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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 27.01.2026
Pronouncing orders on : 03.02.2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

REV.APPLN. Nos. 1 & 2 of 2026

in

**Arb.O.P(COM.DIV.) NOS. 257 OF 2021 &
ARB O.P(COM.DIV.) NO. 209 OF 2022**

REV.APPLN. No.1 of 2026

1. Prime Store
its Partner Mr.S.Kaarthi

2. S. Kaarthi

3. Padma Sivalingam

4. Shruthi Kaarthi

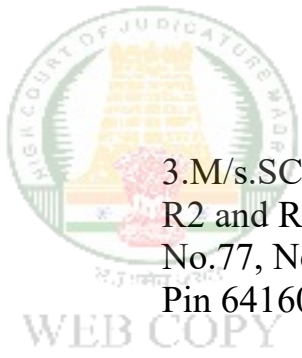
All the petitioners are at
No.77, New Market, Tiruppur,
Pin 641604

Applicant(s)

VS.

1. Sugam Vanijya Holdings Private Limited
Plot No.11B, Sy.No.40/9,
Devadandra Industrial Area, II Stage,
K.R.Puram, Hobli, Bangalore - 560 048.

2.K Sivalingam



3.M/s.SCM Silks Private Limited
R2 and R3 are at:
No.77, New Market, Tiruppur,
Pin 641604.

Respondent(s)

PRAYER: Review application filed under Order XIV Rule 8 of O.S. Rules read with Order XLVIII Rule 1(a) and Section 114 of the C.P.C., to review the order dated 08.10.2025 in Arb.O.P.(Com.Div) No.257 of 2021.

REV.APPLN. No.2 of 2026

1. M/s.SCM Silks Private Limited.,
Rep by its Director, Mr.K.Sivalingam

2.K Sivalingam

Petitioners are at
No.77, New Market, Tiruppur, Pin - 641 604.

Applicant(s)

Vs

1. Sugam Vanijya Holdings Private Limited,
Plot No.11B, Sy.No.40/9, Devadandra Industrial Area,
II Stage, K.R.Puram, Hobli, Bangalore-560048.

2.Prime Store
its Partner Mr.S.Kaarthi,

3.S Kaarthi



4.Padma Sivalingam

5.Shruthi Kaarthi

R2 to R5 are at:

No.77, New Market, Tiruppur, Pin 641604

Respondent(s)

PRAYER: Review application filed under Order XIV Rule 8 of O.S. Rules read with Order XLVIII Rule 1(a) and Section 114 of the C.P.C., to review the order dated 08.10.2025 in Arb.O.P.(Com.Div) No.209 of 2022.

In both Review Applications:

For Applicant(s) : Mr. Anirudh Krishnan

For Respondent(s) : Mr.P.S.Raman
Senior Counsel for
Mr.P.J.Rishikesh

COMMON ORDER

1. These Review Applications seek a review of the common order passed by this Court in Arb.O.P.(Com.Div.) No.257 of 2021 and Arb.O.P. (Com.Div.)No.209 of 2022, dated 08.10.2025.



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2. Heard Mr.Anirudh Krishnan, learned counsel appearing on behalf of the applicants and Mr.P.S.Raman, learned Senior Counsel appearing on behalf of the respondents.

3. These review applications have been filed mainly on the ground that when orders were passed in the original petitions, this Court omitted to take notice of the judgment of the Supreme Court in ***Maula Bux v. Union of India*** reported in ***(1969) 2 SCC 554***. It is contended on behalf of the review applicant that the said decision mandates the claimant to prove loss before being entitled to damages pursuant to a liquidated damages clause. In the case in hand, the claimant did not prove the loss and in spite of the same, the Arbitral Tribunal had concluded that it was entitled to liquidated damages.

