.P.No.105 of 2018 in C.S.No.334 of 2017 on the file of this Court to meet the medical requirements, within a period of one week from the date of receipt of copy of this order.

7. Application is allowed to the extent indicated above.

**14-05-2026**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No

DIXIT

To  
Registrar General,  
High Court,  
Madras.



WEB COPY

A No. 1955 of 2



**N.SENTHILKUMAR, J.**

**DIXIT**

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