

**IN THE COURT OF JUDGE, COMMERCIAL COURT (SENIOR CIVIL JUDGE
CADRE), COIMBATORE**

PRESENT: THIRU.C.B.VEDAGIRI, B.PHARM, MS-IT (AUS)., L.L.M., Judge
Commercial Court, (Senior Civil Judge Cadre)
Coimbatore.

Dated this the 18th Day of November 2025, Tuesday

EA No.1 of 2025

in

EP No.304 of 2024

(CNR.No.TNCB23-000858-2024)

M/s. Oodu Implementers Pvt Ltd.,

Formerly known as M/s. Itara IT Solutions Pvt Ltd.,

Rep by its Director

Mr.D.Purushothaman

... Petitioner/Judgement Debtor

//Vs//

M/s. Boncart Retail Services Pvt Ltd.,

Rep by its Managing Director,

Mr.K.P.Sampathkumar

...Respondent/Decree Holder

This Petition coming on this day for final hearing before me in the presence of Thiru. M.SundaraKadeswaran, Advocate for the Petitioner/ Judgment Debtor and Thiru. P. Sampath, Advocate for the Respondent/Decree Holder. Upon hearing the both counsels and on perusal of records, having stood over till this day for consideration, this Court passed the following:-

ORDER

The Petition has been filed by the Petitioner/Judgment Debtor under order VIII Rule 9 and Section 151 of CPC may be pleased to grant me leave to file additional counter statement and justice be rendered.

1. The sum and substance of the Petition:

The Petitioner/Judgment Debtor submits that he was the petitioner herein and Respondent in above EP proceedings. The Petitioner/Judgment Debtor submit that the petitioner being the director of the petitioner Company herein. The petitioner/judgment debtor states that the above EP has been filed by the respondent/petitioner for execution of the award passed by the learned arbitrator dated 23.09.2019. The respondent/petitioner has sought relief under Order 21 rule 37 and section 55 of CPC as against the petitioner/respondent, who was an individual representative for the petitioner Company. The petitioner/judgment debtor have already filed his counter statement for the liability/debt of a company, whose directors cannot be personally held liable unless a personal decree has been passed against them. Since this aspect was principal of law, it was not pleaded in his counter statement. However now he was advised that the same may be put forth in pleadings by way of additional counter statement as it is necessary aspect to decide whether the award can be executed or not. In the above circumstances, it has become necessary for him to file the additional counter statement putting forth the pleadings. The petitioner/judgment debtor was advised that the petitioner/judgment debtor was entitled to file the additional counter statement with objections as the relief was sought against him. Unless he was granted leave to file the additional counter statement he will suffer irreparable loss and hardship. All those facts and pleadings would also aid the petitioner/judgment debtor has prays this Honorable court to decide this issues in dispute. The delay in filing the additional counter statement is neither willful nor wanton. It is therefore just and necessary that this Honorable Court

may be pleased to grant me leave to file additional counter statement and thus justice be rendered.

2. The crux of the Counter filed by the Respondent/Petitioner:

The Respondent/Decree Holder states that the petition is false, frivolous, vexatious and not maintainable both in law and on facts of the case. The respondent does not admit any of the averments made in the affidavit support of the petition and puts the petitioner to strict proof of all the averments except those which are specifically admitted hereunder. The Petitioner/judgment debtor has filed the present petition seeking leave to file an additional counter statement under the guise of raising new legal pleas. It is respectfully submitted that the said petition is nothing but a dilatory tactic adopted with an intention to prolong the execution proceedings and to delay the fruits of the decree that have already attained finality. The arbitral award dated 23.09.2019 has been passed after full fledged proceedings in which the Judgement Debtor company had actively participated. The award has not been set aside or modified under Section 34 of the Arbitration and Conciliation Act, 1996, and therefore has become final, conclusive, and binding upon the parties. The present Execution Petition has been filed only to enforce the said award in accordance with law. The contention of the Petitioner that he cannot be personally proceeded against is devoid of merit. The petitioner was the principal person -in-charge and responsible for the conduct and affairs of the Judgment debtor company. The transactions between the parties were directly handled by him. The materials on record clearly show that the Petitioner had personally undertaken to discharge the liabilities of the company and had acted in a representative as well as personal capacity, thereby making himself liable for the debts arising under the award. The plea that the Petitioner will suffer irreparable loss is baseless. On the contrary, it is the Decree Holder who continues to suffer loss and hardship due to the deliberate and protracted tactics adopted by the Judgment Debtor for the past several years since the date of award. The so-called additional counter statement sought to be filed does not

introduce any new material fact but only reiterates legal contentions already impliedly covered in the existing pleadings. Hence, the petition is unnecessary, vexatious, and filed only to delay execution. The respondent therefore prays that this Honorable Court may kindly be pleased to dismiss the above application in EA No.1/2025 in E.P. No. 304/2024 with cost and pass suitable orders and render justice.

