

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 19TH DAY OF NOVEMBER 2018

THE HON'BLE DR.JUSTICE ANITA SUMANTH

Rev. A. No.485 of 2009

in

C.S. No.761 of 1990

Rao Bahadur Calavala Cunnan
Chetty Charities, rep. by its trustees

1. M.Nammalwar Chetty,
 2. C.Ethiraj,
 3. J.Govindaswami,
 4. C.Emberumanar Gupta,
 5. C.N.Alwar Chetty,
 6. M.V.Cunniah Chetty,
 7. C.Venkatachalam,
 8. V.Sethuram,
 9. V.R.Bakthavatsalam,
 10. T.Ramachandra,
- all are residing at 116,
Govindappa Naicken Street,
Madras-1.

... Plaintiffs

-Versus-

1. The Official Assignee of
Tamil Nadu as the Official
Assignee of the property
of an Insolvent V.Parthasarathi,
office at High Court Campus,
Madras-104.

3. V.Sudhakar,

4. V.Sridhar,
2 to 4 are residing at No.4,
Dr.Nair Road, T.Nagar, Madras-17.
5. M.S.Stanes Tyre & Rubber Products Ltd.,
business at No.1, Patullos Road,
Madras-2.
6. M/s.Carnatic Studio,
business at No.2, Patullos Road,
Madras-2.
7. M/s.Vijaya Lodge & Hotel,
business at No.3, Patullos Road,
Madras-2.
8. M/s.International Instruments Ltd.,
9. M/s.Yenkan Associates (P) Ltd.,
10. M/s.Protos Engineering (P) Ltd.,
11. M/s.Kriloskar Brothers (P) Ltd.,
8 to 11 are having business at No.4,
Patullos Road, Madras-2.
12. M/s.Kashmir Art Palace,
business at No.156,
Anna Salai (Mount Road),
Madras-2.
13. M/s.Refrigerator & Home
Appliances (P) Ltd.,
business at No.157, Pattullos Road,
(Mount Road), Madras-2.
14. M/s.S.C.Shah,
15. M/s.Phoenix Agencies,
14 & 15 are at No.4,
Patullos Road.
16. M/s.Prace Grip (P) Ltd.,
business at No.158,
Anna Salai (Mount Road),
Madras-2.

... Defendants

Rev. A. No.485 of 2009:-

<https://hcservices.courts.gov.in/hcservices>

Ran Bahadur Calavala Cunnan
Chetty Charities, rep. by its trustees

1. M.Nammalwar Chetty,

2. C.Ethiraj,
 3. J.Govindaswami,
 4. C.Emberumanar Gupta,
 5. C.N.Alwar Chetty,
 6. M.V.Cunniah Chetty,
 7. C.Venkatachalam,
 8. V.Sethuram,
 9. V.R.Bakthavatsalam,
 10. T.Ramachandra,
- all are residing at 116,
Govindappa Naicken Street,
Madras-1. Applicants/Plaintiffs

-Versus-

1. M/s.Protos Engineering Pvt. Ltd.,
4, Pattullos Road, Chennai-600 002.
2. M/s.Kashmir Art Palace,
156, Anna Salai, Chennai-600 002. Respondents

Review Application praying that this Hon'ble Court be pleased to review the order dated 04.03.2003, as modified on 05.12.2003, made in C.S. No.761 of 1990.

This Review Application coming on this day before this court for hearing, the court made the following order:-

The suit has been filed by Dharmamurthi Rao Bahadur Calavala Cunnan Chetty's Charities (in short, 'Trust') arraying the Official Assignee and 15 others as defendants.

2. The plaintiff is a Public Charitable Trust and the owner of premises in New Door Nos.209, 211 and 213, Anna Salai, Pudupakkam, Triplicane, Madras and New Door Nos.5 and 7 Pattulos Road, Pudupakkam, Triplicane, Madras, which had been

leased out to one V.Parthasarathy and his brother V.Pandurangiah. The leases were being renewed from time to time. It appears that during the subsistence of the lease, the properties were sub-leased to various sub-tenants by the original lessee and the lease rentals being collected were woefully low.

