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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-11-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

CRP.No.6384 of 2026

CNR:{HCMA011941082026}

Case QR

and

CMP.No.27502 of 2026

S.Satheesh Kumar

..Petitioner(s)

Vs

1. Margadarsi Chits Private Limited
   Erode.
   Rep by its Foreman,
   S.Sasikumar
   No.352/799, 2nd Floor,
   Brough Road,
   Erode – 638 001.

2. M/s Selvakumaran Tex,
   Rep.by Proprietor,
   R.Selvakumar,
   S/o C.Rajaingam,
   No.202, B.Mulappan Kovil Street,
   Erode - 638001.

3. V.Shanmugasundaram

4. S.Krishnan

5. V.M.Bhaaskaran

..Respondent(s)

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PRAYER: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the Fair and Decretal order dated 15.10.2025 passed in E.P.No.204 of 2019 in Arb.No.2 of 2014 on the file of the 1st Additional Subordinate Judge, Erode.

For Petitioner : Mr.C.Prakasam

For R1 : Mr.D.Shivakumaran

ORDER

The Civil Revision Petition is filed challenging the order passed by the Executing Court in E.P.No.204 of 2019 in Arb.No.2 of 2014, dated 15.10.2025 allowing the arrest EP filed by the 1st respondent/Decree Holder.

2. It is not in dispute that the 1st respondent initiated arbitration proceedings in Arb.No.2 of 2014 under the provisions of Chit Funds Act, 1982 and obtained an award for recovery of money against the respondents 2 to 5 and the petitioner herein. The 2nd respondent is the Subscriber of the chits/Principal Debtor. The petitioner and the respondents 3 to 5 are the Guarantors.

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3. The award obtained by the 1st respondent/Decree Holder was put into execution in E.P.No.204 of 2019 on the file of the I Additional Subordinate Court, Erode. The Execution Petition filed by the 1st respondent was opposed by the petitioner mainly on the ground that the 1st respondent/Decree Holder should proceed against the Principal Debtor first, only on his failure, the 1st respondent can proceed against the Sureties. Over ruling the said objection, the Executing Court allowed the execution petition filed by the 1st respondent/Decree Holder and directed the petitioner and other respondents to pay the decretal amount and failing which, the petitioner and other respondents were ordered to be arrested and sent to civil prison. Aggrieved by the said order, the petitioner has come before this Court.

4. The learned counsel appearing for the petitioner would vehemently contend that the 2nd respondent has got properties worth about several crores and the 1st respondent/Decree Holder failed to proceed against the properties of the 2nd respondent/Principal Debtor and wantonly wants to proceed against the guarantors purposefully. Therefore, according to him, the impugned order passed by the Executing Court is liable to be set aside.

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5. The learned counsel appearing for the 1st respondent would oppose the civil revision petition on the ground that it is not for the petitioner to dictate terms to the Decree Holder to execute the decree in a particular fashion. The learned counsel for the 1st respondent further submitted that the decree was passed against the petitioner as well as the other respondents jointly and hence, the 1st respondent-Decree Holder was entitled to proceed against the petitioner for recovery of the entire loan amount. In support of his contention, the learned counsel for the 1st respondent relied on the judgment of the Apex Court in ***State Bank of India vs. M/s.Indexport Registered and others*** reported in ***(1992) 3 SCC 159*** and ***The Bank of Bihar Ltd., vs. Dr.Damodar Prasad and another*** reported in ***AIR 1969 (0) SC 297***.

6. A perusal of the award under execution would indicate that the petitioner and other respondents, who were arrayed as respondents in arbitration proceedings were directed to pay the award amount jointly and severally. Therefore, the liability of the petitioner and other respondents are joint and several and the 1st respondent is entitled to proceed against any one of them for recovery of the entire loan amount.

7. It is also settled law that the liability of the Surety is co-extensive with that of the Principal Debtor and it is not open to the Surety to say that the

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Decree Holder must proceeded against the Principal Debtor first and then proceed against the Surety. Therefore, the submission made by the learned counsel for the petitioner that the 1st respondent should have proceeded against the 2nd respondent/Principal Debtor is not appealable to this Court.

8. A perusal of the impugned order would indicate that after overruling the objection of the petitioner with regard to the maintainability of the execution petition against the petitioner without proceeding against the Principal Debtor, the Executing Court abruptly directed the petitioner and other respondents to pay the amount and in default ordered their arrest. It is settled law that before ordering arrest, the Executing Court must be satisfied that the Judgment Debtor is a person of means and inspite of the same, he is not ready to obey the decree and refuses or neglects to pay the decree amount.

9. In this regard, it will be useful to refer to the judgment of the Supreme Court in ***Sheik Sujaudeen vs. T.Arumugham Chettiar*** reported in ***1980 (2) MLJ 472***. The relevant observation reads as follows:-

> *"6. ... ... The Court, no doubt, observed that the judgment-debtor has means to pay. But that by itself is not enough to enable an executing Court to order the arrest of the judgment-*

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debtor. Under Clause (b) of the proviso to Section 51 of the Code, the Court must be satisfied, for reasons to be recorded by it in writing, that the judgment-debtor has not only the means to pay the amount of the decree or a substantial part thereof, but it must also be in a position to record a finding to the effect that possessing such means, the judgment-debtor yet refuses or neglects or has refused or neglected to pay the same. On the facts relating to part payments recorded by the executing Court itself in this case, it cannot be said that the judgment-debtor refuses or neglects to pay the amount of the decree. ... ...”

10. First of all, the Executing Court must be satisfied that the Judgment Debtor was having means to meet the decree and inspite of the same, the refuses or neglects to pay the decretal amount. In the case on hand, the Executing Court has not conducted any enquiry with regard to the means of the Judgment Debtor and simply allowed the execution petition for arrest. Therefore, the impugned order deserves to be set aside and accordingly, this Civil Revision Petition stands allowed. The matter is remitted back to the file of the Executing Court with a direction to consider the execution petition filed by the 1st respondent in the light of the principles enunciated under Proviso to Section 51 of the Civil Procedure Code.

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11. Taking into consideration the execution petition was filed in the year 2019, this Court is inclined to direct the Executing Court namely the 1st Additional Subordinate Court, Erode, to dispose of E.P.No.204 of 2019 in accordance with law, as expeditiously as possible, within a period of three months from the date of receipt of copy of this order.

12. With the above direction, this Civil Revision Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

17-11-2026

Index: Yes
Speaking order
Neutral Citation: Yes

dm

To

The 1st Additional Subordinate Court,
Erode.

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S.SOUNTHAR J.

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