

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 09.12.2025

Order pronounced on : 09.01.2026

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THE HONOURABLE MR JUSTICE P.B. BALAJICRP.No.4755 of 2025& CMP.Nos.24045 of 2025

Srinivasa Doss

... Petitioner

Vs.

1.P.Kalaidasan

2.P.Seshian

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decreetal order dated 10.09.2025 made in E.A.No.2 of 2023 in E.P.No.2781 of 2019 on the file XXVII Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Ravindran

For Respondents : Mr.P.K.Sabapathi

ORDER

The revision throws up an interesting question as to whether non-conformity to Order XX Rule 4 of the Code of Civil Procedure, 1908, can be available to an aggrieved defendant, as judgement debtor, to canvas in an application under Section 47 the Code of Civil Procedure, 1908.



WEB COPY 2.I have heard Mr.R.Ravindran, learned counsel for the revision petitioner and Mr.P.K. Sabapathi, learned counsel for the respondents.

3.Mr.R.Ravindran, learned counsel for the revision petitioner would submit that the revision petitioner suffered a judgement and decree in O.S.No.3505 of 1997 on 13.09.2005 and though an attempt was made to set aside the ex-parte decree, the petitioner was unsuccessful. He would however, submit that the mandate of Order XX Rule 4(2) of the Code of Civil Procedure,1908, requires the judgement of the trial Court to contain a concise statement of the case, points for determination, decisions thereon and finally the reasons for such decision. Pointing out to the judgement passed by the trial Court, the learned counsel for the petitioner states that the same clearly offends the definition of a “judgement” under Section 2(9) of the Code of Civil Procedure,1908 and there is a clear flouting of the mandate of Order XX Rule 4(2) of the Code of Civil Procedure,1908.

4.The learned counsel for the petitioner would therefore state that the



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decree is a nullity in the eye of law, which entitles the revision petitioner to attack the executability of the decree by invoking Section 47 of the Code of Civil Procedure, 1908. In support of his contention, the learned counsel for the petitioner, has relied on the following decisions:

1. *Mohandas Issardas and others Vs. A.N.Sattanathan and others* reported in (1955) AIR (Bombay) 113.
2. *Municipal Corporation of Delhi Vs. Gurnam Kaur* reported in (1989) AIR (SC) 38.
3. *State of Haryana Vs. Ranbir @Rana* reported in (2006) AIR (SC) 1796.
4. *Asma Lateef and another Vs. Shabbir Ahmad and others* reported in (2024) AIR (SC) 602 .
5. *Balraj Taneja and another Vs. Sunil Madan and another* reported in (1999) 8 SCC 396.
6. *Rafique Bibi (D) by Lrs. Vs. Sayed Waliuddin (D) by Lrs and others* reported in (2004) 1 SCC 287.
7. *Sandhiya Rani and others Vs. A. Shanmugam* in CRP.Nos.1873 and 1932 of 2023 dated 30.10.2023.
8. *Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd* reported in (2011) 3 CTC 168.
9. *Ramachandran Vs. Balakrishnan* reported in (2020) 6 CTC 843.
10. *K.Balakrishnan Vs. S.Dhanasekar* reported in (2018) 2 CTC 859.
11. *R.Stella Vs. V.Antony Francis* reported in (2019) 5 LW 161.
12. *N.Maheswari Vs. Mariappan and others* reported in (2013) 2 CTC 388.
13. *Balakrishnan Vs. Kaliaperumal* in CRP(MD).Nos.234 & 330 of 2021 dated 06.12.2021.
14. *JST.Nallapa Vs. C.Mahendiran* in [CRP.No.2238](#) of 2019 dated 24.08.2023.



