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O,A,No.1188 of 2025

In the High Court of Judicature at Madras

Dated : 27.2.2026

Coram:

The Honourable Mr.Justice N.ANAND VENKATESH

O.A.No.1188 of 2025

C.J.Charles Rajkumar, Proprietor
M/s.Kiruba Constructions, No.11,
Cross Street, West Karikalan
III Street, Adambakkam,
Chennai-88.

...Applicant

Vs

Mrs.Rahamathunnisa (died)
W/O A.Isfahai
No.19/1, Sundaram Lane,
Purasawalkam, Chennai-7.

1.Mr.I.Syed Ahmed
S/O A.Isfahani,
No.16/2, Venkambakkam
Main Road, Puthur,
Chennai-126.

2.Mr.I.Haja Saibudin
S/O A.Isfahani,
No.19/1, Sundaram Lane,
Purasawalkam, Chennai-7.

...Respondents

APPLICATION under Order XIV Rule 8 of the Madras High Court Original Side Rules, 1956 read with Section 9((ii)(a) of the Arbitration and Conciliation Act, 1996 praying to pass an order of



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injunction restraining the respondents from in any manner dealing, encumbering or alienating the property more fully described in the schedule to the Judges Summons

Schedule of Property

All that piece and parcel of vacant land (dry) and building lying in No.10, Village Puthur within the Registration Sub-District of Tambaram and Registration District of South Madras bearing survey No.16/2 Part measuring 92 cents and in survey No.16/3 Part measuring 31 cents and in survey No.16/4 Part measuring 1 cent in all totaling to an extent of 1 acre and 24 cents having patta No.123, situated at Puthur Village, Chengalpet Taluk, Selaiyur, Chengalpet District.

Boundaries of S.F.No.16/2 measuring an extent of 92 cents

North by : Property in survey No.16/1
South by : Property allotted to 4th Part
East by : Property belonging to 7th Part
West by : Land in survey No.15

Boundaries of S.F.No.16/3 measuring an extent of 31 cents

North by : Property allotted to 4th Part in survey No.16/2
South by : Highways Road
East by : Property allotted to 4th Part in survey No.16/4
West by : Land in survey No.15

Boundaries of S.F.No.16/4 measuring an extent of 1 cent

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North by : Property allotted to 4th Part in survey No.16/2
South by : Highways Road
East by : Property belonging to 7th Part in survey No.16/4
West by : Property allotted to 4th Part in survey No.16/3

For Applicant : Mr.Srikanth
For R-1 : Mr.P.V.Balasubramanian, SC for
Mr.M.Marudhachalam

ORDER

This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') seeking an order of ad-interim injunction restraining the respondents from alienating the property which forms the subject matter of the execution petition in EP 31 of 2023 on the file of the Principal District Judge at Chengalpet.

2. Heard both.

3. The applicant is the decree-holder. The applicant had initiated arbitration proceedings against the respondents which culminated into an arbitral award dated 26.05.2022 awarding a sum of Rs 10,04,25,376 together with interest at the rate of 18 % per annum. The award has remained unchallenged and has become

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final. The applicant levied execution proceedings under Section 36 of the Act in E.P 31 of 2023 before the District Court, Chengalpet. In the execution application, the applicant invoked Order XXI Rules 54 & 66 and sought attachment and sale of the property of the respondent/judgment debtors. During the pendency of the EP, the instant petition has been filed under Section 9 of the Act seeking an order of ad-interim injunction restraining the judgment debtors from alienating or encumbering the properties which form the subject matter of the EP before the executing court.

4. When the matter had come up on 23.02.2026, I enquired from the learned counsel for the applicant as to how an application under Section 9 could be entertained seeking the relief of injunction when the applicant had already commenced proceedings in EP 31 of 2023 which was still pending before the executing court. The learned counsel for the applicant brought to my notice a decision of a Full Bench of this Court in ***B.M.Insulation Private Limited Vs. Vardeep Petro Chemical Private Limited*** in Arbitration Application No.374 of 2025 and 628 of 2025, dated 21.01.2026. It was contended that till the award is satisfied in the execution

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proceedings pending, an application under Section 9 of the Act can be filed.

