



THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 22.01.2026

Order pronounced on : 20.02.2026

CORAM

**THE HON'BLE MR. JUSTICE P.B.BALAJI**

CRP.No.4222 of 2023  
& CMP.No.25952 of 2023

C.Augustin Jebaraj

.. Petitioner

Vs.

1.HDB Financial Services Limited,  
Represented by its Authorised Legal Representative,  
Registered Office at Radhika 2<sup>nd</sup> Floor,  
New Garden Road, Naurangapura,  
Ahmedabad, Gujarat – 380 009.  
Represented by its Authorised Legal Representative,  
Having office at No.68/2, Loyal Towers,  
4<sup>th</sup> Floor, Greams Road,  
Chennai – 600 006.

2.Jane Gladis Abraham.

.. Respondents

**Prayer:** Civil Revision Petition filed under Section 115 of CPC, to set aside the order dated 09.06.2023 in E.A.No.2 of 2022 in E.P.No.2205 of 2017 in Arb.No.1556 of 2016 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Murali

For Respondents : Mr.Ajmal Azzath for R1  
R2 given up



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## **ORDER**

The revision petitioner is the judgment debtor, who had availed of a business loan from the 1<sup>st</sup> respondent even in the year 2011. The 1<sup>st</sup> respondent initiated arbitration proceedings and an award was passed in its favour on 28.01.2017. E.P.No.2205 of 2017 was filed to execute the award. However, based on a memo filed by the decree holder that the petitioner had settled the entire dues, the EP was terminated on 15.04.2021. However, going back on the memo recording the settlement, the 1<sup>st</sup> respondent filed E.A.No.2 of 2022 for restoring the EP to file.

2.In the interregnum period, the petitioner filed W.P.No.16829 of 2021 and this Court directed that if no execution application has been numbered, then the 1<sup>st</sup> respondent would have to return the documents within a period of four weeks. Alleging disobedience and non-compliance of the said order dated 02.02.2022, the petitioner filed Cont.P.No.1182 of 2022. The said contempt petition was disposed of on 26.08.2022, imposing a cost of Rs.25,000/- on the 1<sup>st</sup> respondent, payable to Adyar Cancer Institute and without expressing any opinion on the merits of the case, this Court directed the application in E.A.No.2 of 2022, pending on the file of the IX Assistant City Civil Court,



Chennai, to be disposed of, after providing an opportunity to the petitioner as well as the respondents. This Court also granted liberty to the petitioner to file the receipts with regard to the repayment of the loan amount to the 1<sup>st</sup> respondent.

3.While matters stood there, a revision petitioner filed yet another writ petition in W.P.No.32627 of 2022 and the First Bench of this Court, by order dated 12.04.2024 disposed of the said writ petition, finding that disputed questions of fact exist and the writ petition for return of documents and for cancellation of the assignment agreement cannot be granted under Article 226 of Constitution of India. The Hon'ble First Bench directed the petitioner to approach the forum where proceedings were decided or the appropriate forum as may be permissible under law, leaving the contentions of the respective parties open. In the meantime, the 1<sup>st</sup> respondent has not pressed E.A.No.2 of 2022. Aggrieved by the order permitting withdrawal of E.A.No.2 of 2022, the petitioner has filed the present revision petition.

4.Mr.R.Murali, learned counsel for the revision petitioner would contend that when the 1<sup>st</sup> respondent, along with its counsel had clearly brought it to the notice of the Court that the loan amount had been settled by the petitioner, and the said memo was also acted upon by terminating the EP, it was not open to the



1<sup>st</sup> respondent to retain the original documents with them. Inviting my attention to the order of the writ Court in W.P.No.16829 of 2021, as well as in Cont.P.No.1182 of 2022, the learned counsel for the revision petitioner would contend that this Court, finding that the order passed in the writ petition has not been complied, even imposed cost of Rs.25,000/-. Mr.R.Murali would also point out that the petitioner had made a counter claim for return of documents and in such circumstances, the Court ought not to have permitted withdrawal of E.A.No.2 of 2022. He would therefore state that the order of the executing Court is liable to be set aside and the original documents are to be returned to the petitioner.

