

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 25th of June, 2026

**PRESENT: Hon'ble Mr. JUSTICE G. Chandrasekharan
CHAIRPERSON**

**Misc. Application Dy.No.2832/2025
In
MA No.5/2019**

**(Appeal SR No.1616/2017 in IA SR No.9541/2015 in RP No.73/2008 in DRC No.69/2008
in OA 427/2007 on the file of DRT-III, Chennai)**

1. Syed Anwar Jamal,
S/o. T.N. Mohammed Ibrahim,
No.4, Kutti Street,
Seven Wells,
Chennai – 600 001.

...Petitioner

Vs.

Indian Overseas Bank,
Periyar Nagar Branch,
B - 46, 70 Feet Road, Periyar Nagar,
Chennai – 600 082.

4. V.S.N. Feroze Begum,
Residing at B-132, 10th Street,
Periyar Nagar,
Chennai – 600 082.

2. V.S.N.P. Aliyar,
*(deemed as erroneously mentioned
as the name in the RC is
Mr. V.S.N.S.D. Aliar)*
26, Circular Road,
United India Colony,
Kodambakkam,
Chennai.

5. O. Douloth Saltha,
Residing at B-132, 10th Street,
Periyar Nagar,
Chennai – 600 082.

3. D. Muniammal,
No.81, Pillaiyar Koil Street,
Periyar Nagar,
Chennai – 600 083.

6. O. Hameed Hussain
Residing at at B-132, 10th Street,
Periyar Nagar,
Chennai – 600 082.

7. S. Basheer Ebrahim,
Kathiza Apartments,
1st Floor, HRHK Nagar,
6th Street, Mangalam Road
Tiruppur.

...Respondents

Counsel for Petitioner	:	Mr. Avinash Wadhvani
Counsel for R1	:	M/s F.B. Benjamin George
Counsel for R6	:	Mr. V. P. Parivallal
Counsel for R7	:	Mr.S.N. Subramani

ORDER

1. This Misc. Application Dy.No.2832/2025 is filed under Section 22(h) read with Section 19(25) of RDB Act to recall the order passed by this Tribunal in MA No.5/2019 dated 16.12.2025, as it has been passed against a 'dead person'.
2. MA No.5/2019 had been filed against the order passed by the Learned Presiding Officer, DRT-III, Chennai in Appeal SR No.1616/2017 in IASR No.9541/2015 in RP No.73/2008 in DRC No.69/2008 in OA 427/2007.
3. Appeal SR No.1616/2017 was filed by the petitioner, who is the first respondent in MA No.5/2019 to set aside the order passed by the learned Recovery Officer in IASR No.9541/2015 in RP No.73/2008 in DRC No.69/2008 in OA No. 427/2007.

4. IASR No.9541/2015 was filed by the petitioner for staying all further proceedings in the notice dated 23.11.2015 issued by the learned Recovery Officer, DRT-III, Chennai on 23.12.2015.

5. The ground for filing this application is that petitioner's father, T.N. Mohammed Ibrahim purchased the property from V.S.N.S.D. Aliyar on 15.6.1999 through a registered sale deed. From the date of his purchase, he was living in this property till his death on 3.7.2007. He was succeeded by his wife, daughter and two sons including the petitioner. First respondent bank issued notice for auctioning this property claiming that the property was mortgaged in the year 1998 by the V.S.N.S.D. Aliyar. The bank filed Original Application in the year 2007 and failed to implead the petitioner's father in the OA. Several appeals were filed by interested parties including wife and children of Mr. Mohd. Yousuff Hussain in MA 205/2011. DRAT directed DRT-III, Chennai to take the matters and pass orders as deemed fit and proper. Learned Recovery Officer was restrained from proceeding further till the disposal of the matter by the Learned Presiding Officer, DRT-III, Chennai. That be the case, learned Recovery Officer issued a Notice on 23.11.2015 calling them to vacate the premises by 16.12.2015. Therefore,

it was prayed to recall the notice of the learned Recovery Officer in RP No.73/2008 in DRC No.69/2008 in OA No.427/2007.

6. In IASR No.9541/2015 filed before the Recovery Officer, learned Recovery Officer vide his order dated 14.2.2017 dismissed the application. As against this order, Appeal SR No.1616/2017 was filed. Learned Presiding Officer in his order recorded that, “respondent bank had not explained as to how the bank had obtained the recovery certificate withholding the factum of death of the first defendant viz.,V.S.N.S.D. Aliar during the pendency of the OA and why no steps were taken to bring the same to the notice of the Tribunal and thus made the Tribunal to pass the recovery certificate against a dead person.” It was further recorded that,“neither the bank nor the defendants in the OA brought to the notice of the Tribunal about the death of V.S.N.S.D. Aliyar”. Therefore he found that recovery certificate issued was not in according with law and it is invalid in the eyes of law and cannot be put into execution by the learned Recovery Officer. Thus holding, learned Presiding Officer dismissed the appeal, as infructuous. As against the findings with regard to the death of the V.S.N.S.D. Aliyar during the pendency of the OA and that DRC is invalid and cannot be put into execution, bank filed MA No.5/2019. It is pertinent to note that in the

order of learned Presiding Officer, there is no indication as to the date of death of V.S.N.S.D. Aliyar.