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5. Section 9 of the Act empowers the Court to grant interim measures in favour of a party at three distinct stages i.e., (a) before (b) during arbitral proceedings or (c) at any time after the making of the arbitral award but before it is enforced in accordance with section 36. In **Gopuram Enterprises v Integrated Finance Limited**, AIR 2021 Mad 119, the question before the Division Bench was whether an application under Section 9 was maintainable at the post award stage to direct discovery of the assets of the judgment-debtor. The Court went on to observe:

"To the extent that a post-award application for interim measures may be regarded as something in aid of the award by way of its enforcement, the doors of a Court under Section 9 of the Act will be open to an award-holder till such time that the award becomes enforceable. Once the award ripens for implementation, it has per force to be executed in accordance with the Code."



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6. In other words, the Division Bench held that the the doors of the Section 9 Court would remain open only till such time the award became enforceable. As is common knowledge, an arbitral award becomes enforceable in terms of Section 36(1) which is as follows:

"(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court."

7. The Division Bench held that once the time prescribed in Section 36(1) had expired the award became enforceable and an application under Section 9 could not be maintained thereafter.

8. However, in O.A.No.284 of 2023, a learned single judge of this Court took the view that the decision of the Division Bench in **Gopuram Enterprises** had not taken note of the decision of the Bombay High Court in **Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited reported in 2013 SCC OnLine Bom 481**, which in turn was taken note of by the

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Supreme Court of ***Hindustan Construction Company Ltd., v.***

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According to the learned single judge, in view of the aforesaid decisions an application under Section 9 of the Act was maintainable till such time the award was enforced in terms of Section 36 of the Act.

9. When Application No.374 of 2025, ***B.M Insulation Private Limited Vs. Vardeep Petro Chemical Private Limited***, had come up before me on 01.09.2025, it was brought to the notice of this Court that the decision of the learned single judge in O.A.No.284 of 2023, was carried on appeal in OSA (CAD) No.94 of 2023 dated 21.08.2023, and that the order of the learned single judge was set aside, not on the ground that an application under Section 9 was not maintainable, but on merits and the matter was remanded for fresh consideration.

10. It was also brought to my notice that the view taken in ***Gopuram Enterprises***, supra, had been doubted by a Division Bench of the Calcutta High Court in ***Bidyutlata Mahapatra v Shrachi Developers Pvt. Ltd***, 2025 SCC Online Cal 6073, where it was

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observed:

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"42. *The fulcrum of the appellant's argument on this point was the decision of the Madras High Court in the case of Gopuram Enterprises Ltd., Chennai v. Integrated Finance Company Ltd., Chennai, (Supra). Apart from the fact that in that case, the attention of the Court was not drawn to the decision of the Hon'ble Supreme Court in Hindustan Construction Company Limited v. Union of India, Supra, what was decided in that case is that however wide the powers of a Court under section 9 of the 1996 Act may be, such powers may not extend to issuing orders for discovering the assets of an award debtor. Order XXI of the Code of Civil Procedure provides for execution and carries the necessary provisions for such purpose. Section 9 of the Act cannot be enlarged to incorporate the wide authority that an executing Court has to aid the award-holder, who metamorphoses as a decree holder by the legal fiction contained in Section 36(1) of the 1996 Act, to seek or obtain orders of such nature or of arrest or detention of the award debtor or the sequestration of its assets and properties. I am unable to read the said case as an authority for the proposition that once an award becomes final and enforceable, an application under Section 9 of the 1996 Act cannot be filed in the Court. In my considered*

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opinion, such an application would lie inter alia, to preserve and protect the fruits of the award at the instance of the award holder. One must keep in mind the difference between enforceability of an award and enforcement of an award. A Court retains jurisdiction under Section 9 even after an arbitral award may become enforceable but till it is in fact enforced in accordance with the provisions of Section 36 of the Act."

11. In view of the conflicting views expressed, an authoritative pronouncement was deemed necessary, and this Court directed the matter be placed before the Hon'ble Chief Justice for constituting an appropriate Bench to decide the following questions of law:

"a. When Section 9 of the Act provides for interim measures before the Court even post arbitral award, but before it is enforced, whether the word 'enforced' can be read down as 'enforceable' and thereby limit the scope of Section 9 of the Act?

*b. Whether an application under Section 9 of the Arbitration and Conciliation Act, 1996 **can be maintained** even after the expiry of the period prescribed under sub-section (3) of Section 34 of the Act?"*

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12. The aforesaid backdrop leading to the reference is to point out that the entire issue was whether an application under Section 9 could be **maintained** after the period prescribed under Section 34(3) when the award became enforceable. There exists a vital difference between maintainability and entertainability as was pointed out by the Supreme Court in ***Godrej Sara Lee Ltd. v. E&TOCAA***, (2023 SCC OnLine SC 95). It was held that an objection as to "*maintainability*" went to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the *lis* for adjudication. On the other hand, the question of "*entertainability*" was entirely within the realm of discretion of the Court. Thus, for a petition to be entertainable by a Court, it must first be maintainable. Even if it is maintainable, the petition may still not be entertained as the Court may decline to exercise its discretionary jurisdiction for a variety of reasons.

