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A.Nos.4910 of 2017
in
E.P No.39 of 2017
and
E.P.No.39 of 2017

MASTER
23.11.2026

COMMON ORDER

1. There are two petitions filed before this Court. E.P No.39 of 2019 is filed by the decree holder under O.21 R.34 CPC to direct the respondent/Judgment debtor to execute and register the lease deed attached to the execution petition failing which to execute the lease deed and register the same through Assistant Registrar (Original Side-I). A.No.4910 of 2017 is filed by the Judgment debtor under section 47 of the Code of Civil Procedure to dismiss the E.P. For the sake of convenience the decree holder in EP who is the respondent in A.No.4910 of 2017 hereinafter will be referred as "Petitioner" and the Judgment debtor who is the respondent in EP and Applicant in A.No.4910 of 2017 hereinafter will be referred as "Respondent".

2. It is the case of the Petitioner that he filed a suit in C.S No.982 of 1999 against the Respondent for specific performance of the lease agreement as per draft approved by the defendant who is the respondent herein and after due contest made by both the parties, the suit was decreed in his favour by a Judgment and Decree dated 13.02.2015 and the Respondent was directed to execute and register the lease agreement as per draft approved by the Respondent in respect of the EP schedule mentioned property. Even after passing of the decree, the respondent failed to execute the lease and hence, he filed the above EP for execution of the lease deed in terms of the decree dated 13.02.2015 in C.S.No.982 of 2015.

3. At this stage, the respondent filed the application under section 47 of the Code of Civil Procedure in A.No.4910 of 2017 to dismiss the EP. One of the main contentions of the respondent is that the EP is liable to be dismissed on the short

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ground that the draft lease filed in EP 39 of 2017 is not as per the decree dated 13.02.2015 in C.S No. 982 of 1999. The next contention of the Respondent is that even as per the decree dated 13.02.2015 in C.S.No. 982 of 1999 the Petitioner was liable to pay the Respondent an amount of Rs.5630.82/- per year being the difference between the agreed annual rent payable by the Petitioner and the 10% interest on the security deposit payable by the Respondent. Even after passing of the decree dated 13.02.2015 in C.S.No. 982 of 1999, the petitioner has miserably failed to pay this amount and as such he is a wilful defaulter and is liable to be evicted. Despite the respondent bringing it to the notice of the petitioner that there is an arrear, he continued to default on even this small amount and thereby has violated the terms of draft lease and so there is no readiness and willingness on the part of the petitioner and as such the execution petition is liable to be dismissed. It is further case of the respondent that the petitioner suppressed both the fair rent and eviction proceedings initiated by the respondent and is trying to obtain the execution of the lease agreement and so the EP is to be dismissed in limine. Further, the respondent has filed a petition for fixation of fair rent in RCOP No.1111 of 2001 which was ordered on 20.08.2004 and fair rent for the schedule mentioned property was fixed at Rs.80,746/- per month as against which both the petitioner and the respondent preferred appeals in RCA Nos.1432 of 2004 and 609 of 2005 which was disposed of by a common Judgment dated 12.11.2011 and the order in RCOP was modified and fair rent was fixed on slabs. Once again both the petitioner and the respondent filed revision petitions against the order of the Appellate Authority in CRP(NPD) 1866 of 2012 (against RCA 1432 of 2004) and CRP (NPD) 1935 of 2012 (against RCA 609 of 2005) which were disposed of by an order dated 28.04.2017, whereby a fair rent at Rs.2,55,756/- per month from the date of filing of the RCOP was fixed. The respondent further contended that the petitioner was permitted by the Hon'ble High Court to raise an additional ground with regard to the judgment and decree dated 13.02.2015 passed in CS No.982 of 1999 and the same was considered and it was held that the decree passed by this Court in CS No.982 of 1999 has to be read in its

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entirety along with the judgment in RCA Nos. 1432 of 2004 and 609 of 2005, fixing fair rent to the premises in question. The respondent states that in view of the order dated 28.04.2017 passed by the Hon'ble High Court in the CRP(NPD) Nos.1866 of 2012 and 1935 of 2012, if at all the Petitioner is entitled to execute the draft lease as per the decree dated 13.02.2015 in CS No.982 of 1999, the same would have to incorporate the fair rent at the rate of Rs.2,55,756/- per month as fixed by the Hon'ble High Court and not the contractual rent. Thus the EP is to be dismissed.

