



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:26.11.2025

Pronounced on: 30.01.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. Nos.1530 & 1931 of 2025
and CMP. Nos.11025, 25625 & 8899 of 2025**

1.M/s.Real Link Engineering India (P) Ltd,
Rep. by its Managing Director, L.Navaneetha Krishnan.

2.L.Navaneethakrishanan,
Managing Director of M/s.Real Link Engineering (P) Ltd.

Petitioners in both CRPs

Vs

M/s.Aquatex Engineering,
A Partnership Firm, Rep by its,
Managing Partner R.Kumaravelu.

Respondent in both CRPs

COMMON PRAYER: These Civil Revision Petitions is filed under Section 115 of the Civil Procedure Code, to set aside the order dated 15.04.2025, passed in E.P. No.194 of 2024 and to set aside the order dated 03.04.2025 made in E.A. No.1 of 2025 in E.P. No.194 of 2024 passed by the Commercial Court (District Judge, Carde), Coimbatore.

For Petitioners : Mr.R.Shivakumar for
M/s.K.M.Vijayan Associates
Petitioner in CRP. No.1931 of 2025
Mr.S.Senthilnathan
Petitioners in CRP. No.1530 of 2025

For Respondent : Mr.R.Bharathkumar in both cases



COMMON ORDER

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The revision petitioners in both these revisions are the judgment debtors. In CRP. No.1530 of 2025, the revision petitioners challenge the order made in E.A. No.1 of 2025 which was filed under Section 47 of Code of Civil Procedure, 1908 (in short 'CPC').

2. In CRP. No.1931 of 2025, challenge is to the order dated 15.04.2025 in E.P. No.194 of 2024, in and by which, the Executing Court has ordered sale of the immovable property belonging to the judgment debtors/revision petitioners.

3. I have heard Mr.S.Senthilnathan, learned counsel for the petitioner in CRP. No.1530 of 2025. Mr.R.Shivakumar, learned counsel for M/s.K.M.Vijayan Associates in CRP. No.1931 of 2025 and Mr.R.Bharathkumar, learned counsel for the respondent/decree holder in both the revisions.

4. The learned counsel for the petitioner in CRP. No.1530 of 2025, Mr.S.Senthilnathan, would submit that the respondent/decree holder is guilty of fraud and fabrication of documents and the Trial Court had rightly declined to grant the relief of specific performance. However, it is the contention of



Mr.Senthilnathan, learned counsel that having declined the equitable relief of specific performance, the Trial Court erroneously proceeded to award refund of the amounts advanced together with interest. The bone of contention of the argument of Mr.Senthilnathan, learned counsel is that when the agreement is marked as Ex.A3 before the Trial Court, was found to be created and fabricated, the Trial Court ought not to have relied on the terms of the very same agreement to direct refund of amounts advanced by the revision petitioner together with interest.

5. Mr.R.Shivakumar, learned counsel for the petitioner in CRP. No.1931 of 2025, apart from adopting the submissions of Mr.Senthilnathan, learned counsel would submit that in view of the findings rendered by the Trial Court, there was no cause of action for the Court to order refund of the advance and therefore, the very direction/decreed is without jurisdiction. The learned counsel would further state that there is absolutely no reason as to why the Trial Court was awarding interest and falling back on the very agreement that has not been believed to award interest, is clearly unsustainable. The learned counsel would also state that the Executing Court has not followed the mandate of Order 21 Rule 64 and 66 before ordering sale of the properties of the petitioners. In support of his contentions, the learned counsel for the petitioner have relied on the following decisions:-



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(i) *S.P.Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by*

LRs, reported in, (1994) 1 SCC page 1;

(ii) *A.V.Pappayya Sastry and Others Vs. Government of A.P and others*, reported in (2007) 4 SCC 221; and

(iii) *Vishnu Vardhan @ Vishnu Pradhan Vs. State of Uttar Pradesh and Others*, reported in (2025) SCC Online SC 1501.

6. Per contra, Mr.Bharathkumar, learned counsel appearing for the respondent would submit that the petitioners are now contradicting their own stand before the Executing Court by inventing a new argument which is impermissible. He would further state that the huge amounts advanced by the respondent have been utilized by the petitioners to save their property from public auction and it is not open to the petitioners to now contend that the decree is in-executable and that the award of interest is erroneous and unsustainable without challenging the decree in a manner known to law. Mr.Bharathkumar, learned counsel would further state that though it was represented across the bar by Mr.Shivakumar, learned counsel that an appeal has been filed challenging the judgment and decree of the Trial Court, the respondent has no notice of any such appeal having been filed and he would state that in any event, when there is no stay granted by the Appellate Court,



there is no impediment for the Executing Court to proceed to have the decree executed. Mr.Bharathkumar, learned counsel for the respondent would also state that the Executing Court cannot go behind the decree and none of the circumstances contemplated under Section 47 of CPC exist for the revision petitioners to challenge the executability of the decree.

