



C.M.A(MD)No.1081 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 16.04.2026

PRONOUNCED ON: 19.06.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1081 of 2025

and

C.M.P.(MD)No.15482 of 2025

President,
St.Alphonsa trust,
R.C.Diocese of Kottar,
represented by the Bishop of Kottar,
Nagercoil, Kanyakumari District.

: Appellant/Respondent/
Respondent/Judgment Debtor

Vs.

Michael Builders & Developers Pvt Ltd.,
represented by its Managing Director,
Mr.Praveen T.T., 1/2/182 Kanathukonam,
Cheriyakolla,
Cheruvallor P.O., Tamil Nadu.

: Respondent/Review Petitioner/
Petitioner/Decree - Holder

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1(w) C.P.C., to call for the records and to set aside the fair order and decreetal order passed in E.A.No.16 of 2025 in E.P.No.13 of 2023 in O.P.No.934 of 2017, dated 25.07.2025, on the file of the Principal District Judge, Kanyakumari District at Nagercoil.



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For Appellant : Mr.T.Lajapathi Roy
Senior Counsel for
Mr.G.Anto Prince

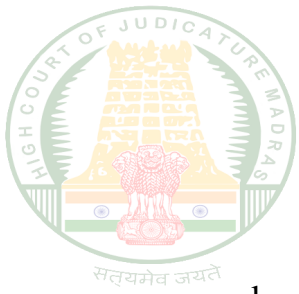
For Respondent : Mr.N.Dilip Kumar

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order passed in E.A.No.16 of 2025 in E.P.No.13 of 2023 in O.P.No.934 of 2017, in A.F.No.66 of 2018, on the file of the Principal District Court, Kanyakumari District at Nagercoil.

2. The facts not in dispute are

(i) An arbitral award was passed in O.P.No.934 of 2017 dated 27.06.2018. The decree holder laid an execution petition in E.P.No.13 of 2023 for enforcement of the award. The Executing Court passed an order of attachment and the judgment debtor challenged the same before this Court by filing a revision in C.R.P.(MD)No.1080 of 2024. This Court, while disposing the revision, vide order dated 15.10.2024 directed both parties to file their respective calculation memos and the Executing Court was directed to conduct enquiry into the matter and pass appropriate



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orders in accordance with law within a period of three months from the date of receipt of a copy of the said order. In pursuance of the said directions, the Executing Court conducted an enquiry and passed final orders dated 08.04.2025.

(ii) The decree holder, alleging that there were errors apparent on the face of the order of the Executing Court, filed a petition in E.A.No.16 of 2025 invoking Order 47 Rule 1 C.P.C., to review the said order. The judgment debtor also filed a petition in E.A.No.17 of 2025 invoking Section 152 C.P.C., alleging that there were clerical and arithmetical mistakes in the order dated 08.04.2025 passed by the Executing Court. The Executing Court, after conducting enquiry, in both petitions passed the common order dated 25.07.2025 allowing both the petitions. Aggrieved by the order passed in the review petition in E.A.No.16 of 2025, the judgment debtor preferred the present Civil Miscellaneous Appeal.

3. It is pertinent to mention that the decree holder, in the review petition, has pointed out three errors allegedly apparent on the face of the records:



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(i) interest was calculated erroneously from 13.10.2018 instead of 13.03.2018 as held in award;

(ii) appropriation of part payments was first made towards principal instead of interest; and

(iii) interest was not paid for tax dues settled by builders at Rs. 1,10,92,970/-.

4. In the petition filed under Section 152 C.P.C., the judgment debtor has pointed out mistake that the Executing Court has calculated the interest at the rate of 18% per annum instead of 12% per annum. The Executing Court, in the common order, rectified the errors pointed out in Nos.1 and 2 and rejected the third one. The Executing Court has further corrected the interest rate as 12% per annum, which was shown as 18% per annum in the earlier order.

5. The learned Counsel for the appellant/Judgment debtor would submit that the decree holder having arrived the amount payable by calculating the amounts by appropriating the amounts paid towards the principal, is estopped from subsequently claiming appropriation of the



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said amounts towards interest. The learned Counsel would further contend that the Executing Court having accepted the calculation furnished by the decree holder and determined the amount payable, ought not to have entertained the review petition seeking alteration of the mode of appropriation. The learned Counsel would further contend that the Executing Court has erroneously calculated the interest on interest particularly when the award does not contain any such clause and that therefore, the order passed in the review petition is liable to be set aside.

6. Per contra, the learned Counsel for the respondent/decreed holder would submit that this Court, in the earlier orders passed in C.R.P. (MD)No.1080 of 2024 had directed both parties to file fresh calculation memos and directed the Executing Court to determine the amount payable and in pursuance of the same, fresh calculation memos were filed and the Executing Court, after enquiry, determined the amount payable, that the earlier calculations made by the decree holder in the execution petition, cannot attain finality nor can it operate as an estoppel, particularly, when the Court is required to determine the amount payable as per the arbitral award and the applicable legal principles.