5.Per contra, Mr.Ajmal Azzath, learned counsel for the 1<sup>st</sup> respondent would contend that the petitioner's loan account was only assigned to Edelweiss Asset Reconstruction Company Limited and by inadvertence, the execution petitions were withdrawn, as if the account has been settled out of Court. He would further state that the original documents are not even with the 1<sup>st</sup> respondent, but have been handed over to Edelweiss Asset Reconstruction Company Limited and citing an assignment agreement entered into between the 1<sup>st</sup> respondent and the said Edelweiss Asset Reconstruction Company Limited, the learned counsel for the 1<sup>st</sup> respondent contended that the collection would

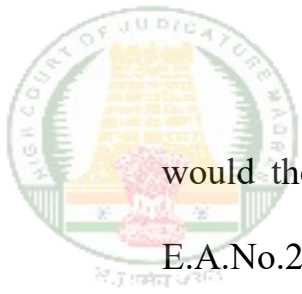


have to be made only by the assignee and only under such circumstances,  
E.A.No.2 of 2022 was also withdrawn.

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6.Inviting my attention to the orders passed by the writ Court in W.P.No.16829 of 2021 and the order in the contempt petition, as well as the order in W.P.No.32627 of 2022, the learned counsel states that despite being conscious of the fact that the EP had been terminated based on the memo filed by the decree holder, this Court has repeatedly held that the matter has to be agitated only before the competent Civil Court where the proceedings were pending and would also specifically point out to the liberty granted to the petitioner to prove repayment by production of relevant receipts. The learned counsel would further state that yet another writ petition was filed by the revision petitioner in W.P.No.30358 of 2022, seeking for a direction to the Reserve Bank of Indian to conduct an enquiry. The said writ petition came to be allowed by this Court, directing RBI to conduct an enquiry and file a report.

7.Placing reliance on the said report dated 22.07.2024, the learned counsel for the 1<sup>st</sup> respondent would state that the RBI did not find any *prima facie* contravention of RBI directions, warranting any action to be taken against the 1<sup>st</sup> respondent and further observation that the report was without prejudice to the rights of both the parties to approach the appropriate legal forum. He



would therefore state that the petitioner is not entitled to seek restoration of E.A.No.2 of 2022.

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8.In support of his contentions, the learned counsel for the 1<sup>st</sup> respondent would place reliance on the decision of the Hon'ble Supreme Court in *M.D.Frozen Foods Exports Private Limited and others Vs. Hero Fincorp Limited*, reported in (2017) 16 SCC 741, for the proposition that the SARFAESI proceedings are in the nature of enforcement proceedings, while arbitration is an adjudicatory process and therefore, both the proceedings can go hand in hand and the question of doctrine of election would not come in the way of the bank or institution from proceeding against the borrowers and in any event of the secured assets being insufficient to satisfy the debts, it would open to the secured creditors to proceed against other assets in execution against the debtors after determination of the pending outstanding amount by a competent forum. He would therefore pray for dismissal of the revision petition.

9.I have carefully considered the submissions advanced by the learned counsel on either side.

10.No doubt, subsequent to obtaining an award in its favour on 28.01.2017, the 1<sup>st</sup> respondent, after initiating EP proceedings, chose to



withdraw the same by filing a memo contending that the petitioner has settled the account. The said memo was acted upon and the executing Court dismissed the EP on 15.04.2021 as terminated. However, within a span of few months, the 1<sup>st</sup> respondent has taken out E.A.No.2 of 2022 for recalling the said order of dismissal of EP as terminated and to consequently restore the same to file, alleging that the petitioner's loan account has been assigned to Edelweiss Assets Reconstruction Company Limited and by mistake, the EP was sought to be withdrawn and that the petitioner is a chronic defaulter in huge arrears to the financial institution and that he has taken undue advantage of the mistake committed by the 1<sup>st</sup> respondent.

11.At that stage, the petitioner filed W.P.No.16829 of 2021 and by order dated 02.02.2022, this Court directed that the parties have to agitate their rights only in the pending application in E.A.No.2 of 2022 and if there is no such application pending, then the documents would have to be returned within a period of four weeks. Admittedly, the documents were not returned and therefore, the petitioner filed a contempt petition in Cont.P.No.1182 of 2022. Even in the said contempt petition, though this Court imposed costs on the 1<sup>st</sup> respondent, only directed the parties to workout their rights in the pending E.A.No.2 of 2022. In fact, in the writ petition, as well as in the contempt petition, writ Court did not accept the version of the revision petitioner that he



had paid the entire dues and the petitioner was only given liberty to prove payment as claimed in full and final settlement.