4. The learned counsel for the applicants submitted that the Supreme Court in ***Maula Bux*** case referred *supra* has taken note of the judgment of the Constitution Bench in ***Fateh Chand vs Balkishan Das*** reported in ***AIR 1963 SC 1405*** and the judgment broadly classified cases where loss can be proved and cases where loss cannot be proved. In the later cases, if the Court finds the pre-estimated compensation to be reasonable, the same can be awarded. However, in the former cases, even if the parties have agreed pre-estimated



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damages, the claimant must necessarily prove the loss. However, in Paragraph No.52 of the order passed in the petitions, it was held otherwise. It was further submitted that the judgment of the Constitution Bench in ***Fateh Chand*** case referred *supra* dealt with reasonable compensation and how that reasonable compensation must be determined by the Court was explained in ***Maula Bux*** case. Apart from the same, the above judgments were considered in detail by the Hon'ble Mr. Justice Senthilkumar Ramamoorthy in ***Infotech Limited vs Tamil Nadu E- Government Agency and others*** in O.P.No.532 of 2014 dated 07.11.2019, reiterating the above position of law and that the order passed in the main petitions conflicts with the judgment of the other learned single Judge and that by itself requires review of the order passed in the petitions.

5. Per contra, the learned Senior Counsel appearing on behalf of the respondents submitted that in the case in hand, Section 74 of the Contract Act comes into play and that the Constitution Bench in ***Fateh Chand*** case dealt with the scope of awarding reasonable compensation, which was taken into consideration by this Court while passing the order in the petitions. Apart from that, the judgment in ***Maula Bux*** case did consider the judgment of the Constitution Bench in ***Fateh Chand*** case and the law in ***Maula Bux***



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case did not in any way detract from the law laid down in ***Fateh Chand*** case. Therefore, the order passed in the petitions relying upon the ***Fateh Chand*** judgment does not require any review. In the case in hand, the parties had entered into a lease agreement and the loss suffered was determined by the parties based on the monthly rent fixed and the pre-estimated liquidated damages was accordingly fixed in the contract and was accepted by both sides. Therefore, unless the pre-estimated liquidated damages fixed by the parties is found to be unreasonable or it amounts to a penalty, it is always open to the Court to fix the compensation based on such pre-estimated liquidated damages once the claimant establishes that he has suffered legally injury, ie., loss or damage. If this requirement is satisfied, there is no further requirement for the plaintiff to prove actual loss or damage. It was further submitted that the judgment in O.P.No.532 of 2014 was a case where the term ‘Penalty’ was used in the relevant clause in the agreement and therefore, the learned single Judge held that the claimant has to necessarily prove the loss suffered. Therefore, that case is clearly distinguishable on facts. Even the judgment in ***Maula Bux*** is clearly distinguishable on facts. Accordingly, the learned Senior Counsel sought for the dismissal of these review applications.



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6. This Court has carefully considered the submissions made on either side and also the materials available on record.

7. When the order was passed in the original petitions, this Court took into consideration the judgment of the Constitution Bench in ***Fateh Chand*** case referred *supra*. This Court also took into consideration the judgment passed in O.P.No.532 of 2014. Apart from that, this Court also took into consideration the judgment of the Apex Court in ***Kailash Nath Associates v. Delhi Development Authority and Another*** reported in ***2015 4 SCC 136***. In this judgment, the earlier judgments in ***Fateh Chand*** and ***Maula Bux*** were also taken into consideration.

8. After having taken into consideration all the judgments, the following findings were rendered:

“48. The contention raised by the learned counsel appearing on behalf of the petitioners is that Clause 4.3 of the lease deed is in the nature of liquidated damages and to allow a claim for liquidated damages, proof of loss is a sine qua non and that since the first respondent/claimant failed to prove the loss and since they have also been awarded the future rent even after the petitioners surrendered possession on 12.11.2019, the impugned award passed by the learned Arbitrator for the entire lock-in period is unsustainable.

49. A careful reading of Clause 4.3 of the lease deed would show that the first 36 months' period from the commencement date, which is defined in Clause 1.1 of



the lease deed, will be considered as the lock-in period. During this period, the lessee will not have the right to terminate the lease before the expiry of the lock-in period. In case the lessee terminates the lease, then the lessee must pay the lessor the admitted liability (and not by way of penalty), 100% of the rent for the balance term of the lock-in period. There can be no doubt that the stipulation provided for in Clause 4.3 is in the nature of liquidated damages by way of a fixed sum.