3. The present suit thus came to be filed praying as follows:

a. direct the defendants to deliver vacant possession of the suit properties to the plaintiff after removing the superstructure thereof.

b. to direct the defendants to pay to the plaintiff Rs.77,09,040/- being damages for use and occupation for 3 years prior to date of suit.

c. to direct the defendants to pay future damages for use and occupation at the rate of Rs.2,14,140/- p.m. from the date of plaint till the date of realisation.

d. to direct the defendants to pay the cost of the suit to the plaintiff.

e. to grant such relief or reliefs as this Hon'ble Courts may deem fit.

4. While the pleadings were in the process of being completed, proceedings for compromise of the dispute were initiated by the 11th and 12th defendants in suit, Protos Engineering P. Ltd. and Kashmir Art Palace respectively.

5. There appears to be some confusion as to the array

of the respondents herein as defendants in the Suit. The original plaint arrayed Protos Engineering P. Ltd. and Kashmir Art Palace as defendants 10 and 12 respectively. An amended plaint is found on file wherein the aforesaid parties are arrayed as defendants 11 and 12. The judgment and decree impugned in this review application array the aforesaid two parties as 11th and 12th defendants, whereas, by order dated 05.12.2003, this Court has corrected the array of the 11th defendant as 10th defendant. An amended decree has also been issued on 12.12.2003. Therefore, in order to avoid further confusion in the matter, the respondents in the review application, Protos Engineering P. Ltd., arrayed as R1, and Kashmir Art Palace, arrayed as R2, will be referred to as 'Protos and 'KFA' respectively.

6. The Trust and KFA appear to have entered into a Memorandum of Compromise dated 28.02.2003 settling all the issues raised in the plaint, out of Court.

7. Though judgment and decree dated 04.03.2003 states that the Trust and Protos had entered into a letter of undertaking, no such letter of undertaking is available on file or with the parties. To a pointed query put to learned counsel for the Trust as well as Protos in this regard, they confirm that such letter of undertaking, though referred to in judgment and decree dated 04.03.2003, is not available with them.

<https://hcservices.ecourts.gov.in/hcservices/>

8. Be that as it may, the suit came to be dismissed as against both KFA and Protos in the light of the said Memorandum

of Compromise dated 28.02.2003 and Letter of Undertaking (unavailable on file) and a judgment was passed on 04.03.2003 to the following effect:

'Today, learned counsel for the plaintiff has produced a letter of undertaking received from the 11th defendant namely M/s.Protos Engineering Private Limited, Chennai, wherein it is stated that the 11th defendant is prepared to pay rent at Rs.20,000/- (Rupees twenty thousand only) per month in future, effective from 1.1.2003 and also a memo of compromise entered into between the plaintiff and the 12th defendant namely, M/s.Kashmir Art Palace, Anna Salai, Madras. Learned counsel has further submitted that the plaintiff has no objection for the proposal of the 11th defendant.'

2. Recording the said letter of undertaking given by the 11th defendant and the memo of compromise filed by the 12th defendant, the suit is dismissed as against the 11th and 12th defendants.

Post next week for proposals, if any, to be submitted by the other defendants.'

9. The above judgement came to be modified on 05.12.2003 in the following terms:

'Heard the learned counsel for the plaintiff.

The learned counsel represents that he has to file an application for review of the order dated 04.03.2003. Hence he seeks for adjournment of the matter.

Considering the request of the counsel for plaintiff, adjd. to 12.12.2003.

It is also represented by the learned counsel

that the array of 10th defendant in the order dated 04.03.2003 is wrongly stated as 11th defendant. The same is ordered to be corrected as the 10th defendant, since the error is purely typographical in nature.'

10. It appears that the Trust thereafter has had a change of heart with regard to the conclusions arrived at by this Court in judgment and decree dated 04.03.2003 and has sought a review of the judgement dismissing the suit as against Protos and KFA.