4. The Petitioner who has filed his counter in A.No.4910 of 2017 has stated that when there is clear admission that the respondent accepts decree and is willing to execute the lease deed, the attempt now made by the respondent to replace the contractual rent with fair rent is beyond the scope of execution petition and amounts to reopening the decree. Further, the plea of willful default and denial of title cannot be raised by the respondent in the execution petition as it ought to have been raised before the Rent Control Authority itself and the same has not been done by the respondent initially and moreover the matter is pending subjudice before the Rent Control Authority in RCOP No.1895 of 2015.

5. Now the point for consideration is whether the objections raised by the respondent under section 47 CPC are sustainable and whether the petitioner is entitled to execute the draft lease agreement approved by the respondent in terms of the decree dated 13.02.2015 in CS No.982 of 1999 or not?

6. Heard both side counsel and materials on record perused. Written arguments filed by both sides. To substantiate his case the petitioner has marked Ex.P1 to P4 through RW1 in cross. The Company Secretary of the Respondent Company namely Ajilal A.S was examined as RW1 and Ex.R1 to R.40 marked through him.

7. The learned counsel for the petitioner submitted that no appeal was filed by the respondent against the judgment and decree dated 13.02.2015 in CS No.982 of 1999 and thus the decree has attained its finality and the respondent is bound to execute the lease deed for 99 years in terms of the decree dated 13.02.2015 in CS No.982 of

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1999. It is further argued that the stand taken by the respondent that the petitioner has denied the title of the respondent by relying upon Ex.R38 is not sustainable because the same was taken by him in CS No.982 of 1999 and not accepted in the judgment and decree dated 13.02.2015. Similarly, the defence that the petitioner is a willful defaulter was also not taken before the Hon'ble High Court in CRP(NPD) Nos.1866 of 2012 and 1935 of 2012. Moreover, this Court as an EP Court cannot go beyond the decree. In support of his contention the learned counsel for the petitioner relied on the decisions in

(i) Vasudev Dhanjibhai Modi Vs Rajabhai Abdul Rehman and others 1970 (1) SCC 670 wherein it is held that "*A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.*"

(ii) Brakewel Automotive Components (India) Pvt Ltd., Vs P.R. Selvam Alagappan (2017) 5 SCC 371 wherein it is held that

"*Section 47 CPC mandates determination by an executing court questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof. The powers of the court under Section 47 CPC are quite different and much narrower than those in appeal/revision or review. The exercise of power under Section 47 CPC is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignormance of such provision of law*

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or the law was promulgated making a decree unexecutable after its passing. An executing court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardising the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus unexecutable. An erroneous decree cannot be equalled with one which is a nullity. None of the above eventualities as recognised in law for rendering a decree unexecutable, exist in the case in hand."

8. The learned counsel for the petiitoner further argued that the respondent seeks rescission under section 28 of the Specific Relief Act without there being any prayer in the application under section 47 CPC and objected that the said prayer under section 28 of the Specific Relief Act can only be sought in the suit and not in the stage of execution. To this effect the learned counsel for the petitioner relied on the decision in **Ishwar (Since Deceased) thr. Lrs and others Vs. Bhim Singh and another 2024 SCC Online SC 2338** wherein it is held that

"*The law is, therefore, settled that an application seeking rescission of contract, or extension of time, under Section 28 (1) of the 1963 Act, must be decided as an application in the original suit wherein the decree was passed even though the suit has been disposed of. As a sequitur, even if the Execution Court is the Court of first instance with reference to the suit wherein the decree under execution was passed, it must transfer the application filed under Section 28 to the file of the suit before dealing with it."*

9. On the otherhand, the learned counsel for the respondent submitted that the decree sought to be executed is one for specific performance of a lease, unlike a sale, a lease involves only the transfer of certain rights in the property and involves continuing obligations (such as paying rent) on the part of the lessee. It is further submitted that if a lessee seeking specific performance of a lease acts contrary to the lease even after attaining a decree, then the decree would be rendered inexecutable. In

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this regard the learned counsel for the respondent relied on the decisions in

(i) H.P Pyarejan V. Dasappa (2006) 2 SCC 496 at Para 13, the Hon'ble Supreme Court has held that the basic principle behind Section 16 (c) r/w Explanation (ii) of the Specific Relief Act, 1963 is that a party seeking specific performance "must manifest that his conduct has been blemishless throughout".

(ii) Hungerford Investment Trust Limited V. Haridas (1972) 3 SCC 684, the Hon'ble Supreme Court held at Paras 23, 24 & 26 a decree for specific performance is like a preliminary decree and the court retains control and the suit must be deemed to be pending even after the decree. Further, the contract between the parties is not extinguished by the decree and failure on the part of a party to perform his part of the contract (even after the decree) would render the decree inexecutable.