13. Coming back to ***B.M Insulation Private Limited v Vardeep Petro Chemical Private Limited***, *supra*, it would be evident from the questions referred, extracted *supra*, that the issue was whether an application under Section 9 was maintainable after

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the expiry of the period prescribed in Section 34(3). The Full Bench

has answered the reference as under:

"A) *The word 'enforced' under Section 9 cannot be read down as 'enforceable'.*

B) *The word 'enforced' denotes a completed act. Hence, the phrase 'before it is enforced' signifies 'until the complete satisfaction of the award'.*

C) *The correct position of law has been already laid down in Dirk India Private Limited's case cited supra, which has also been approved by the Hon'ble Supreme Court of India in Hindustan Construction Company's case cited supra. In the light of the same the stance taken by the Division Bench of this Court in Gopuram Enterprises Limited's case cited supra by reading down the word 'enforced' as 'enforceable' is held to be bad in law."*

14. In view of the aforesaid declaration of law, it follows that the view of the Division Bench in **Gopuram Enterprises**, supra, that an application under Section 9 is not maintainable after the award becomes enforceable is no longer good law. For the sake of completion, it should be mentioned that in **Alok Saraf v Shyam Sundar Nangalia**, 2026: CHC-OS:59-DB, a Division Bench of the

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Calcutta High Court has followed the decision of the Full Bench.

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15. As noted above, the question referred to the Full Bench was whether a petition under Section 9 was maintainable after the award became enforceable. The Full Bench did not, and could not have, taken to have decided when and in what circumstances a petition under Section 9 should be entertained. As I have pointed out earlier, by holding that a petition under Section 9 is maintainable till the stage of complete satisfaction of the award, it does not follow that a petition under Section 9 should be entertained in all cases. There is no gainsaying that the power under Section 9 and the quality of orders which can be passed under the said provision are discretionary in nature. Consequently, it would always be open to the Court, on the facts of a given case, to decline the exercise of discretionary powers under Section 9 for good and sound reasons. This would be more so in case like the one at hand when the executing court is seized of the EP concerning the very same property which forms the subject matter of this application.

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16. What must not be lost sight of is the fact that the Act itself contemplates execution of an award only through the process involved in the execution of a decree. Section 36(1) of the Act reads as follows:

"(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court."

17. Thus, the Act itself envisages that an award must be executed primarily in terms of Order XXI which is the procedure prescribed for execution of a decree of a civil court. In this scheme of things, an application under Section 9 has supplemental role to act as a step-in-aid towards enforcement. In other words, an application under Section 9 can supplement but cannot supplant the process of execution contemplated through the route of Order XXI of the Code.

18. To illustrate, in ***L&T Finance Limited v JKS Constructions Private Limited*** (2014) 1 LW 888, a learned single



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judge of this Court held that a post award direction under Section 9, to the award-debtor to furnish security for the claim amount, cannot be taken to be equivalent to enforcement of the award.

19. In ***Samson Maritime Limited v Hardy Exploration & Production (India) Inc*** (2016) 2 LW 342, it was held that the principles governing the grant of relief under Order XXXVIII Rule 5 cannot be applied at the post award stage to consider a case for furnishing security. It was held that the award holder is entitled to seek protection as a matter of right since the delay in execution would undoubtedly cause hardship. In ***Citicorp v Manoj Ray***, AIR 2017 Cal 268, it was held that Section 9 can be resorted to for interim execution if the same is more efficacious. The award holder may thereafter levy formal execution to satisfy the award.

20. The power of the Court under Section 9 to direct the judgment debtor to deposit the sum under the award has been recognized by the Supreme Court in ***Seppo Electric Power Construction Corporation v Power Mech Projects Ltd, reported in 2024 SCC Online SC 1243***. The parameters have been set out as

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under:

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"All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition."

21. The aforesaid decisions show that the power under Section 9 can be used as step-in-aid and not as a substitute for execution. This has been reiterated by the Full Bench in ***B.M Insulation Private Limited v Vardeep Petro Chemical Private Limited***, *supra*.