11. Though this Application for Review has been numbered only in the year 2009, the seal of the Registry in the Judges Summon reveals that the same has been instituted on 12.12.2003. The Application was returned by the Registry for rectification of defects. There appears to have been substantial delay in re-representation and the application was re-presented only in the year 2009, as a result that the review was numbered only then. A preliminary objection has been raised by the respondents to the effect that the review is barred by limitation. However, in the light of the endorsement of the Registry on 12.12.2006, this issue is not pursued further.

12. The grounds of review are limited and read as under:

I. The Plaintiff Trust had never given its consent for the waiver of the entire damages for use and occupation, from 1978 to 2003, as against the Respondents herein.

II. The Learned Counsel for the Plaintiff Trust gave her consent specifically only for the attornment of tenancy and quantum of future rent, namely Rs.10/- sq.ft. There was no concession ad idem in so far as the damages for use and occupation for the period 1987 to 2003 was concerned.

III. The Plaintiff Trust being a Public Charitable Trust is depending upon the properties for its income and survival and it could never have been intention of the parties that the occupants of the prime most properties in Chennai could get away scot free, without payment of any damages towards use and occupation whatsoever, for an entire period of 16 years.'

13. As far as Protos is concerned, no specific grounds for review have been raised, and the grounds raised pertain only to the memorandum of compromise entered into with KFA. Moreover, records reveal that the suit has been dismissed as against Protos even earlier by order dated 27.02.2003 in the following terms:

'Learned counsel for the 11th defendant has submitted that the said defendant vacated the premises on 28.09.1991 and the entire arrears of rent are also deposited into the court.

Hence, the suit against the 11th defendant is dismissed.

Learned counsel for the 11th defendant also submitted that he has no objection to withdraw the said amount by the plaintiff.

Submission is recorded and the plaintiff

is permitted to withdraw the said amount.

Post the matter on 04.03.2003 at 2.15.

p.m.'

14. Learned counsel were wholly unaware of the aforesaid order or of any action taken in pursuance thereto by the parties. However, upon enquiry, the Registry of this Court confirms that the rents have been deposited till 2002 and a sum of Rs.5,68,359/- is lying to the credit of the suit as on date.

15. The prayer in the present Application in so far as it relates to Protos is for a review of order dated 04.03.2003 as modified on 05.12.2003, which contains no reference to order dated 27.02.2003. In the light of there being no challenge either by way of appeal or review to order dated 27.02.2003 dismissing the suit as against Protos, the order has become final. The subsequent judgment and decree dated 04.03.2003 appears to have been passed without noting the earlier order dated 27.02.2003. The relief sought for as against Protos thus, holds no water as on date and the review application as against Protos stands dismissed.

16. However, both Mr.R.S.Jeevarathinam, learned counsel appearing for Ms.Maduri Donti Reddy, learned counsel for the Trust and Mr.P.B.Balaji, learned counsel appearing for Protos circulate a letter dated 18.11.2014 addressed by Mr.Balaji to the erstwhile counsel for the Trust, the contents of which are as follows:

<https://hcservices.ecourts.gov.in/hcservices/> 'Sub: C.S.No.761 of 1990 - High Court, Madras.
(My client M/s.Protos Engineering & your client, M/s.Dharmamurthy Rao Bahadur.... Charities)

In pursuance of the hearing in Court yesterday and keeping in mind the Court's suggestion to settle the matter, I am writing this to inform you that my clients are willing, strictly without prejudice to their claims and rights in the pending matter, to try and amicably resolve the issues viz., past arrears of rent as well as future rents.

Kindly request your concerned Trustees to meet my clients and if possible facilitate a meeting so that they can sit across the table and trash out the differences in a peaceful manner.

Yours truly,

sd/-

(P.B.Balaji).'

17. The above communication makes it clear that Protos continues to be in possession and occupation of their portion of the suit property till November, 2014, and Mr.Balaji confirms, even till date. Order dated 27.02.2003 to the effect that Protos has vacated the premises is thus clearly incorrect, on the face of it.