10. It is further argued that even after the passing of the decree dated 13.02.2015 in CS No.982 of 1999, the petitioner has committed willful default in payment of both contractual rent and fair rent and also has denied the title of the respondent and so, the petitioner is not entitled for execution of the lease deed. It is the duty of the executing court to look into subsequent events and take into consideration before passing of any order in the execution petition and in this regard he relied on the decision in **Municipal Board, Kishangarh Vs Chandmal and Co (1999) 9 SCC 198** wherein it is held that "*Duty of executing court to look into Subsequent events - Dispute between leaseholder wanting to raise construction on suit land and Municipal Board – Leaseholder filing and winning suit for permanet injunction – At execution stage Municipal Board filing objections under S.47 which dismissed – During appeal against this dismissal Board also filing application under Or.41 R.27 and submitting documents indicating that (i) the lease had been cancelled after the end of suit proceedings, and (ii) that by notification the whole area including suit land had been included in municipal limits – Board contending that its permission now necessary under S.170, Rajasthan Municipalities Act, 1959 (38 of 1959) – High Court holding that subsequent events could not be looked into by*

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executing court – Held on facts, in the interest of justice, the whole case be remanded to the executing court for rehearing of objections under S.47 and consideration of the effect of the two documents – Municipalities – Rajasthan Municipalities Act, 1959 (38 of 1959), S.170 (Para 8)."

11. Furthermore, it is submitted that the draft lease filed in EP 39 of 2017 is not in consonance with the draft lease mentioned in the decree or the order of the Hon'ble High Court in CRP(NPD) Nos.1866 of 2012 and 1935 of 2012 dated 28.04.2017 and so the EP is liable to be dismissed on this ground alone.

12. Before going into the merits of the case it would be useful to extract the provison of section 47 CPC **Questions to be determined by the Court executing decree.** (1) *All question arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit*. The scope of section 47 CPC is narrow. Decree can be declared as null and void and inexecutable only on limited scope, if decree was passed without jurisdiction, barred by limitation and without notice to the legal heirs. Section 47 of CPC cannot be invoked even decree is erroneous either in law or on facts.

13. The plea that the decree was obtained by suppressing material facts like pendency of fair rent proceedings and eviction proceeding before the Rent Controller can be adjudicated only by way of appeal or separate suit but not by way section 47 of CPC which can be invoked only if decree is nullity, passed without jurisdiction, barred by limitation without notice to the legal heirs. Similarly, the plea of denial of title for which the respondent relied on Ex.R38 was also considered by the Hon'ble Court in C.S.No.982 of 1999 and rejected and so the same cannot be agitated once again before this Court. The rights and obligation of the parties having alreay been adjudicated in the suit, the execution court cannot reopen the same under the guise of objections raised under section 47 CPC. It is also seen from the averments made out

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by both the parties that the respondent has already filed RCOP 1895 of 2015 against the petitioner for eviction on the ground of willful default and denial of title and the same is pending before the Rent Controller and is subjudice. So, this Court as an execution court cannot decide the plea of willful default subsequent to the passing of decree and is bound to execute the decree in its terms.

14. On perusal of the decree dated 13.02.2015 in CS No.982 of 1999 which reads as follows:

"*That the defendant herein be and is hereby directed to execute and register the lease agreement as per draft approved by the defendant, in respect of the property morefully setout in the schedule hereunder.*

2. that in default of executing and registering the lease deed by the defendant herein, the Assistant Registrar (O.S)-I shall execute and register the lease deed in respect of the property morefully setout in the schedule hereunder.

3. That the defendant herein do pay to the plaintiff herein the costs of this suit as and when taxed by the taxing officer of this court and noted in the margin thereof.

from which it is clear that the decree directs the respondent to execute and register the lease agreement in terms of the draft approved by the respondent and it does not independently specify any particular rate of rent.**"**

15. In the Civil Revision Petitions in CRP (NPD) Nos.1866 of 2012 and 1935 of 2012, the Hon'ble High Court has specifically observed as follows:

"*The rent control original petition was allowed by Judgment dated 20 August 2004. The related appeals were disposed of by the Appellate Authority by Judgment dated 12 November 2001. The civil suit in C.S.No.982 of 1999 was pending before this court at that point of time. The pendency of the civil suit was not disclosed by the petitioner either before the Rent Controller or before the Appellate Authority. The Rent Controller is the competent Authority to fix the fair rent under Section 4 of the Act. The decree in C.S.No.982 of 1999 would not nullify the Judgment passed by the*

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competent Authority under the Rent Control Act. There was no issued framed in the civil suit in C.S.No.982 of 1999 with regard to the Judgment in the rent control original petition and the related Judgment in the appellate proceedings. The decree passed by this court in C.S.No.982 of 1999 has to be read in its entirety along with the Judgment in RCA Nos.1432 of 2004 and 609 of 2005, fixing fair rent to the premises in question. In any case, the decree passed by the Competent Authority under the Rent Control Act would not merge with the decree passed by the Court in a suit for specific performance."