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5.Per contra, Mr.P.K.Sabapathi, learned counsel for the respondents would submit that the suit in O.S.No. 3505 of 1997 was filed for recovery of possession, mandatory injunction and mesne profits. The revision petitioner appeared and filed a written statement, claiming that he was inducted as a tenant by the predecessor in right and title of the respondents herein and he was in lawful occupation. The petitioner however did not appear at trial and an ex-parte decree was passed on 13.09.2005. He would further contend that when the petitioner had filed an application to set aside the ex- parte decree, along with an application to condone delay of 1753 days in I.A.No.1697 of 2010 and the said petition was also dismissed on merits on 15.09.2014, it was not open to the petitioner to over and again reagitate the same issue that the judgement and decree is a nullity.

6.The learned counsel, Mr.P.K.Sabapathi, would further state that after the dismissal of the condone delay application filed by the petitioner, the respondents represented the execution petition in the year 2017 and notice was sent to the revision petitioner/judgement debtor. Even in the application to condone delay in representing the execution petition, it was only on 25.07.2019 that delay in representation was ordered and the execution petition came to be numbered as E.P.No.2781 of 2019. Pointing

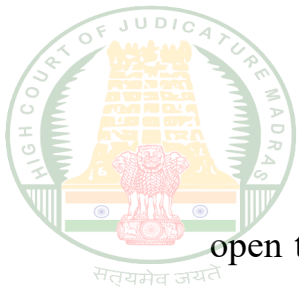


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out to the fact that even in the execution petition, the petitioner was set ex-parte on 05.03.2020 and an application was filed in I.A.No.1 of 2021 to set aside the ex-parte order and the same was allowed on 15.04.2021, the learned counsel would point out to the conduct of the revision petitioner / judgement debtor.

7.That apart, Mr.P.K.Sabapathi, would further bring to my notice that after having failed in his attempts to have the ex-parte decree set aside and despite filing an application under Section 47 of the Code of Civil Procedure, 1908, the petitioner also preferred an appeal in A.S.SR.No.7380 of 2022 along with an application for condonation of delay of 5758 days in I.A.No.1 of 2022, challenging the ex-parte decree in O.S.No. 3505 of 1997. On contest, the learned Principal Judge, City Civil Court, Chennai dismissed the said application. The said order was challenged before this court in C.R.P.No.4245 of 2023 and the CRP was dismissed on 23.06.2025. It is only thereafter that the present application under Section 47 of Code of Civil Procedure, 1908 was taken up before the executing Court.

8.According to Mr.P.K.Sabapathi, learned counsel for the respondents, having lost his right to challenge the decree on merits, it is not



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open to the petitioner to invoke Section 47 of the Code of Civil Procedure, 1908, on the ground that the judgement and decree does not conform to the mandate of Order XX Rule 4(2) of the Code of Civil Procedure, 1908 and that the judgement and decree is a nullity in law. The learned counsel for the respondent has relied on the following decisions:

- 1.State of Gujarat and Others v. Utility Users' Welfare Association reported in (2018) 6 SCC 21.*
- 2.Career Institute Educational Society v. Om Shree Thakurji Educational Society reported in (2023) 16 SCC 458.*
- 3.Hira Lal Patni vs Sri Kali Nath reported in AIR 1962 SC 199.*
- 4.Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and others reported in 1970 (1) SCC 670.*
- 5.Balvant N.Viswamitra and others Vs. Yadav Sadashiv Mule (Dead) through Lrs. and others reported in (2004) 8 SCC 706.*
- 6.M/s. Brakewel Automotive Components (India) Pvt.Ltd Vs. PR.Selvam Alagappan reported in AIR 2017 SC 1577.*
- 7.Moolchand and others Vs. Maganla reported in AIR 1965 Madhya Pradesh 75.*
- 8.R.Rasappan Vs. D.Rajalakshmi (Dead) and others in CRP.Nos.1013 and 2274 of 2024 dated 09.07.2025.*

9.Relying on the said decisions, Mr.P.K.Sabapathi, learned counsel for the respondents would contend that the decision of the Honourable Supreme Court in *Asma Lateef's case* (referred herein supra) does not lay



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down the ratio that a judgement which is not in conformity to Order XX

Rule 4(2) of the Code of Civil Procedure, 1908 is a nullity in the eye of law, as even for the said finding regarding the said judgement being a non-speaking one, the Honourable Supreme Court had already found that without adjudicating on its own competence the Court could not have erroneously assumed jurisdiction, which was inherently lacking and therefore that was the primary ground on which the decree was found to be a nullity. In this regard, the ratio laid down by the Honourable Supreme Court in *State of Gujarat and Others's case* (referred herein supra), as well as *Career Institute Educational Society's case* (referred herein supra) is pressed into service.