7. During the course of hearing of the appeal, MA No.5/2019, it was submitted by the appellant bank that death of V.S.N.S.D. Aliyar was not brought to the notice of the bank at any point of time or immediately on his death on 24.6.2005. No proof of death was filed like 'death certificate' or any other document. Thus, this Tribunal directed the petitioner/first respondent to produce evidence of the death of V.S.N.S.D. Aliyar, because, there is no material produced before this Tribunal or DRT confirming the death of V.S.N.S.D. Aliyar and the date of his death. Therefore, this Tribunal, set aside the findings of the Tribunal recorded in paragraphs 14 to 16 of the impugned order and directed the learned Recovery Officer to proceed further in accordance with in the recovery proceedings. Aggrieved against this order this Miscellaneous Application is filed for recalling the order passed by this Tribunal along with xerox copy of the Inspection Report given by the Valuer.
8. It is submitted by the learned counsel for the petitioner that as per the inspection report, valuer inspected the property in dispute on 20.3.2009 at 14.00 hrs. It is said in the report that first defendant V.S.N.S.D. Aliyar

expired and hence he advised the bank to furnish the address of his legal heirs. This report is relied by the petitioner to say that V.S.N.S.D. Aliyar had died during the pendency of the OA 427/2007, therefore, the order passed in the said OA against a dead person is null and void and cannot be executed against the petitioner and others, especially, against the property purchased by his father.

9. Even in this report, there is no mention about the date of death of V.S.N.S.D. Aliyar. Thus, this miscellaneous application is posted for its maintainability and learned counsel appearing for parties were heard.

10. From the backdrop as narrated above, this Tribunal perused the records. There is no dispute with regard to the fact that OA No.269/2001 filed before DRT-II, Chennai was subsequently transferred to DRT-III, Chennai and renumbered as OA 427/2007. It was filed by the first respondent bank viz., Indian Overseas Bank against one V.S.N.S.D. Aliyar, Proprietor of M/s General Agency 2) S.M. Omar Farook (deceased) 3) Mrs. D. Muniammal and 4) Mrs. Zeenath Neesa. On the death of 2nd defendant, S.M. Omar Farook, his legal heirs viz., 1) Mrs. V.S.N. Feroze Begum 2) Mrs. O. Douloth Saltha and 3) O. Hameed Hussain were impleaded as defendants 5 to 7. The OA

was filed for recovery from the aforesaid defendants a sum of Rs.31,99,661/- with future interest, costs and for other reliefs.

11.V.S.N.S.D. Aliyar offered his property as security and created equitable mortgage by deposit of title deeds of his property on 8.12.1988, described in schedule 'A'. He had also extended the security for the subsequent loans also. The final order passed in OA No.427/2007 shows that OA was allowed on 10.1.2008 against all the defendants except Defendants 5 to 7. The properties described in the Schedule A to D in the OA were ordered to be sold for realizing the debt due in the event of defendants not paying the amount determined in the OA, as due. Defendants 1, 3 and 4 are personally liable, in case, if there is any deficiency. The claim against defendants 5 to 7 was dismissed. The order shows that V.S.N.S.D. Aliyar, the first defendant was represented by M/s M. Muthukumaran, Advocates. M/s M. Muthukumaran advocates represented V.S.N.S.D. Aliyar and Mrs. Zeenath Neesa, the 4th defendant. The 3rd defendant was represented by Mr. S. Swaminathan, advocate. Defendants 5 to 7 were represented by Mr. M.J. Vijayaraghavan, Advocate. Therefore, this order manifestly makes it clear that V.S.N.S.D. Aliyar was represented by counsel, Mr. M. Muthukumaran at the time of the disposal of OA No.427/2007 on

10.1.2008. Therefore, the submission made by learned Counsel for the petitioner that OA was allowed against a dead person, hence, DRC issued on the basis of the order passed in OA 427/2007 cannot be enforced is not tenable.

12. From the typed set of papers produced, it is clear that Mr. T.N. Mohammed Ibrahim purchased the property in dispute from V.S.N.S.D. Aliyar on 15.6.1999 during the subsistence of the mortgage executed by V.S.N.S.D. Aliyar in favour of the first respondent bank.

