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**(1996) 07 MAD CK 0015**

**In the Madras High Court**

**Case No :** Civil Revision Petition No. 1232 of 1993

D.M. Elango

APPELLANT

Vs

Sudarsan Chits (1) Ltd., (in liquidation)

RESPONDENT

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**Date of Decision :** 19-07-1996

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 38, 39  
Companies Act, 1956 — Section 10, 164, 199, 200, 201

**Citation :** (1996) 07 MAD CK 0015

**Hon'ble Judges :** S.S. Subramani, J

**Bench :** Single Bench

**Advocate :** P. Mani, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

S.S. Subramani, J.—Second Judgment debtor in C.C. No. 3849 of 1986 is the revision petitioner before this Court. The decree-holder is a

company known as Sudarsan Chits (India) Limited, now under liquidation as per proceedings of the High Court of Kerala, at Ernakulam. When

Execution Petition was filed before District Munsif's Court, Dharmapuri, revision petitioner filed objection stating that the Court has no jurisdiction

to entertain the Execution Petition. He also contended that the executing Court also must be a Company Court and since Munsif's Court is not a

Company Court, the Execution Petition filed before it is not maintainable. He also said that there is no transfer of a decree for being executed, and

for that reason also, the execution petition cannot be sustained.

2. By the impugned order, Court below rejected the objections and directed the execution to be proceeded with. It is against the said order, the

present Revision is filed.

3. Learned counsel relied on a decision reported in (1969) 39 Company Cases 993 (Smt Kalagara Rama Tulasamma v. Subhodaya Publications

Ltd. (in liquidation), to substantiate that the Munsif's Court is not a Company Court. He also wanted this Court to consider the provisions of S. 10

of the Companies Act which deals with jurisdiction of Courts. I do not think any of these provisions has any relevancy since the very decision

which learned counsel is relying on, is an answer to all his contentions. The case that is cited is one coming under the Indian Companies Act, 1913.

S. 3 of that Act corresponds to S. 10 of the present Act. S. 200 corresponds to S. 634 and S. 201 corresponds to S. 635 of the present Act.

Considering the relevant provisions, the Andhra Pradesh High Court held that if a Certificate is issued by the winding-up Court, the Certified copy

itself is sufficient for executing the decree, and in view of Ss. 38 and 39 of the Code of Civil Procedure, the transferee Court also gets jurisdiction

to execute the decree. In view of the production of certified copy of the Certificate, no separate order of transfer is required. It was also held in

that decision that for the purpose of execution, the Court need not be a Company Court. In the case cited, a learned Judge of the Andhra Pradesh

High Court has held thus-

What was, however, urged was that it is the company court which alone is competent to execute the order and, since the District Court is not a

Company Court, it cannot execute the order sent to it by this Court. It is not possible to accept this contention It is true that the District Court has

not been made a Company Court by any notification under S. 3. S. 164 is not quite relevant for this purpose What S. 164 concerns itself is with

the subsequent winding up proceedings and not enforcement of any order passed by a Company Court. The language of S. 164 is plain enough to

indicate that the Company Court, which has passed orders of winding up. can direct any District Court to conduct the subsequent proceedings.

The order, which is under my consideration and which has come from the Madras High Court for enforcement, cannot be an order which falls

within the ambit of S. 164. That section therefore is inapplicable to such a case, It is only under S. 200 that this Court, which also is a company

court, gets jurisdiction to enforce the orders in cases where certified copies of such orders are produced before it under S. 201. While enforcing

that order, S. 199 expressly empowers this court to enforce that order in the same manner as if it was a decree in a civil suit passed by this court

and it is under this provision that Ss. 38 and 39, Civil Procedure Code, get attracted under which this court would be competent to transfer the

order for execution to a competent subordinate court. It will thus be plain that while initially the certified copy must be produced before a court

within the meaning of S. 3, that is to say a company court, when once the certified copy is received by the company court, the company court has

jurisdiction to either directly execute it itself or send it for execution to a subordinate court in the same manner as it sends its decrees for execution

passed in civil suits to the subordinate court. Any such contention would practically amount to flying in the face of S. 199. It is difficult to accept the

contention that the expression "in the same manner" relates only to the procedure and does not authorise the District Court to execute the order. S.

199 does not indicate any such distinction. It clearly states that it "may be enforced in the same manner" in which decrees of civil courts made in

any suits pending therein may be enforced. The word "manner", in my opinion, is comprehensive enough to include a subordinate court which can

execute the order if such an order is transferred for enforcement by this court in its jurisdiction as company court.

No other contention was raised. In view of my finding that the court below has got jurisdiction to proceed with the execution, the Civil Revision

Petition is dismissed. No costs.