50. As noticed earlier, Section 74 of the Indian Contract Act provides that the party complaining of a breach, can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and if it is found to be such by the Court. There are two categories of stipulated payment for the breach of contract and they are :

- (a) a sum named in the contract as the amount to be paid in case of breach; and
- (b) stipulation by way of penalty.

In both the categories of payment, the sum stipulated operated as the maximum amount or ceiling.

51. The nomenclature of “liquidated damages” or “penalty” is not relevant or conclusive or determinative and what is relevant is the entire clause read together. If the Court concludes that the stipulated payment is a genuine pre-estimate of anticipated loss in case of breach, the sum stipulated would be managed to be paid if the Court also concludes that it is difficult or impossible to prove the loss in the facts and circumstances of the case. In both the contingencies, i.e. in cases where the amount is fixed as compensation or it is stipulated by way of penalty, only reasonable compensation can be awarded.

52. In the case at hand, it is not the contention on the side of the petitioners that there was no loss or damage. The contention is that there was no proof of loss or



damage. However, once the case is covered by Section 74 and loss or breach is established, the provision itself says that the aggrieved party would be entitled to receive compensation from the party, who has broken the contract, “whether or not actual damage or loss is proved to have been caused by the breach”.

9. In **Maula Bux** case, the learned counsel for the petitioner relied upon the following paragraph:

“6. Counsel for the Union, however, urged that in the present case Rs 10,000 in respect of the potato contract and Rs 8500 in respect of the poultry contract were genuine pre-estimates of damages which the Union was likely to suffer as a result of breach of contract, and the plaintiff was not entitled to any relief against forfeiture. Reliance in support of this contention was placed upon the expression (used in Section 74 of the Contract Act), “the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation”. It is true that in every case of breach of contract the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree, and the Court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of contract. But the expression “whether or not actual damage or loss is proved to have been caused thereby” is intended to cover different classes of contracts which come before the Courts. In case of breach of some contracts it may be impossible for the Court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the Court is unable to assess the compensation, the sum named by the parties if it be regarded as a genuine pre-estimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of a penalty. Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him.”

10. The ground raised by the learned counsel for the applicants is that, in the case in hand, the claimant could have claimed compensation which is determinable and, in such cases, the claimant was in a position to prove the



loss suffered by them. It is contended that in view of the ***Maula Bux*** case, the claimant without proving the loss suffered by them will not be entitled for liquidated damages, even if there is a genuine pre-estimation of damages agreed between the parties to the contract.

11. While examining this contention, this Court cannot lose sight of the fact that it is sitting in review jurisdiction over an order passed in a petition under Section 34 of the Arbitration and Conciliation Act, 1996. If a petition under Section 34 is confined to pigeonholes a review application in such a petition is akin to an ant-hole in a pigeon-hole. The short point for consideration is as to whether, the perceived failure to advert to ***Maula Bux*** case, constitutes an error apparent on the face of the record so as to warrant a review.

12. On facts, ***Maula Bux*** was a case involving forfeiture of security deposits for due performance of the contracts involving supply of potatoes, poultry, eggs and fish for one year. The question was whether such amounts could be automatically forfeited. On these facts it was held:

“In the present case, it was possible for the Government of India to lead evidence to prove the rates at which potatoes, poultry, eggs and fish were purchased by them when the plaintiff failed to deliver "regularly and fully" the quantities stipulated under the terms of the contracts and after the contracts were terminated. They could have proved



the rates at which they had to be purchased and also the other incidental charges incurred by them in procuring the goods contracted for. But no such attempt was made.”

13. On the present set of facts, it is certainly not possible to equate Prime Store to the poultry seller in the ***Maula Bux case***. Closer home is the decision in ***ONGC v. Saw Pipes Ltd.***, (2003) 5 SCC 705, where the decision in ***Maula Bux*** was specifically taken note of. The Supreme Court went on to hold as under:

“Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.