18. Being conscious of the position that the plaintiff in suit is a public charitable Trust and specifically in the light of the concurrence expressed by Mr.Balaji on behalf of Protos to the effect that the parties are in the process of arriving at an amicable solution with regard to the issue of past and future rents and in the light of the specific request made by both learned counsel Mr.R.S.Jeevarathinam and Ms.Maduri Donti Reddy for the Review Applicant and Mr.P.B.Balaji for Protos, the disputes as between the parties are referred to

19. I now come with the Review Application in so far as it deals with Kashmir Art Palace. The bone of contention is a Memorandum of compromise dated 28.02.2003 entered into between the Trust and KAP. The relevant paragraphs in the memo of compromise are paragraphs 5, 6 and 7 and are extracted hereunder:

5. Whereas the Plaintiffs and the Twelfth Defendants held discussions to sort out the disputes and differences in so far as they are concerned. The Plaintiffs and the Twelfth Defendants have now reached an amicable settlement out of Court in so far as they are concerned in respect of the portion of the premises at No.156, Anna Salai, Chennai - 600 002, which is already in the possession and occupation of the Twelfth Defendants.

6. As per the settlement reached between the plaintiffs and the Twelfth Defendants out of Court, it is mutually agreed between them that the Twelfth Defendants should pay a sum of Rs.10/- (Rupees Ten only) per square foot per month as rent per month in respect of the portion of the premises in the occupation of the Twelfth Defendants at No.156, Anna Salai, Chennai - 600 002 from the date of recording the Memo of Compromise in the above Civil Suit and the Twelfth Defendants thereby shall continue to be the Tenant in respect of the portion in their possession and occupation at premises No.156, Anna Salai, Chennai - 600 002.

7. It is therefore most respectfully prayed that the above Compromise may be recorded and declared that the directions prayed for by the plaintiffs in their plaint in so far as the Twelfth Defendants are concerned are settled out of Court and render justice.

Dated at Chennai this 28th day of February 2003

TWELFTH DEFENDANTS

sd/-

COUNSEL FOR TWELFTH

DEFENDANTS

PLAINTIFFS

sd/-

COUNSEL FOR PLAINTIFFS'

20. The Review Application, as the grounds reveal, is filed on the basis that there has been no compromise entered into as between the parties in relation to past arrears of rents and that the inclusion of the issue of past rents in the Memorandum of Compromise was incorrect.

21. Mr. Jeevarathinam draws attention to the provisions of Order XXIII Rule 3 of the Civil Procedure Code, 1908 (in short 'CPC') dealing with compromise of suit and reading as follows:

3. Compromise of suit.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.

(emphasis, mine)

22. The phrase 'in writing and signed by the parties' was inserted in Rule 3 vide Amendment Act, 1976 with effect from 01.02.1977. The memo of compromise provides for the signatures of the parties as well as their respective counsel. However, while the signatures of the counsel have been

appended, the signatures of the parties are conspicuous by their absence. The Trust thus emphasises that there was no intention on their part to compromise the suit in so far as it related to the issue of past rents and the counsel ought not to have compromised this issue seeing as he/she did not, in fact, have the authority to do so.

23. Thus, according to the Trust, the present Application is both maintainable as well as liable to be allowed since the impugned judgment and decree are based upon a compromise memo which is invalid in so far as it is not executed by the parties but only the counsel who had no authority to enter into such compromise.

24. The judgments of the Supreme Court in the case of *Som Dev and others V. Rati Ram and another* ((2006) 10 SCC 788 and a Division Bench of the Madras High Court in the case of *K.M.Ramanathan and others V. Rengasamy and others* (2013 (2) CTC 13) are pressed into service to establish that a compromise must be signed by the parties to be valid.

25. The Trust however does not dispute the position that the parties have negotiated and settled all other issues/disputes inter se under the same memo of compromise dated 28.02.03, barring the issue of past rents. Thus, according to the Trust, the judgment and decree dated 04.03.2003 dismissing the suit as against KFA in entirety, traverses beyond the compromise entered into between the parties. This, in substance, is the summary of arguments advanced before me seeking review of the judgement dated

04.03.2003.

26. Mr.T.P.Sankaran, for his part, seriously contests the application pointing out that the memo of compromise was the conclusion of detailed negotiations as between the parties, intended to comprehensively cover all disputes between them. My attention is drawn to the prayers in the suit, which specifically address the issue of past arrears of rents as well. Thus according to him, the memo of compromise records a wholistic settlement as between the parties and paragraph seven (7) thereof records and declares that all directions prayed for by the plaintiffs, which includes the prayer for past arrears of rent, stands settled as between the parties, amicably and outside the Court.