3. Heard both sides. Perused the record.

4. Point of determination:

The point for consideration is that whether the present petition by the petitioner/Judgment Debtor may be pleased to file additional counter statement is to be allowed or not?

5. The Petitioners /Judgment Debtor contended that the above EP has been filed by the respondent/petitioner for execution of the award passed by the learned arbitrator dated 23.09.2019 and that the respondent/petitioner has sought relief under Order 21 rule 37 and section 55 of CPC as against the petitioner/respondent, who was an individual representative for the petitioner Company. The petitioner/judgment debtor states that the above EP has been filed by the respondent/petitioner for execution of the award passed by the learned arbitrator dated 23.09.2019.

6. The petitioner/JD counsel urged that they have already filed counter statement for the liability/debt of a company, whose directors cannot be personally held liable unless a personal decree has been passed against them. Since this aspect was principle of law, it was not pleaded in his already filed counter statement. So as to decide whether the award can be executed or not, the petitioner / JD has come up with this petition seeking leave of this court to receive the additional counter stating the afore mentioned averments as the same would being a valid defense. The petitioner / JD has also urged that the delay in filing the additional counter is neither willful nor wanton and that the very EP cannot be enforced against the Director of the Company in his individual capacity and that the executing court cannot go behind the decree.

7. Reliance is placed on the decision of the **Hon'ble Allahabad High Court** in **Dhanush Vir Singh Vs Dr. Ilasharma and 3 others 2024 AHC 113931** wherein it was held that:

“29. In view of the above, this Court comes to the irresistible conclusion that the application 57-Kha moved by the Decree Holder/Opposite Party seeking the arrest and detention of the Revisionist who admittedly is not the judgment debtor and only the Vice President of the Judgment Debtor Company is misconceived and was not liable to be entertained. The learned Additional District Judge, Court No. 6, Bareilly, committed manifest error of law in allowing the Application and issuing Warrant of Arrest under Order 21 Rule 38 against the Revisionist under the impugned order dated 16.01.2024. The order dated 16.01.2024 impugned in the instant SCC Revision is set aside. The SCC Revision is allowed. However, this Court is conscious of the fact that a Money Decree has been passed against the Judgment Debtor Company, which is liable to be enforced against the Judgment Debtor Company. The Decree Holder/Respondent may take recourse to the specific provisions of Order 21 Rule 41 CPC to enforce the Decree passed in the SCC Suit No. 18 of 2016 and suitably amend the Execution Application No. 2 of 2021.

30. Learned counsel for the decree-holder may file an appropriate application at the earliest and in the eventuality of such an application being filed, it is expected that the Executing Court shall taken cognizance of the said application and pass appropriate orders expeditiously preferably within two months from the date of service of a certified copy of the order of this Court.”

8. Per contra, the respondent/DH contended that the very petition is false, frivolous, vexatious and not maintainable both in law and on facts of the case. The Petitioner/judgment debtor has filed the present petition seeking leave to file an additional counter statement under the guise of raising new legal pleas and has been filed with a definite purpose to protract and delay the EP and the fruits of the decree that have already attained finality. The arbitral award dated 23.09.2019 has been passed after full fledged proceedings in which the Judgement Debtor company had

actively participated. The award has not been set aside or modified under Section 34 of the Arbitration and Conciliation Act, 1996, and therefore has become final, conclusive, and binding upon the parties.

9. The respondent counsel urged that the present Execution Petition has been filed only to enforce the said award in accordance with law. The petitioner was the principal person -in-charge and responsible for the conduct and affairs of the Judgment debtor company. The transactions between the parties were directly handled by him. The materials on record clearly show that the Petitioner had personally undertaken to discharge the liabilities of the company and had acted in a representative as well as personal capacity, thereby making himself liable for the debts arising under the award.

10. The learned counsel for the respondent argued that it is the Decree Holder who continues to suffer loss and hardship due to the deliberate and protracted tactics adopted by the Judgment Debtor for the past several years since the date of award and not the otherwise. The so-called additional counter statement sought to be filed does not introduce any new material fact but only reiterates legal contentions already impliedly covered in the existing pleadings. Hence, the petition is unnecessary, vexatious, and filed only to delay execution and prayed for dismissal.