22. Reverting to the case on hand, the award holder has already levied execution of the award arising out of a claim for money. Order XXI Rule 30 of the CPC reads as follows:

"30. Decree for payment of money —Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both."

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23. Order XXI Rules 54 & 64 are as follows:

"54. Attachment of immovable property.—

(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer of charge."

.....

"64. Power to order property attached to be sold and proceeds to be paid to person entitled.—Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may see necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same."

24. The power to order conditional attachment can be traced to Order XXXVIII Rule 5(3) of the Code. Though the said provision is applicable at the stage of attachment before judgment, it cannot be said that the executing court is powerless to grant an order of interim attachment of the property pending further proceedings in the execution proceedings if the circumstances of the case so warrant. The mistake lies in assuming that since the power is not expressly

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found anywhere in Order XXI, the executing court is powerless to grant suitable interim reliefs in aid of the final relief in execution.

25. In ***Ammakannu Ammal v Natesa Thevar***, (1984) 1 MLJ 187, a learned judge of this Court had pointed out that the rules under Order XXI were by no means exhaustive. It was held that enumeration of powers of a particular kind did not rule out the exercise of appropriate enabling or ancillary powers of another kind to make execution an effective instrument to help the decree holder realize the fruits of his decree. The observations of the learned judge merit reproduction in extenso:

"The mistake lies in supposing that O. 21 of the Code is so exhaustive of the court's powers in execution that whatever is left un-expressed in it must be held to have been deliberately left out of the scope of the jurisdiction. O. 21 is by no means an exhaustive Code on the subject of execution of decrees. It is only its length and attention to details that give O. 21 the humbug impression of exhaustiveness. There are fearful gaps in the rules on vital topics in execution. If the statute makers had the imagination to vismlise these situations they might well have made provision for them too. But, the fact that



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there are gaps and they remain so does not mean those represent lacunae in the legislation which can be filled only by legislative enactment. In other words, O. 21 dose not exhaustively define the jurisdiction and powers of the executing court. It only enumerates them in its various rules. The incompleteness in enumeration is however nothing serious; it only affords scope for the invocation of implied or ancillary powers in appropriate cases to see if the executing Court can grant the relief asked for.”

26. Once the aforesaid position is understood there is no difficulty in concluding that the executing court possesses all such implied or ancillary powers which are necessary to enable it to effectively execute the decree and assist the decree holder to realize the fruits of litigation. Thus, where there exists a threat of alienation, the executing court could always protect the interests of the decree holder by effecting an order of interim attachment. Any alienation made thereafter would be void as regards all claims enforceable under the attachment by virtue of Section 64 of the Code.

27. The position as regards injunctions is no longer res-integra. The injunctions contemplated under Order XXXIX Rules 1 &

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2 are those passed during a suit. This, however, does not rule out the grant of injunctions in exercise of inherent powers under Section 151. Prior to 1962, there existed a difference of opinion between various High Courts as to whether Section 151 could be exercised to grant injunctions in a case that was not covered by Order XXXIX Rule 1 & 2.

28. The consistent view of the Madras High Court in ***Varadacharlu v. Narsimha Charlu [reported in AIR 1926 Mad 258]; Govindarajulu v. Imperial Bank of India [reported in AIR 1932 Mad 180]; Karuppayya v. Ponnuswami [reported in AIR 1933 Mad 500 (2)]; Murugesu Mudali v. Angamuthu Mudali [reported in AIR 1938 Mad 190]*** and ***Subramanian v. Seetarama [reported in AIR 1949 Mad 104]***, was that an order of injunction cannot be granted if the circumstances fell outside the purview of Order XXXIX. These decisions are no longer good law in view of the decision of the Supreme Court in ***Manohar Lal Chopra v. Seth Hiralal [reported in AIR 1962 SC 527]***, wherein it was held as follows:

".....the Courts have inherent jurisdiction to issue temporary injunctions in circumstances

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which are not covered by the provisions of Order 39 CPC. There is no such expression in Section 94 which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order 39 or by any rules made under the Code. It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression "if it is so prescribed" is only this that when the rules prescribe the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interests of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of Section 94 were not there in the Code, the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction. No party has a right to insist on the Court's exercising that jurisdiction and the Court exercises its inherent jurisdiction only when it considers it absolutely necessary for the ends of justice to do so. It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions



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of Section 94 of the Code have their effect and not in taking away the right of the Court to exercise its inherent power.”