10.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the various decisions and the orders passed by the trial Court, as well as the order of the executing Court.

11.The fact remains that the judgement passed on O.S.No. 3505 of 1997 does not qualify to be a judgement under Section 2(9) of the Code of



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Civil Procedure, 1908. Equally, the mandate of Order XX Rule 4(2) of the

Code of Civil Procedure, 1908, has also admittedly not been followed.

Therefore, the only question that remains to be answered is as to whether the said judgement can be attacked as one being a nullity in the eye of law in an application under Section 47 of the Code of Civil Procedure, 1908.

12. In *Asma Lateef's case* (referred herein supra), the Honourable Supreme Court has, in fact, at paragraph Nos.49 to 51 discussed the scope of decree defined under section 2(2) of the Code of Civil Procedure, 1908 and held that where there is no determination or adjudication made by the Court so as to conform to the requirements of a decree, then the decree is not a decree at all in the eye of law and it would be inexecutable and also open to objection in an application under Section 47 of the Code of Civil Procedure, 1908. The Honourable Supreme Court has however, in the preceding paragraphs found that the Court which passed the decree was inherently lacking in jurisdiction, to even try the suit in the first place and after discussing the maintainability of the suit before the said Court at paragraph No.41, the Honourable Supreme Court had already come to the conclusion that the trial Court ought not to have ventured to render a decision on the merits of the controversy, without first adjudicating on its competence to



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decide such controversy and that it amounted to an illegal and erroneous assumption of jurisdiction, rendering the decree a nullity in the eye of law and consequently inexecutable.

13. The Honourable Supreme Court in *State of Gujarat and Others's case* (referred herein supra) which came to be followed later on in *Career Institute's case* (referred herein supra) has held that the test to be applied to find out if a particular proposition of law is to be treated as a *ratio decidendi* of the said case, is to remove the proposition, from the text of the judgement as if it did not exist and if the conclusion of the case would still have been the same, even without examining the proposition then it would not amount to a *ratio decidendi* of the case. Therefore, applying the law laid down in *State of Gujarat and Others's case* (referred herein supra) and *Career Institute Educational Society's case* (referred herein supra) and the “inversion test” as well, I do not find that the Honourable Supreme Court in *Asma Lateef's case* (referred herein supra) has laid down a *ratio decidendi* that a judgement and decree not conforming to Order XX Rule 4(2) of the Code of Civil Procedure, 1908 is a nullity, which can be challenged even in an application under Section 47 of the Code of Civil procedure, 1908.



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14. In fact, even as early as in *Hira Lal Patni's case* (referred herein supra), a Four Judge Bench of the Honourable Supreme Court held that the validity of a decree can be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking inherent jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed or on some other ground, which could have the effect of rendering the Court entirely lacking in jurisdiction in respect of the subject matter of the suit.

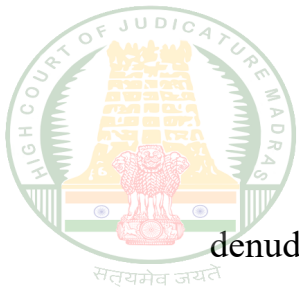
15. A Three Judge Bench of the Honourable Supreme Court in *Vasudev Dhanjibhai Modi's case* (referred herein supra) held that a decree would be a nullity if it was passed without bringing the legal representatives on record of a person, who was dead on the date of a decree or when the decree is made by a Court, which has no inherent jurisdiction and such objection as to validity of the decree can be raised in execution proceedings, if such objection appears on the face of the record and not even in a case where the objection as to jurisdiction of the Court requires examination of the questions raised and decided at the trial.