16. From the above it is seen that the Hon'ble High Court has categorically observed that (i) The decree in CS No.982 of 1999 does not nullify the judgment under the Rent Control Act, (ii) The decree in CS No.982 of 1999 must be read in its entirety along with the judgment in the Rent Control Appeal fixing fair rent and (iii) The decree under the Rent Control Act does not merge with the decree in the suit for specific performance. Therefore, this Court is of opinion that the fair rent determination cannot be ignored while executing the lease deed and at the same time, incorporating the fair rent as per the observations made by the Hon'ble High Court in CRP(NPD) Nos.1866 of 2012 and 1935 of 2012 will not amount to reopening or modifying the decree passed by the Civil Court in CS No.982 of 1999.

17. As rightly pointed out by the learned counsel for the petitioner, though it is well settled that an executing Court cannot go beyond the decree, it is equally important that under O21 R34 CPC, the executing Court is duty bound to scrutinise the draft document submitted by the decree holder and ensure that it is in confirmity with the decree sought to be executed. The executing Court cannot mechanically approve the draft document if the same contains certain terms inconsistent with the decree or the binding adjudications that governs the rights of both the parties.

18. In the case on hand, the decree sought to be executed, directs the respondent to execute the draft lease deed as approved by the respondent. However, as per the order of the Hon'ble High Court passed in CRP(NPD) Nos.1866 of 2012

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and 1935 of 2012 the said direction in the decree is to be understood in the light of the observation made in the aforesaid Civil Revision Petitions. Therefore, the draft lease deed has to reflect the fair rent as determined in the Rent Control proceedings, subject to the applicable terms and directions contained in the judgments of the civil court and the Hon'ble High Court in the Civil Revision Petitions.

19. In view of the aforesaid discussions, this Court is of opinion that the application in A.No.4910 of 2017 filed by the respondent under section 47 CPC is to be partly allowed to the limited extent that the draft lease deed shall wherever necessary, incorporate the fair rent as determined in the Rent Control proceedings, in accordance with the order passed by the Hon'ble High Court in CRP (NPD) Nos.1866 of 2012 and 1935 of 2012. The other objections raised by the respondent in A.No.4910 of 2017 with regard to the willful default in payment of rents and denial of title as already discussed above are rejected.

In the result,

(i) A.No.4910 of 2017 is partly allowed to the limited extent that the draft lease deed shall wherever necessary, incorporate the fair rent as determined in the Rent Control proceedings, in accordance with the order passed by the Hon'ble High Court in CRP (NPD) Nos.1866 of 2012 and 1935 of 2012.

(ii) E.P No.39 of 2017 is allowed and the petitioner is directed to submit a revised draft lease deed in confirmity with the Judgment and decree dated 13.02.2015 passed in C.S.No.982 of 1999 read along with the common Judgment and decree dated 12.11.2011 passed in RCA Nos. 1432 of 2004 & 609 of 2005 as per the order of the Hon'ble High Court i.e., the draft lease deed shall wherever necessary, incorporate the fair rent as determined in the Rent Control proceedings and modified in the order passed by the Hon'ble High Court in CRP (NPD) Nos.1866 of 2012 and 1935 of 2012, within a period of 3 weeks from the date of this Order. No order as to costs.

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List of Witnesses on the side of Petitioner: NIL

List of Exhibits on the side of the Petitioner:

Sl.No.	Description
1	Certified copy of the Judgment dated 13.02.2015 in C.S.No.982 of 1999 passed by Hon'ble High Court of Madras.
2	Certified copy of the decree dated 13.02.2015 in C.S.No.982 of 1999 passed by Hon'ble High Court of Madras.
3	True copy of petition in RCOP No.1111 of 2001.
4	True copy of Written statement filed by the defendant in C.S.No.982 of 1999.

List of Witnesses on the side of Respondent:

RW-1 : Mr.Ajilal A.S.