“If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to reasonable compensation for the loss suffered. But if the compensation named in the contract for such breach is genuine pre-estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him. Burden is on the other party to lead evidence for proving that no loss is likely to occur by such breach.”

14. The conclusions expressed by this Court in its common order dated 08.10.2025 are in line with the aforesaid observations of the Supreme Court in the ***ONGC case***, which was rendered after taking note of the decision in



Maula Bux. While construing and applying precedents, it is necessary to heed to the word of caution expressed by the Supreme Court in **Bihar School Examination Board v. Suresh Prasad Sinha**, (2009) 8 SCC 483, which reads as follows:

18. The courts should guard against the danger of mechanical application of an observation without ascertaining the context in which it was made. In CIT v. Sun Engg. Works (P) Ltd. [(1992) 4 SCC 363] (vide para 39) this Court observed : (SCC pp. 385-86)

“39. ... It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete ‘law’ declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings.”

15. In the case on hand, this Court held that Clause 4.3 of the Lease Deed fixed a pre-estimated sum, which was held to be not “in terrorem” so as to warrant labeling it as a penalty. This Court found that the sum determined and set out in Clause 4.3 is a reasonable compensation. At paragraph 52, it was held that it was not as if the claimant did not suffer any loss or damage and what was contended was that they did not prove the loss or damage. This Court held that the pre-estimated sum set out in Clause 4.3 of the Agreement was reasonable and therefore, upheld the findings of the learned Arbitrator. It



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cannot be overlooked that this Court was exercising jurisdiction under Section 34 with the result that a mere possibility of an alternative view is no ground to legitimately interfere with the award of the Arbitrator.

16.Clause 4.3 of the Lease Deed provided that the first 36 months period from the commencement date, which is defined in Clause 1.1 of the Lease Deed, will be considered as the lock-in period. During this period, the lessee will not have the right to terminate the lease before expiry of the lock-in period. In case, the lessee terminates the lease, then the lessee must pay the lessor the admitted liability, which is 100% of the rent for the balance term of the lock-in period. This was in the nature of liquidated damages stipulated by way of a fixed sum. It is not the case of the review applicants that the claimant had leased the property to any other tenant and in spite of the same, was claiming liquidated damages. On the facts of this case, this Court took into consideration the fact that the claimant had provided the space as per the specification and requirement of the review applicants and that it was a registered Lease Deed which was reflected in the Encumbrance Certificate and therefore, the claimant was not in a position to let out the property on lease to any third party. This is more so since the review applicants were not complaining about any issue till the termination notice was issued on



14.12.2018 and only thereafter, they started coming up with grounds pointing their fingers against the claimant.

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17. In the light of the above facts, this Court found that the claimant had, in fact, suffered legal injury i.e., loss or damage and the pre-estimated compensation was found to be reasonable and therefore, it was held that there is no further requirement for the claimant to once again prove the loss. Accordingly, the Award passed by the Sole Arbitrator was upheld.

18. Insofar as the judgment relied upon in O.P.No.532 of 2014, dated 07.11.2019, the said case turned on its own facts, since the learned single Judge found that the term 'Penalty' was used in the relevant clause. Therefore, there is no contradiction whatsoever between the order passed in the petitions in hand and the order passed in O.P.No.532 of 2014.

19. It is not necessary for this Court to go into the issue regarding the maintainability of these review applications, since this Court has already analyzed as to whether the order passed in the petitions requires review. Having done so, this Court is unable to persuade itself to hold that there



exists any error apparent on the face of the record to warrant a review of its common order dated 08.10.2025.

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20.In the result, these review applications fail and are consequently dismissed.

No Costs.

03.02.2026

Index:Yes
Speaking order
Internet:Yes
Neutral Citation:Yes
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Rev.Appln.Nos.1 & 2



N.ANAND VENKATESH J.

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Pre-Delivery Order in
REV.APPLN. Nos. 1 & 2 of 2026
in Arb.O.P(COM.DIV.) NOs. 257 OF 2021 &
ARB O.P(COM.DIV.) NO. 209 OF 2022

03.02.2026