13. IA No.91/2011 in RP No.73/2008 was filed by Mr. Mohammed Ismail Haroon, son of Late T.N. Mohammed Ibrahim seeking relief of permanent injunction restraining the defendants and to quash the auction notice issued by the bank for public auction on 10.3.2011 in respect of Item II of the schedule mentioned property. It was pleaded in this application that this property was purchased by his father and after the death of his father, he along with his mother, sisters and brothers are entitled for this property. On these ground, he filed that application. Similarly, Mrs. S.A. Mahamamuda Beevi, wife of late T.N. Mohammed Ibrahim and this petitioner filed MP 144 and MP 145/2011 claiming that the property was purchased by their father late T.N. Mohammed Ibrahim and they are in

possession of the property and sought relief for injunction against the respondents and quash the auction held on 10.3.2011 and for other reliefs. In fact, the petitioner stated in the affidavit that he was willing to pay the first respondent bank a sum of Rs.9,85,000/-, which is a higher price than that was quoted during the auction. These applications were dismissed by the learned Recovery Officer by a Common Order dated 25.4.2011. Against the order passed in IA 91/2011, Mohammed Ismail Haroon and Syed Anver Jamal, the petitioner herein filed Appeal No.1/2011 and Appeal No.2/2011 respectively before Learned Presiding Officer, DRT-III, Chennai. These appeals came to be dismissed on 29.2.2012. Thereafter, petitioner filed RA 48/2012 before DRAT, Chennai. It is not known what is the outcome of this appeal. Both parties have not produced the details on the pendency or disposal of this appeal.

14.Khansul Mehbooba, wife of Mohd. Yousuff Hussain and her two children filed MA No.205/2011 before DRAT, Chennai to direct DRT-III, Chennai to take up the application in MA SR No.1644/2011 and pass orders on merits. MASR No.1644/2011 was filed, claiming that they have right in the property. MA No.205/2011 was disposed by DRAT directing the learned Presiding Officer, DRT-III, Chennai to take up MASR No.1644/2011 and pass

suitable orders. There was also a direction issued to the learned Recovery Officer not to proceed further till the disposal of the matter by learned Presiding Officer, DRT-III, Chennai.

15. Petitioner filed Writ Petition No.9476/2016 before the Hon'ble High Court of Madras seeking direction to dispose of MA SR No.1644/2011. In the said writ petition, Hon'ble High Court of Madras directed the petitioner to deposit Rs.15.00 lakhs within a period of one month from the date of receipt of copy of the order passed and directions were issued to the learned recovery officer to hear the petitioner and pass orders.

16. In pursuance of this direction, learned recovery officer heard the matter and passed orders on 14.2.2017. Learned Recovery Officer recorded the chronology of the events from the date of creation of the mortgage by V.S.N.S.D. Aliyar, filing of OA, issuance of recovery certificate, etc. and observed that property was purchased by the petitioner's father during the subsistence of the mortgage in favour of the bank. IA No.91/2011, MP 144 and MP 145/2011 filed by the legal heirs of late T.N. Mohammed Ibrahim claiming right in the property were dismissed on 25.11.2011. Patta in the name of the petitioner's father had been cancelled. Executive Officer, Town Panchayat, Abiramam found that the petitioner and his family

members have committed forgery, obtained building license and fake patta and the same was cancelled and charged in favour of Mrs. S. Basheer Ebrahim, the auction purchaser on 17.3.2012. MA SR No.1644/2011 was filed by Khansul Mehbooba and therefore petitioner/3rd party cannot pursue this, as he is third party to the petitioner. Ultimately the petition was dismissed.

17. From the consideration of the material produced in this case, it is evident that the death and the date of death of V.S.N.S.D. Aliyar was not brought to the notice of DRT or DRAT, at any point of time. His death is reiterated only on the basis of the Chartered Engineer's report, which has not mentioned about the date of death. Order passed in OA No.427/2007 indicates that V.S.N.S.D. Aliyar was represented by counsel on the date of passing of the order. Therefore, the submission now made by the petitioner that order in OA 427/2007 was passed against a dead person cannot be accepted.

18. As per the order passed in the OA 427/2007 and the DRC issued, recovery proceedings were initiated, property was sold to the 7th respondent, who is the auction purchaser. Earlier attempts to challenge the recovery proceedings made in IA 91/2011, MP Nos.144, 145/2011 had failed. In fact, this petitioner offered to pay a sum of Rs.9,85,000/-, in MP

No.145/2011. Then, there was no plea taken that order in OA No.427/2007 was passed against a dead person. Therefore, relying on the Engineer's report dated 20.3.2009, the petitioner cannot contend that order in OA No.427/2007 was passed against a dead person and it cannot be executed. It is reiterated that the death and the date of death of V.S.N.S.D. Aliyar was not intimated to DRT or DRAT and even to the first respondent bank.