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12. Notwithstanding the above writ petition as well as the contempt petition, the revision petitioner moved yet another writ petition seeking return of documents. W.P.No.32627 of 2022 was filed by the revision petitioner seeking return of the original documents, as well as the cancellation of the assignment agreement. The Hon'ble First Bench of this Court declined to grant any relief to the petitioner as prayed for. In fact, in paragraph No.5, the First Bench has recorded that disputed questions of fact exist and there is an assignment of loan between the respondents 3 and 4 therein, that is the 1<sup>st</sup> respondent herein and the Edelweiss Assets Reconstruction Company Limited and that the revision petitioner claims complete discharge of the loan, based on the termination memo filed by the 1<sup>st</sup> respondent and that even in the writ petition, the details of payment made by the petitioner have not been forthcoming. Therefore, the writ petition was disposed of, finding that it would proper for the petitioner to approach appropriate forum as permissible under law. In such backdrop, I do not see how the petitioner can complain of the 1<sup>st</sup> respondent not pressing E.A.No.2 of 2022 and in fact, I find that while not pressing E.A.No.2 of 2022, in fact liberty was sought for by the 1<sup>st</sup> respondent to file a fresh EA.



13. The executing Court, recording the said memo, dismissed E.A.No.2 of 2022. No liberty was however granted as sought for by the 1<sup>st</sup> respondent.

However, the fact remains that according to the 1<sup>st</sup> respondent, the petitioner's loan account has been assigned in favour of Edelweiss Assets Reconstruction Company Limited and therefore, it is for the assignee to take appropriate steps to recover the amounts due and it appears that SARFAESI proceedings are also pending between the parties. However, no concrete documents have been produced before this Court to substantiate the nature or stage of the said proceedings. In any event, considering that even in the earliest instance, this Court had given liberty to the petitioner to file receipts to prove repayment, despite termination of EP and again the First Bench subsequently in another writ petition granted liberty to the petitioner to workout his remedy before the competent forum, I do not see how the petitioner is in any way prejudiced by the withdrawal of E.A.No.2 of 2022 by the 1<sup>st</sup> respondent.

14. Though the learned counsel for the revision petitioner vehemently contended that he had made a counter claim for return of documents, I do not find any such independent counter claim having been filed. A feeble statement has been made in the counter to E.A.No.2 of 2022 and nothing more. Admittedly, the document is also not in the custody of the 1<sup>st</sup> respondent, but with the third party, namely the assignee Edelweiss Assets Reconstruction



Company Limited. Therefore, the petitioner can only take benefit and avail of the liberty granted by the First Bench of this Court by filing an appropriate application, impleading the assignee as the respondent as well and seek for appropriate orders, which would again be subjected to any proceedings pending under the SARFAESI Act, if any. In the light of the above, I do not find any reasons, warranting interference with the order of the executing Court, permitting the 1<sup>st</sup> respondent to withdraw E.A.No.2 of 2022.

15. In fact, liberty has also not been granted, though sought for by the 1<sup>st</sup> respondent and it is always open to the petitioner to take advantage of the same as well, in the proposed application to be filed, after impleading the assignee also as one of the respondents. In the light of the above, I am not inclined to allow the revision. However, it is open to the petitioner to move an appropriate application for return of the original documents and also cancellation of the assignment, in so far as the petitioner's loan account is concerned, after impleading the assignee viz., Edelweiss Assets Reconstruction Company Limited as a party respondent, along with the 1<sup>st</sup> respondent herein. Any such application shall be decided by the executing Court, on merits and in accordance with law, keeping in mind the various directions issued by this Court in W.P.No.16829 of 2021, Cont.P.No.1182 of 2022 and W.P.No. W.P.No.32627 of 2022.



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16.It is needless to state that the executing Court shall also be entitled to take note of pendency of any SARFAESI proceedings in respect of the petitioner's very same loan account and any orders that may have been passed thereunder. Equally, the executing Court shall also take note of the fact that the EP was terminated based only on the memo filed by the 1<sup>st</sup> respondent and countersigned by the counsel as well and even the application to restore the EP in E.A.No.2 of 2022 was also withdrawn and thereafter no fresh application has also been filed. Taking into account all these cumulative facts and circumstances, the executing Court shall conduct due enquiry, after affording fair opportunity to all the parties and dispose of any such application, if filed by the petitioner, as expeditiously as possible.

17.In fine, the Civil Revision Petition is dismissed with the above observations and directions. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

20.02.2026

Neutral Citation Case : Yes / No  
Speaking / Non-speaking order  
Index : Yes/No  
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**P.B.BALAJI.J,**

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To

The IX Assistant City Civil Court, Chennai.

Pre-delivery order made in  
CRP.No.4222 of 2023  
& CMP.No.25952 of 2023

20.02.2026