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16. In *Viswamitra's case* (referred herein supra) the Honourable Supreme Court drew a distinction between a decree which can be said to be “null” and “void” and held that where a court lacks inherent jurisdiction in passing a decree or making an order, such a decree would be without jurisdiction, *non est* and *void ab initio* as a defect of jurisdiction of the Court goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order and the validity of such a decree or order can be challenged at any stage, even in execution or collateral proceedings.

17. Relying on earlier decision of the apex court in *Rafique Bibi's case* (referred herein supra), the Honourable Supreme Court held that a distinction exists between a decree passed by a Court having no jurisdiction and consequently, being a nullity and non-executable and a decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law and that a decree suffering from such illegality or irregularity of procedure cannot be termed inexecutable by the executing Court and the only remedy of a person aggrieved by such a decree is to have it set aside by a duly constituted legal proceeding or by a superior Court, failing which, he must obey the command of the decree and such a decree, which has been passed by a Court of competent jurisdiction cannot be



denuded of its efficacy by any collateral attack or in incidental proceedings.

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Therefore, in view of the ratio laid down by the Honourable Supreme Court, the legal position is that an irregular or a wrong decree is not void and thus cannot be objected to in execution proceedings.

18. In *Brakewel's case* (referred herein supra), the Honourable Supreme Court held that the executing Court cannot travel behind the decree and sit in appeal over the decree and pass any order jeopardising the rights of the parties there under. The role of the executing Court is limited only when the decree is attacked on the ground that the Court that has passed the decree lacked inherent jurisdiction and therefore, inexecutable as being *non-est* in law and under Section 47 of the Code of Civil Procedure, 1908, the executing Court cannot adjudicate anything beyond the questions that arise between the parties or their representatives, limited to execution, discharge or satisfaction of the decree.

19. The Full Bench of the Madhya Pradesh High Court in *Moolchand's case* (referred herein supra) held that even if a decree is not according to law, yet it would be binding and conclusive between the parties until it is set aside in appeal or revision and the executing Court has no



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jurisdiction to refuse execution of a decree on the ground that it is not in accordance with law.

20. In *Rasappan's case* (referred herein supra), this Court held that a judgement, which is not in conformity to Order XX Rule 4(2) of the Code of Civil Procedure, 1908 can only be termed as an irregular judgement and such an irregularity can be set aside only in appeal or review and not by invoking Article 227 of the Constitution of India or at the stage of condonation of delay application.

21. Coming to the decisions that have been on by Mr. R. Ravindran, I have already discussed elaborately, the applicability of the decision of the Supreme Court in *Asma Lateef's case* (referred herein supra).

22. In *Balraj Taneja's case* (referred herein supra), the Honourable Supreme Court held that even if the defendant does not file a written statement, it is the Court's duty to examine the plaint and ascertain if the plaintiff is entitled to a judgement in his favour. There is no quarrel with regard to the said proposition laid down in the said case. However, such irregularity in the judgement cannot be tested at the stage of execution, as



already discussed herein above.

WEB COPY 23. In *Rafique Bibi's case* (referred herein supra), the Honourable Supreme Court held that the executing Court cannot go behind the decree, unless the decree is a nullity due to lack of inherent jurisdiction, that too, which is apparent on the face of the record.

24. The Honourable Supreme Court in *Vasudev Dhanjibhai Modi's case* (referred herein supra), held that there was a clear difference between lack of inherent jurisdiction and wrong exercise of jurisdiction or procedural irregularity and a decree, which suffers from irregularity or illegality of procedure is not inexecutable by the executing Court and the remedy to challenge such a decree is only by approaching the superior Court by initiating appropriate proceedings. This decision, in fact, supports the case of the respondents and not the revision petitioner.