27. He also argues that the present review application is not maintainable as there is no error apparent on record. Moreover, the counsel engaged was vested with the requisite authorisation by vakalatnama both to appear on behalf of the party as well as to sign and execute a compromise with the opposing party in regard to the dispute in question. He relies on a slew of judgments/decisions as below:

On the question of Review:

- a) *LiLy Thomas etc. V. Union of India and others* (AIR 2000 SC 1650)
- b) *State of W.B. and Ors. V. Kamal Sengupta and another* (AIR 2009 SC (Supp) 476)
- c) *Union of India V. Sandur Manganese & Iron Ores Ltd. & Ors.*

<https://hcservices.ecourts.gov.in/hcservices/> (2013 AIAR (Civil) 614)

On the question of validity of Compromise:

- a) *Byram Pestonji Gariwala V. Union Bank of India and others* ((1992) 1 SCC 31)
- b) *Y.Sleebachen etc. V. Superintending Engineer WRO/PWD & Another* (2014 SAR (Civil) 909)
- c) *Commissioner of Endowments and others V. Vittal Rao and others* ((2005) 4 SCC 120)
- d) *Pushpa Devi Bhagat V. Rajinder Singh and others* ((2006) 5 SCC 566)
- e) *Bakshi Dev Raj (2) and another V. Sudheer Kumar* ((2011) 8 SCC 679)

28. I have heard learned counsel in detail.

29. As far as maintainability is concerned, the provisions of Order 47 Rule 1 provide for a review of a judgement in the following terms:

1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

30. The provisions of Rule 1 permit a review of a judgment

in three circumstances: i) where there is discovery of new and important evidence, which was not within the knowledge of the party when the original decree was passed ii) where there is a mistake or error apparent on the face of the record necessitating a review and correction and iii) any other sufficient reason warranting a review.

31. In the present case, the third limb of the provision is emphasized pointing out that there is 'sufficient reason' for the review on the ground that the Memo of Compromise is itself invalid in so far as the counsel settled the issue of 'past rents', waiving the same without any authority to do so. Since the maintainability of the application would depend on the existence or otherwise of an error, or the counsel compromising an issue that he/she did not have authority to do, thus constituting sufficient reason to review the judgment, I proceed to adjudicate upon the validity or otherwise of the Memorandum of Compromise.

32. On merits, the specific argument of the Trust is that the judgement and decree dated 04.03.2003 is vitiated by the lack of authority of the Counsel at the relevant point in time to enter into a Compromise on its behalf with respect to the issue of 'past rents'.

33. Since the issue hinges on the authority given to the Counsel, the vakalathnama filed by the Counsel for the Trust at the original instance was called for. It was not available on file. I then proceeded to examine the formats of Vakalathnamas available on file which conformed to the format of vakalat

filed in the Original Side generally, as follows:

'I/We..... the Plaintiff/Defendant above named do hereby appoint and retain as my/our counsel to appear for me/us in the above case and on my/our behalf to conduct and prosecute (defend) the same and all proceedings therein before and after decree. He is/they are also authorised to depute other counsel to act on his/their behalf and to file appeal u/cl.15 of Letters Patent and to review the judgment'

34. None of the Forms of vakalathnama filed, barring one, (filed by Mr.K.V.Rajan and Mr.K.Suresh Kumar, counsel for Protos), including the Form of vakalathnama filed by the counsel now on record for the Trust, specifically authorised the counsel to enter into a compromise on their behalf. Thus, and generally, the scope of engagement of the Counsels, including the Counsel engaged by the Trust presently, did not empower the Counsel to enter into a compromise on behalf of their clients.

