

In the Court of the Principal District Judge, Thoothukudi.

Present : Tmt.R.Vasanthi, M.L.,
Principal District Judge, Thoothukudi.

Monday, the 21st day of July 2025

E.P. No.9/2022

[C.N.R. No.TNTT01-007786-2021]

in

O.S. No.44/2019

M/s.Annai Logistics through its Proprietor
S.Antony Cruz, Thoothukudi ... Petitioner / Plaintiff

// versus //

- 1) M/s.Ram Meenakshmi Firm through its
Partners, R.Vetriselvan
- 2) R.Vetriselvan
- 3) V.Anbucheziyan ... Respondents / Defendants

This petition has come up before this Court on 10.07.2025 for final hearing in the presence of Thiru.W.Xavier, Advocate for the petitioner and Thiru.M.Muruganantham, Advocate for the respondents, upon hearing both side arguments, on perusing the available records and having stood over for consideration till this day, this Court passed the following

ORDER

This petition has been filed by the petitioner under Order 21 Rule 54, 66 of The Code of Civil Procedure, to attach the petition schedule property solely belonged to the 3rd defendant, one of the partner in 1st defendant firm and after effecting attachment, the attached property brought to the Court sale proceedings and to sell the same through Court public auction and to adjust the sale proceeds into decree amount.

II. The brief averments of the petition are as follows:

The petitioner has filed a suit O.S. No.44/2019 for recovery of Rs.70,95,039/- from the respondents / defendants with the future interest at the rate of 12% for Rs.53,66,898/- from the date of plaint till the date of realization and for cost and the suit was decreed on 07.02.2020 directing the respondents / defendants to pay a sum of Rs.70,95,039/- to the plaintiff with future interest at the rate of 6% for Rs.53,66,898/- from the date of plaint till the date of realization. Against which, no appeal is pending. According to the decree passed by this Court, the respondents / defendants have to pay the total sum of Rs.80,39,269/- and Rs.10,525/- towards the expenses of E.P. Therefore, the petitioner has filed this execution petition to sell the petition schedule property in order to realize the sum of Rs.14,83,305.60 towards

decree amount, interest and cost. Hence the execution petition has to be allowed as prayed for.

III. The brief averments of the counter filed by the respondents are as follows :

The Execution Petition is not maintainable and the same is liable to be dismissed in limine. The petitioner / plaintiff has filed the Execution Petition on the strength of exparte decree passed on 07.02.2020 in O.S. No.44/2019. In fact, the suit itself is not maintainable against the respondents for the reason that the plaintiff has suppressed various facts. The amount mentioned in the plaint was not payable by these respondents and the transactions only between the plaintiff and one Saravana Traders. The suit is also bad for non-joinder of necessary parties.

The respondents were set exparte in the suit in O.S. No.44/2019 for non-filing of the written statement. Immediately, on 21.02.2020, a petition to set aside the exparte order along with the written statement. The petitioner while served with copies of I.As and written statement, made objection on the docket of the I.A., stating that the written statement cannot be filed beyond the period of 120 days as per the Commercial Courts Act. Thereafter, this Court has returned the I.A., raising query of maintainability. The respondents have represented the I.A., by answering the queries. However, again the I.A

was returned without numbering. As against the same, the respondents have filed C.R.P (MD) No.1113 and 1114 of 2022 before the Hon'ble Madurai Bench of Madras High Court to number the petition to set aside the exparte order as well as the I.A., to receive the written statement. The said Civil Revision petitions are pending.

The petitioner has obtained the exparte decree before this Court by representing that the suit in O.S. No.44/2019 was a commercial suit. In fact, the suit in O.S. No.44/2019 was not taken on file as Commercial suit and none of the procedures contemplated under the Commercial Courts Act, as well as procedures laid down in the Amended C.P.C regarding Commercial Courts Act was followed in the present suit. The suit in O.S. No.44/2019 was registered only as regular suit. The respondents have not put on notice that the suit was converted as a Commercial Suit for summary disposal. The notice is mandatory as per the Commercial Courts Act as well as C.P.C. Further, Section 26(2) of CPC and Order VI Rule 3-A followed in the suit. Case management hearing under Order 15A of CPC was not followed. To be precise, none of the procedures contemplated for hearing a Commercial Suit was followed in the instant suit. The objection of the petitioner to number the set aside petition on the ground that the suit was a commercial suit and

decided under the Commercial Courts Act is not substantiated by any procedures or documents.