25. The Division Bench of this Court in *M/s. Meenakshisundaram Textiles's case* (referred herein supra), elaborately discussed the definition of judgement under Section 2(9) of the Code of Civil Procedure, 1908. The requirements for a valid judgement, the mandate of Order XX Rule 4(2) and 5 of the Code of Civil Procedure, 1908 and held that a decree which does

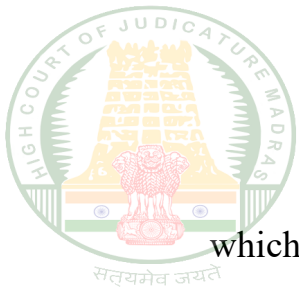


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not conform to Section 2(9) and Order XX Rule 4(2) of the Code of Civil procedure, 1908 would render a decision inscrutable and incongruous.

However, in the very same judgement, the Honourable Division Bench has clarified that even if a judgement is rendered ex-parte, it is appealable and if not appealed against, the judgement and decree would become final and consequently, the decree would become executable. However, the Division Bench proceeded to find that the Court should be extra careful when considering the pleadings and evidence when the defendant is set ex-parte and there must be application of minimum requirement of consideration of pleadings, issues and evidence and the relief sought for while rendering judgement.

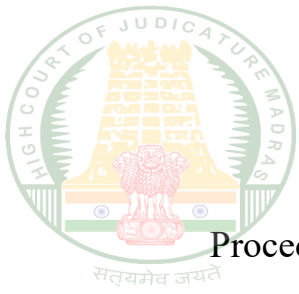
26. The Division Bench judgement was followed later by this Court in *Ramachandran's case* (referred herein supra), *K. Balakrishnan's case* (referred herein supra), *R. Stella's case* (referred herein supra) and *N. Maheshwari's case* (referred herein supra) as well. Therefore, I do not see any of these decisions being applicable to the case of the revision petitioner. There is no lack of inherent jurisdiction on the part of the trial Court which passed the decree. It is in fact not the case of the revision petitioner also that the Court did not have a jurisdiction to try the suit. The only ground on



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which the Section 47 application is maintained is that the judgement passed is not in conformity with Order XX Rule 4(2) of the Code of Civil Procedure, 1908. As held by the Honourable Supreme Court, the said judgement will not be a nullity and not inexecutable, but only amount to be an irregular judgement and decree, which can be set right only if challenged in appeal or in review.

27. Admittedly, the petitioner attempted to have the decree set aside by taking out an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, along with an application to condone delay. The said application was dismissed. A First Appeal was preferred, challenging the judgement and decree. The said appeal was in fact filed belatedly and the Section 5 application was dismissed. The revision filed against the said judgement and said order of the Principal District Court, dismissing the condone delay application was also dismissed by this Court. Therefore, all attempts complaining of the irregularity committed originally by the trial Court have been unsuccessful. In such view of the matter, it is not open to the petitioner to once again harp on the violation of the mandate of Order XX Rule 4(2) of the Code of Civil Procedure, 1908, in the execution petition, by filing an application under Section 47 of the Code of Civil



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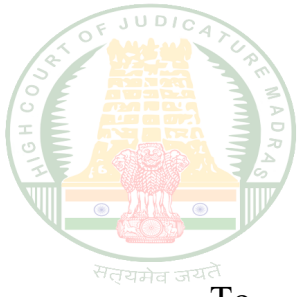
Procedure, 1908. Therefore, I neither find any merit in the revision, nor any irregularity committed or impropriety or perversity in the findings of the executing Court, dismissing the application under Section 47, warranting interference in revision.

28. In fine, the Civil Revision Petition is dismissed. No costs.

Connected Civil Miscellaneous Petition is closed.

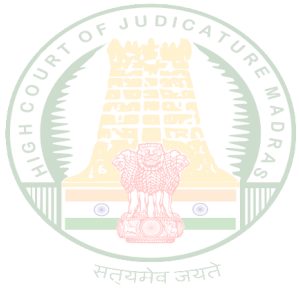
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Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The XXVII Assistant City Civil Court, Chennai.



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P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.4755 of 2025
& CMP.Nos.24045 of 2025

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