35. However, it is germane that the Trust does not dispute the Compromise dated 28.02.2003 in relation to **all other** items covered by the Compromise, except the one in relation to past rents. In such circumstances, when the authority extended to the Counsel to enter into a Memorandum of Compromise generally, and in respect of some of the prayers sought for in the Suit has not been questioned, it is for the Trust to establish by way of evidence that the authority given to the counsel to

settle the issues in suit compromise had been restricted only to **some** of the issues in the suit and not **all** issues. This evidence could have been by way of correspondence exchanged with the Counsel to such effect, minutes of Trust meetings or the like. This not having been done, I am of the view that the Trust has not made out any reason, much less sufficient reason for me to conclude that the Judgement and Decree dated 04.03.2003 as modified on 05.12.2003, is liable to be reviewed.

36. The absence of a specific authorisation in the vakalatnama to the counsel to Compromise the suit on behalf of the Trust will not militate against my conclusion above, in the specific facts and circumstances of this case where the Trust confirms that it is bound by the Memorandum of Compromise dated 28.02.2003 in respect of all issues settled, excepting that in relation to past rents.

37. Mr.Sankaran has also argued that if at all the Trust had a quarrel with the Memorandum of Compromise, it ought to have been made the subject of an appeal in terms of Order 43 Rule 2 of C.P.C. In the light of my conclusion on the facts of this matter, as discussed and stated above, I see no reason to dwell any further on this argument. I also do not elaborate upon the decisions cited at the Bar, since my conclusion in this Review Application is based on the specific facts of this case as set out above.

38. Accordingly, Review Application No.485 of 2009 is dismissed. No costs.

Sd/-A.S.M.J

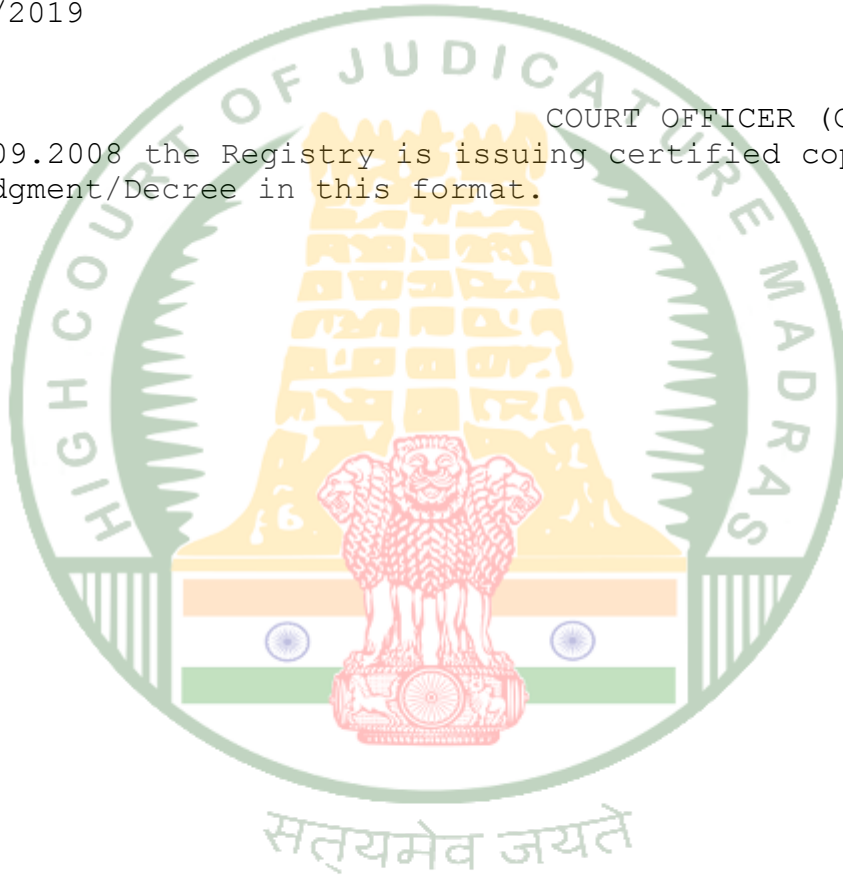
19/11/2018

//Certified to be a true copy//

Dated this the day of 2019.
JJ 08/03/2019

COURT OFFICER (O.S)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment/Decree in this format.



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