11. The respondent counsel also urged that in the cause title, it is mentioned as Pvt Ltd Company and this the Director is held liable individually. Thus EP can be executed against the individual in the capacity as Director of the Company, as the company is a separate legal entity.

12. The respondent counsel placed reliance on the decision of the **Hon'ble Madras High Court in Samson Maritime Ltd Vs Hardy Exploration and Production (India) Inc and Ors MANU/TN/0925/2019** wherein it was held that:

“The Application Nos.3047 to 3050 of 2018 in EP Nos.11 and 12 of 2017, seeking the following reliefs:

(i) To prohibit the 2 nd Garnishee Bank, from parting with the funds lying in Site Restoration fund Deposits (14 accounts) bearing CIF No.85024991365, as described

in the schedule hereto, of which the Judgment Debtor is the sole account holder and further direct the 2 nd Garnishee Bank to deposit the funds lying in the accounts to the credit of the present execution petition hereto under Order 21 Rule 12 and 46 A of the Code of Civil Procedure, 1908.

(ii) ***To detain the authorized signatory of the judgment debtor Mr.Sankalp Mitra in Civil prison as mandated under Order 21 Rule 41(3) of the Code of Civil Procedure 1908***, for concealing the details of the bank accounts in the letter dated 06.05.2016 and violating the order dated 27.04.2016.

(iii) ***To detain the authorized signatory of the judgment debtor Mr.Sankalp Mitra in Civil prison as mandated under Order 21 Rule 41(3) of the Code of Civil Procedure 1908***, for concealing the details of the bank accounts in the letter dated 06.05.2016 and violating the order dated 27.04.2016.

(iv) To prohibit the 2 nd Garnishee Bank, from parting with the funds lying in Site Restoration fund Deposits (14 accounts) bearing CIF No.85024991365, as described in the schedule hereto, of which the Judgment Debtor is the sole account holder and further direct the 2 nd Garnishee Bank to deposit the funds lying in the accounts to the credit of the present execution petition hereto under Order 21 Rule 12 and 46 A of the Code of Civil Procedure, 1908.

21. I am therefore of the considered opinion that the judgment debtor had in fact disobeyed the order of this Court dated 23.03.2016. Therefore, ***it is liable to be committed to Civil Prison under Order 21 Rule 41 Sub Rule 3. Since the judgment debtor is a Company, its Principal Officer, has to be detained, as per the provision of code of Civil Procedure. Hence the applications in Application No.3048 and 3049 are allowed, with a direction to detain the Principal Officer of the judgment debtor - Mr.Sankalp Mitra, in Civil Prison for a period of 15 days. The warrant of arrest and detention to be issued after 10 days. There shall be no order as to costs.***”

13. It is from the record that the respondent / DH has filed the above EP for the execution of the arbitral award dated 23.09.2019 and the same has not been set aside or modified under Section 34 of the Arbitration and Conciliation Act, 1996. This court

finds force in their argument of the respondent that since the award was not challenged in the manner known to law, the same has become final, conclusive, and binding upon the parties.

14. The only contention of the petitioner/JD is that the execution petition has been filed against the petitioner/respondent, who was an individual representative for the petitioner Company and now has stated that for the liability/debt of a company, directors cannot be personally held liable unless a personal decree has been passed against them, which was not earlier averred in the counter statement already filed by the JD.

15. This court finds that there is no new facts being added through the additional counter and that the respondent / DH would not be prejudiced if leave is granted to the petitioner to adduce additional counter.

16. In considering the nature of the petition, delay occurred, this court is inclined to allow the petition upon payment of cost of Rs.2000/- to be paid by the petitioner / JD to the Respondent / DH on or before 27.11.2025.

In the result, the petition would be allowed upon payment of cost of Rs.2000/- to be paid by the Petitioner / JD to the Respondent / DH on or before 27.11.2025.

The Order is directly typed in computer by Typist, corrected and pronounced by me in this Open Court on this 18th Day of November, 2025.

Judge
Commercial Court
(Senior Civil Judge Cadre)
Coimbatore

List of Documents:-

List of Documents the side of the Petitioners: Nil

List of Documents the side of the Respondents: Nil

Judge
Commercial Court
(Senior Civil Judge Cadre)
Coimbatore

Fair Order
EA No. 1 of 2025 in
EP No. 304 of 2024
Date: 18.11.2025
SCJ, CBE