The respondents have been denied fair trial due to the non-numbering of the set aside petition. The set aside petition was filed within time. The petitioner has wanted to enjoy the decree without facing the trial. The petitioner has wanted to execute the decree against the wrong person, namely, the respondents, who are no way liable towards the petitioner / plaintiff. The petitioner is objecting for numbering the petition to set aside the exparte order without valid reason and on the other hand, they are insisting for execution of the exparte decree. If the execution petition is disposed of without giving opportunity to the respondents to defend the suit through fair trial, the respondents would be put to irreparable loss, hardship and agony. The respondents have filed Civil Revision petitions as stated above and they are pending. In the interest of justice, this Court can very well decide whether the suit is decided as a Commercial suit by following the procedure laid down under the Commercial Courts Act and C.P.C., or not, before venturing to decide the execution petition. Hence, prayed for the dismissal of the Execution Petition.

IV. Neither witness was examined nor exhibits were marked on both side.

V. The point for determination in this petition is :

Whether the petition has to be allowed or not?

VI. The Point:

This petition has been filed by the petitioner to attach the immovable property belongs to the 3rd respondent mentioned in the petition schedule through Court and bring the same in Court auction for realizing the amount of Rs.80,49,794/-.

2) In the counter, though the respondent has stated that the amount mentioned in the plaint was not payable by the respondents and that the transactions only between the petitioner / plaintiff and one Saravana Traders and that the suit is bad for non-joinder of necessary parties and that the respondents herein have filed a petition to set aside the exparte order passed against the respondents, however that petition was not taken on file, because of the reason that the respondent cannot be filed the written statement beyond the period of 120 days as per the Commercial Courts Act, but in fact, the suit was neither taken as Commercial Suit nor followed the procedures contemplated under Commercial Courts Act and hence, the respondents have filed C.R.P (MD) Nos. 1113 and 1114 of 2022 before the Hon'ble Madurai Bench of Madras High Court and the same was disposed of by the Hon'ble

Madurai Bench of Madras High Court on 09.07.2024 with a direction that the respondents can re-present the petition to set aside the exparte order passed against them in the original suit within two weeks from the date of receipt of a copy of the order of the Hon'ble High Court before the Principal District Judge, Thoothukudi and on such re-presentation, the petition can be listed "For Maintainability" in Open Court on any subsequent date, in which both sides learned counsel can argue regarding the maintainability of the petition under Order 9 Rule 13 and depending on the outcome, the Court can either number the petition and take up the petition for hearing on merits or reject the petition as the case may be and if only Order 9 Rule 13 petition is ultimately allowed, thereafter, the question of taking up the other application for filing the written statement would arise.

3) This Court on perusal of the records of O.S.No.44/2019, none of the petition was filed by the respondents / defendants under Order 9 Rule 13 of CPC as directed by the Hon'ble Madurai Bench of Madras High Court. Therefore, the respondent without filing such petition in O.S. No.4/2019 as ordered by the Hon'ble High Court, the respondents are estopped to raise objections which has to be raised in the original suit in this execution petition. Further, it is not the case of the respondents that the petition schedule property is not belongs to the 3rd respondent and that the respondents have paid the

entire decree amount. Therefore, this Court is of the view that, the petitioner is entitled to recover the decree amount by bringing the petition schedule property for attachment and sale, consequently, this petition is liable to be allowed and this point is answered accordingly.

4) In the result, this petition is allowed and the petition mentioned property is ordered to be attached. Batta in a week. Attach by 20.08.2025.

Dictated by me to the stenographer and directly typed by her into computer and corrected and pronounced by me, in the open court, on this the 21st day of July 2025.

Principal District Judge,
Thoothukudi.

Witness examined and exhibits marked on both side :

Nil

Principal District Judge,
Thoothukudi.