29. Thus, where there is an allegation that the property forming the subject matter of the EP is or is about to be alienated, the executing court can always draw upon its inherent powers to pass a suitable order to protect the rights of the parties before it. This is not to say that the Court can in no case exercise its powers under Section 9 to grant an injunction pending an EP, if the circumstances of the case so warrant. As I have pointed out, though a post award Section 9 is maintainable, the Court still retains the discretion to entertain a post award EP if the circumstances so justify provided the relief sought is a step in aid to enforcement. All that can and should be said is that the Court must necessarily take into consideration whether the same relief could be granted by the executing court where the EP is pending, and if so whether there are any other circumstances which make the interim order under Section 9 the most appropriate relief in facts and circumstances of the case. This would also have the added advantage of avoiding multiplicity of proceedings in different courts concerning the same subject matter.

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30. In this case, the petitioner has filed the EP in Chengalpet where the assets of the judgment debtors are located. In the considered opinion of this Court, having regard to the facts of this case, it would be more appropriate if the petitioner approaches the executing court to seek for interim relief by way of interim attachment/injunction. At the same time, the directions that this Court proposes to issue will allay any apprehension that the EP will continue to remain pending indefinitely.

31. A look at the record of the proceedings in the EP discloses that on 20.04.2023 the 1st respondent was reported to have died in August 2022, even prior to the filing of the EP. The case has been adjourned for steps from April 2023 and remains pending without any effective order. The tardy pace of the proceedings before the EP Court coupled with the threat of alienation by the respondents may have prompted the petitioner to approach this Court under Section 9. Otherwise, it makes little sense as to why a litigant in Chengalpet should come all the way to the Madras High Court to obtain an order of injunction as regards a property situated in Chengalpet. Is the executing court powerless to offer such protection or is there

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something fundamentally wrong with the way justice is being administered by the executing court? Or worse still, has justice taken leave of the precincts of the executing court forcing the litigant to rush to Chennai to seek protection to ensure that hard won fruits of litigation are not wasted.

32. The cliched observations of the Privy Council in ***The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing [reported in (1871-72) 14 M I.A. 605]***, that the actual difficulties of a litigant in India begin when he has obtained a decree is a judicial favorite to demonstrate the realities of execution. Though several things have changed since then, the pace of execution has remained the same since 1872 and in many cases, may have receded even further. In some cases, the pace of execution is so tardy that it would make even the proverbial snail blush. This case is an illustrative example. Month after month after month the case has seen nothing but adjournments before the executing court. The time has now come to set the house in order.

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33. In a recent decision in ***Periyammal v. V. Rajamani***, **[reported in (2025) 9 SCC 568]**, the Supreme Court passed the following directions:

"77. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the Presiding Officer concerned would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports."

34. The aforesaid decision was delivered on 06.03.2025. Nearly a year has passed, and the execution petition filed in 2023 remains pending as on date.

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35. In view of the above discussion, the following order is

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- a. O.A 1188 of 2025 is closed granting liberty to the applicant to move the executing court for the same relief, if so advised.
- b. The Mahila Court, Chengalpattu shall take up E.P.No.31 of 2023 and conclude the same on or before 30.6.2026, and a compliance report shall be filed before the Registrar General of this Court.
- c. In the interregnum, if there is any threat of alienation it will be open to the decree holder to move the executing court for appropriate orders by way of interim attachment/injunction.
- d. The Registrar General, High Court, Madras is directed to call for an explanation from the Mahila Court, Chengalpattu as to why E.P.No.31 of 2023 has remained pending on its file without any effective progress despite the orders of the Supreme Court in **Periyammal v. V. Rajamani, [reported in (2025) 9 SCC 568]**, extracted supra. The explanation shall be placed before this Court on the next date.
- e. The Registrar General, High Court, Madras is directed to call for a report from the Principal District Judge, Chengalpattu on the following aspects (i) Total number of pending execution petitions in Chengapattu District involving execution of arbitral awards (ii) Number of



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such petitions which are pending for more than six months (to be listed from oldest to newest) (iii) Reasons for the delay in disposal (iv) Number of execution petitions filed after April 2025 and their current stage and number of such cases which have been disposed within six months as required by the Supreme Court in ***Periyammal v. V. Rajamani [reported in (2025) 9 SCC 568]***.

- f. In cases where the execution petitions have been pending for more than six months, the report of the Principal District Judge, Chengalpet shall also indicate the names of the concerned judicial officers who have been presiding over these Courts since April 2025.
- g. For consideration of the reports indicated in paragraphs 35(d)-(f), post this case on 01.7.2026 at 2:15 pm.

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Internet : Yes

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