7. Even insofar as the other revision challenging the sale notice, the learned counsel submits that there is no error committed by the Executing Court in ordering the same. He would also rely on the order passed by this Court in CRP. No.3276 of 2023, where by order dated 09.11.2023, this Court upheld the order of the Commercial Court in I.A. No.4 of 2023, regarding the dispute being a commercial dispute falling under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 and he would therefore state that at every stage of the proceedings, the petitioners have attempted to defeat and delay payment of the legitimate amounts due and payable to the respondent.

8. I have carefully considered the submissions advanced by the learned counsel for the parties.

9. The admitted facts which would be necessary for deciding these revisions are briefly culled out as hereunder:



The respondent filed a Commercial Suit in COS. No.110 of 2023 against the revision petitioners for specific performance of the Memo of Understanding dated 20.07.2022. In the plaint, it was the case of the respondent that a balance sale consideration of Rs.5,47,94,101/- was payable by the plaintiff and that the plaintiff has always been ready and willing to perform its obligations under the same Memorandum of Understanding. The plaintiff also sought for an alternative prayer for refund of Rs.19,52,05,899/- together with interest at 24% per annum. The challenge to the jurisdiction of the Commercial Court in I.A. No.4 of 2023, was unsuccessful and the order of the Commercial Court upholding its jurisdiction was confirmed by this Court as already discussed, in CRP. No.3276 of 2023.

10. The petitioners filed a written statement and contested the suit on merits. After trial, the Commercial Court declined to grant the relief of specific performance and permanent injunction, however, proceeded to grant the alternative relief of refund of advance of Rs.19,52,05,899/-, together with interest at 12% per annum and for such money decree, a charge decree was also passed over the suit property, to be in force till realisation of the amounts due to the plaintiff. Costs of Rs.1,00,04,200/-, was also awarded, to be paid by the defendants.



11. Admittedly the said decree dated 15.03.2024 was not challenged by either the plaintiff or the defendants. In order to recover the amounts payable under the decree, the respondents filed E.P. No.194 of 2024. In the Execution Petition, despite filing a counter attacking the genuineness of the suit Memorandum of Understanding dated 20.07.2022, the petitioners also filed E.A.No.1 of 2025 under Section 47 of CPC, to declare the judgment as a nullity and in-executable. The Commercial Court in execution of the decree dismissed E.A. No.1 of 2025 finding that the question of validity of the Memorandum of Understanding cannot be raised in the application under Section 47 CPC, especially when the same issue was conclusively decided in I.A. No.4 of 2023, where the petitioners sought for rejection of the plaint and the petitioners lost upto the Hon'ble Supreme Court. The Commercial Court rejected all the allegations regarding Memorandum of Understanding not being binding on the petitioners as such facts cannot be gone into by the Executing Court and ultimately, while dismissing the Section 47 petition, directed sale of the properties in respect of which a charge has been created even under the decree.

12. The primordial ground on which, the decree is attacked and challenge has been that it is in-executable is that the respondent/decree holder has played fraud. The petitioners draw strength from the very findings of the Trial Court



that the Memorandum of Understanding has been brought about under suspicious circumstances. Therefore, it is their case that when the Trial Court had given a categorical finding that the Memorandum of Understanding is not capable of being specifically performed, according to the learned counsel for the petitioners, the alternate relief for refund of advance ought not to have been granted. It is their further case that for awarding interest, the Commercial Court has fallen back on the terms of the very same memorandum of understanding which was clearly amounting to the Court blowing hot and cold as the Commercial Court had already non suited the respondent to the discretionary relief of specific performance, on the ground that the Memorandum of Understanding is not a genuine document and on the other hand, the Commercial Court relies on the Clauses of the very same Memorandum of Understanding to award interest to the respondents.

13. The question that falls for consideration in these revision is as to whether the said issue can be agitated by way of filing an application under Section 47 of CPC. It is settled law that the Executing Court cannot go behind the decree and it is the duty of the Executing Court to ensure that the decree is satisfied. However, if the judgment debtor is able to point out that the Court that passed the decree lacked inherent jurisdiction in the first place to pass the decree, by way of lack of competency or otherwise or on other grounds, where the decree is passed against a deed person, which issues go to the foundation of



the suit claim, then alone the question of decree being in-executable or not can be tested by the Executing Court.

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14. In the present case, I do not find any allegation or challenge to the jurisdiction of the Trial Court. In fact, at the very earlier stages, the jurisdiction of the Commercial Court was challenged by the petitioners themselves and the application filed by the petitioners questioning the maintainability of the suit before the Commercial Court, on the ground that it was not a commercial dispute. However the Commercial Court dismissed the challenge to its jurisdiction and the revision preferred before this Court in CRP. No.3276 of 2023 is also dismissed. With the dismissal of the said revision on 09.11.2023, the issue of lack of jurisdiction got sealed and it was thereafter not open and I am given to understand that the order in the revision was taken up before the Hon'ble Supreme Court as well and the Special Leave Petition also dismissed by the Hon'ble Supreme Court. Therefore, the challenge on the ground of lack of jurisdiction of the Commercial Court has already attained finality and it is no longer open to the petitioners to re-agitate the very same issue by way of the Section 47 Application.