List of Exhibits on the side of the Respondent:

Sl.No.	Description
1	Certified copyof the Board Resolution dated 15.12.2016.
2	True copy of the Eviction Petition in RCOP No.1895 of 2015.
3	True copy of the Proof affidavit filed before Small Causes Court by Judgment debtor in RCOP No.1895 of 2015.
4	Certified copy of the Common Judgment dated 12.11.2021 and decree passed by the Small Causes Court, Chennai in RCA Nos.1432 of 2004 & 609 of 2005 in RCOP No.1111 of 2001.
5	Certified copy of the letter dated 20.07.2015 issued by the Judgment debtor counsel to the decree holder.
6	Certified copy of the Advocate Notice dated 09.10.2015 issued by the Judgment debtor counsel to the decree holder.
7	Certified copy of the letter dated 24.07.2015 issued by the decree holder to the Judgment debtor.
8	Certified copy of the Advocate Notice dated 08.12.2015 issued by the

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Sl.No.	Description
	decree holder counsel to the Judgment debtor counsel.
9	Certified copy of the Advocate Notice dated 16.12.2015 issued by the Judgmentn debtor counsel to the decree holder counsel.
10	Certified copy of the Advocate Notice dated 21.04.2016 issued by the decree holder counsel to the Judgment debtor counsel.
11	Certified copy of the Judgment and decree dated 28.04.2017 passed by the Hon'ble High Court of Madras in CRP (NPD) No.1866/2012 and CRP (NPD) No.1935/2012.
12	Certified copy of the Advocate Notice dated 15.06.2017 issued by the Judgment debtor counsel to the decree holder.
13	Online printout of the Order dated 06.10.2017 passed by the Hon'ble Supreme Court in Diary No.(S).27970/2017.
14	Certified copy of the letter dated 10.11.2017 issued by the decree holder to the Judgment debtor.
15	Certified copy of the letter dated 15.11.2017 issued by the decree holder to the Judgment debtor.
16	Certified copy of the letter dated 15.11.2017 issued by the Judgment debtor to the decree holder.
17	Certified copy of the letter dated 16.11.2017 issued by the Judgment debtor to the decree holder.
18	Online printout of the Order dated 27.11.2017 passed by the Hon'ble Supreme Court in SLP (C) No.27329-27330/2017.
19	Certified copy of the letter dated 28.11.2017 issued by the Judgment debtor to the decree holder.
20	Certified copy of the letter dated 30.11.2017 issued by the decree holder to the Judgment debtor.
21	Certified copy of the letter dated 07.12.2017 issued by th e Judgment debtor to the decree holder.
22	Certified copy of the lette dated 10.01.2018 issued by the decree holder to the Judgment debtor.
23	Certified copy of the letter dated 11.01.2018 issued by the Judgment debtor to the decree holder.
24	Certified copy of the letter dated 22.01.2018 issued by the Judgment debtor to the decree holder.
25	Certified copy of the letter dated 23.01.2018 issued by the decree holde to

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Sl.No.	Description
	the Judgment debtor.
26	Certified copy of the letter dated 31.01.2018 issued by the decree holder to the Judgment debtor.
27	Certified copy of the letter dated 01.02.2018 issued by the decree holder to the Judgment debtor.
28	Certified copy of the letter dated 28.02.2018 issued by the decree holder to the Judgment debtor.
29	Certified copy of the letter dated 02.03.2018 issued by the Judgment debtor to the decree holder.
30	Certified copy of the letter dated 12.03.2018 issued by the decree holder to the Judgment debtor.
31	Certified copy of the letter dated 26.03.2018 issued by the Judgment debtor to the decree holder.
32	Original bank statement of Judgment debtor issued by Dhanalaxmi Bank Limited, Mount Road, Chennai for the period 01.03.2018 to 31.03.2018 bearing Account No.005406200023004.
33	Online print out of the Order dated 27.03.2018 passed by the Hon'ble Supreme Court in SLP (C) No.27329-27330/2017.
34	(Series 4 Nos.) are the Certified copies of the Orders dated 21.11.2009 passed by the Small Causes Court, Chennai in MP No.446 of 2009 in RCA No.609/2005 and MP No.376 of 2009 in RCA No.1432 of 2004.
35	Certified copy of the plaint dated 06.12.2009 in C.S No.1106 of 2009 filed by the decree holder.
36	Certified copy of the Judgment and decree dated 21.07.2016 passed by Hon'ble XIX Additional City Civil Court, Chennai in O.S.No.11986 of 2010.
37	Certified copy of the lette dated 04.01.2017 issued by the Judgment debtor to the decree holder.
38	Certified copy of the letter dated 23.01.2017 issued by the decree holder to the Judgment debtor.
39	True copy of the stay petition filed by the decree holder in MP No.3 of 2023 in RCOP No.1895 of 2015.
40	Copy of draft lease deed.

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