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7. As already pointed out, this Court, while disposing of the revision petition in C.R.P.(MD)No.1080 of 2024, directed both parties to file fresh calculation memos and directed the Executing Court to conduct enquiry and pass appropriate orders. As rightly contended by the learned Counsel for the decree holder, once such a direction had been issued by this Court, the Executing Court was under an obligation to arrive at the correct amount payable under the award and not merely to adopt the calculation furnished by either of the parties.

8. It is pertinent to note that a calculation memo is only a statement of claim or a working sheet furnished by a party to the dispute. Merely because the decree holder had initially filed a calculation adopting particular mode of appropriation, the same would not prevent either the Court or the decree holder from showing there arose a patent error in such calculation. No doubt, it is settled law that there can be no estoppel against law and a party to the lis cannot be compelled to perpetuate a mistake merely because such mistake had been committed earlier.



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9. A perusal of the entire records would reveal that the Executing Court, while determining the amount payable had committed certain apparent errors. According to the judgment debtor, the Executing Court had calculated interest upon accrued interest and that the mode of appropriation adopted was contrary to the settled legal principles. As rightly contended by the learned Counsel for the decree holder, if such errors are apparent from the record itself and are capable of being identified without embarking upon a roving enquiry or re-appreciation of evidence on record, the same would fall within the ambit of review jurisdiction.

10. In the case on hand, the Executing Court has not re-opened the entire adjudication on merits, but it has only corrected the patent mistakes pointed out by both sides in the original order relating to the manner of appropriation and determination of the amount payable. Notably, when the Executing Court finds that the final orders passed earlier does not confirm to the award or the settled legal principles governing calculation and appropriation, the said Court is not only empowered, but is duty bound to rectify its own mistakes.



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11. In view of the above, this Court is of the view that the contention of the judgment debtor that the decree holder is clearly estopped from seeking correction of the mode of appropriation, merely because a different calculation had been furnished earlier, cannot be sustained. Moreover, the calculations made earlier in the execution petition cannot over-ride the legal principles, nor can it preclude the concerned Court from correcting the apparent errors.

12. The learned Counsel for the decree holder would submit that neither the settlement agreement dated 13.03.2018 nor the arbitral award contains any specific clause providing mode of appropriation of the part payments made by the judgment debtor namely, whether the part payments are to be appropriated first towards the principal amount or towards the interest and thereafter towards principal and that in the absence of any such specific clause, the Executing Court has rightly applied the legal position settled by the Constitution Bench of the Hon'ble Supreme Court in ***Gurpreet Singh Vs. Union of India*** reported in ***(2006)8 SCC 457***.



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13. As rightly contended by the learned Counsel for the decree holder, when the agreement and the award are silent regarding the mode of appropriation of payments, the Executing Court is required to apply the settled principles governing appropriation. The Constitution Bench of the Hon'ble Supreme Court in ***Gurpreet Singh Vs. Union of India***, reported in **(2006) 8 SCC 457**, has explained the manner in which payments made during the course of execution are to be appropriated towards costs, interest and principal. Considering the above legal position, the order of the Executing Court directing appropriation of the payments first towards interest and thereafter towards the principal amount is perfectly in order and the same cannot be found fault with.

14. As rightly pointed out by the learned Counsel for the appellant/Judgment debtor, the Executing Court has calculated the interest on the accrued interest and that in the absence of any provision in the award authorising such calculation, the calculation of the Executing Court in this regard cannot be sustained. A careful scrutiny of the calculation made by the Executing Court in the review petition would



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reveal that the interest has been calculated on the accrued interest, resulting in levy of interest upon interest. Considering the above, the impugned determination by the Executing Court cannot be said to reflect the correct amount payable to the decree holder.

15. The decree holder as well as the Judgment debtor have filed calculation memos before this Court. The calculation memo filed by the decree holder proceeds on the basis of calculating interest only on the outstanding principal amount and the same into account the payments made by the Judgment debtor on the respective dates of payment and, after giving credit to such payments, interest has been calculated on the reduced principal amount for the relevant period.

16. Considering the above, the method of calculation adopted by the decree holder is perfectly in accordance with law and is liable to be accepted. Accordingly, the calculation furnished by the decree holder is accepted. Consequently, the amount determined on the basis of calculation memo , ie., Rs.2,41,05,084/- is fixed as the amount payable, apart from the service tax already paid.



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17. In the result, the Civil Miscellaneous Appeal is partly allowed. The Judgment Debtor is directed to pay a sum of Rs. 2,41,05,084/- as on 08.04.2026 together with a sum of Rs.1,00,00,528/- towards service tax paid to GST, aggregating to Rs.3,41,05,612/-, within a period of two weeks from the date of receipt of a copy of this judgment, failing which the Executing Court shall proceed further in accordance with law. Consequently, the connected Civil Miscellaneous Petition is closed. There shall be no order as to costs.

19.06.2026

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1. The Principal District Court,
Kanyakumari District at Nagercoil.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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19.06.2026