15. If at all, the petitioners were aggrieved by the findings of the Trial Court, then the proper course of action would have been to challenge the



findings of the Trial Court by preferring a regular appeal. Though Mr.Shivakumar, learned counsel for petitioner in CRP. No.1931 of 2025 stated across the bar that an appeal has been filed along with a delay, no particulars of the said appeal has been made available to this Court. In any event, even according to the petitioners there is no stay granted by any appellate Court and therefore there was no impediment for the Executing Court to proceed to decide the Section 47 application filed by the petitioners and to consequently, order sale of the properties after finding that there was no merit in the claims made in the Section 47 Application.

16.The conduct of the petitioners also needs to be looked into. While preferring the Civil Revision Petitions. Challenging the order in I.A. No.4 of 2023 in CRP. No.3276 of 2023, the petitioners have filed an affidavit in CMP.No.20197 of 2023, where the petitioners have categorically admitted to the fact that they have entered into Memorandum of Understanding with the respondent on 20.07.2022. Infact, they also admit that the respondent made periodical payments as per the Memorandum of Understanding and the amounts were utilised to settle the outstanding with TIIC and IOB and there was some delay in receiving no objection Certificate from TANGEDO and Pollution Control Board and other local Authorities.



17. Therefore, having admitted to the execution of the Memorandum of Understanding and also conceding that the respondent had made periodical payment as per the Memorandum of Understanding, conceded that the suit Memorandum of Understanding dated 20.07.2022 was validly entered into between the parties and that in furtherance of the same, the respondent has also made payments and the petitioners have utilized the said amount to settle the outstanding amount with TIIC and IOB, it is not open for the petitioner to turn around at the execution stage and contend that the Memorandum of Understanding was brought about by playing fraud. The petitioners are clearly trying to take undue advantage of the findings rendered by the Trial Court in declining to grant the discretionary relief of specific performance. The fact that the Trial Court has found the Memorandum of Understanding to have been brought about under suspicious circumstances cannot give rise and will not open a new window to the petitioners to contend that fraud has been played.

18. The decisions on which reliance has been placed on by the learned counsel for the petitioners. In *S.P.Chengalvaraya Naidu's* case (referred herein supra) or even the recent decision in *Vishnu vardhan'* case (referred herein supra), are all cases where the Hon'ble Supreme Court found that fraud had been played by one of the litigants and when fraud had been established, it



would amount to not only fraud on the other parties but also on the Court and in such circumstances, the Hon'ble Supreme Court held that fraud would vitiate all proceedings. These decisions cannot be pressed into service, in the present facts and circumstances, for the simple reason that the Trial Court has only held the Memorandum of Understanding to be one entered into under cloud or suspicion and under such circumstances, the Trial Court declined to grant the discretionary and equitable relief of specific performance. The Trial Court has however proceeded to grant an alternate relief for refund of advance. If the petitioner were really aggrieved by the said findings of the Trial Court or the decree in respect of the alternate relief, the same should have been taken up on appeal and challenged in a superior Forum. It is not open to the petitioners to raise this issue before the Executing Court that too, by way of Section 47 Application as the objection does not pertain to any inherent lack of jurisdiction of the Court to pass the decree and the questions that are now called for determination do not relate to execution, discharge or satisfaction of the decree, but clearly relate to a challenge to the findings rendered by the Commercial Court alone.

19. The Executing Court has rightly held that the questions that have been raised by the petitioner cannot be decided in the Section 47 application. The Executing Court has relied on the decision of the Hon'ble Supreme Court in



Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and others, reported in 1970 AIR 1475, I do not find any perversity or infirmity in the findings of the Executing Court, (Commercial Court), dismissing the Section 47 application.

20. In so far as the revision in CRP. No.1931 of 2025, the Executing Court relying on the dismissal of the Section 47 application and also taking note of the fact that the decree in the suit has not been stayed by any Appellate Court and charge having been already created even under the decree has proceeded to direct sale notice, the Executing Court has also found the arguments of the petitioner that the description of the property as set out in the Execution Petition is not identifiable to the decree as unsustainable. The Execution Court has also rightly held that there is necessity to fall back on the procedures contemplated under Order 21 Rule 54(3) or Order 21 Rule 58(a) CPC in view of the charge having been created even in the decree of the Trial Court. Therefore, I do not see any infirmity in the order passed by the Executing Court issuing sale notice as well.

21. In fine, there is no merits in these revisions and accordingly, both these revision petitions are **dismissed**. Consequently, connected Miscellaneous Petitions are also dismissed. 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 (District Judge Cadre),
Coimbatore.

P.B.BALAJI, J.,

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Pre-delivery order in

**CRP. Nos.1530 & 1931 of 2025
and CMP. Nos.11025, 25625 & 8899 of 2025**



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