19. It is pertinent to refer to the decision of the Hon'ble Supreme Court of India relied by the first respondent bank in re, **Binod Pathak and others Vs.Shankar Choudhary and others reported in 2025 SCC Online SC 1411** for the proposition that, "A duty is cast upon the lawyer representing such party, to communicate the fact of death to the opposite party in terms of provisions contain in Rule 10A of [Order XXII of the CPC](#)." It is pertinent to refer to the relevant portion of the judgment as follows:

["Order XXII, Rule 10A of the CPC](#).

29. With enforcement of 1976's amendment to [the CPC](#), once a party to the suit dies, a duty is cast upon the lawyer representing such party, to communicate the fact of death to the opposite party in terms of provisions contain in Rule 10A of [Order XXII of the CPC](#). It is nobody's case that there was compliance of this rule in the case at hand by the advocate appearing for the defendants. Unless this primary obligation is discharged and it is established with cogent evidence that the opposite party had sufficient opportunity to know and, had, in fact, knowledge of the death of the defendant, the plea of abatement of the suit at the instance of party having failed to comply with the obligation mentioned under Rule 10A of [Order XXII](#)

[of the CPC](#) cannot be entertained. Nobody can be allowed to reap the benefit of his own lapse and to non-suit the plaintiff.

Rationale behind Order XXII Rule 10A.

41. An “innovative provision” in the form of Rule 10A has been introduced by the Amendment Act, 1976 in the Code to avoid procedural technicality scoring march over substantial justice.
42. In [Gangadhar](#) (supra), dealing with the object underlying Rule 10A, this Court observed that it was introduced to mitigate the hardship arising from the fact that the party to a suit or appeal, as the case may be, may not come to know about the death of the other party during the pendency of such suit or appeal. A suit or appeal takes years to come up for hearing and it is very difficult to expect the other party to be a watch-dog for day-to-day survival of his opponent. Then when the suit / appeal comes up for hearing, it comes to the light that not only one of the parties to the suit / appeal had died but the time for substitution had also run out and the suit or appeal had abated. It is with a view to avoid technicalities and to do full and complete justice that an important provision has been inserted in [CPC](#), in the form of Order XXII Rule 10A, requiring the advocate appearing for the party to inform death of his client to the court so as to enable the other side to take appropriate steps to bring on record legal representatives of the deceased. For that purpose, a deeming fiction is introduced that the contract between the dead client and pleader will subsist to the limited extent to supply information to the court about the death of his client. This Court stated that: -

The Legislative intention of casting a burden on the learned advocate of a party to give intimation of the death of the party represented by him and for this limited purpose to introduce a deeming fiction of the contract being kept subsisting between the learned advocate and the deceased party was that the other party may not be taken unawares at the time of hearing of the appeal by springing surprise on it that the respondent is dead and appeal has abated. In order to avoid procedural justice scoring a march over substantial justice Rule 10-A was introduced by [the Code of Civil Procedure](#) (Amendment) Act of 1976 which came into force on February 1, 1977.” (Emphasis supplied) b. Nature of the salutary provision of Order XXII Rule 10A.

43. Rule 10A is procedural in nature. No penalty is provided for non-compliance with the rule. The provision is not “absolutely mandatory” [See: [United Bank of India v. Kanan Bala](#), (1987) 2 SCC 583].

44. The new provision has been inserted with a view that just delay in preferring substitution application may not be put forward a ground for dismissal of the application. Since a lawyer for the party is obliged to inform the court about the death of his client, his failure to do so should be treated as good and sufficient ground for condonation of delay.

51. Thus, the principle that no party can take advantage of his/her own wrong i.e. 'nullus commodum capere potest de injuria sua propria' is squarely attracted in the event of a failure in complying with the provision of Rule 10A of [Order XXII of the CPC](#), and any abatement as a result of such wrongdoing or failure ought not to be validated by the courts.

Duty of Pleader.

60. Rule 10A of Order XXII, as inserted by the Amendment Act, 1976 imposes an obligation on the pleader appearing for the party to intimate death of his client to the court. But there is difference of opinion as to whether the duty imposed on the pleader is confined to factum of death of a party or also to furnish names and particulars of legal representatives.

61. According to one view, there is no obligation on the pleader appearing on behalf of the deceased party to furnish or supply list of legal representatives of the deceased.

62. According to the other view, however, the pleader has not only to inform the court as to death of the party but he must also furnish particulars of legal representatives.

63. However, we are of the view that providing merely an information with regard to the fact of death is not sufficient compliance of the [Rule 10A of the CPC](#). unless and until the counsel furnishes the information with regard to the details of the persons on whom and against whom the right to sue survives and the information under [Rule 10A of the CPC](#). and the object behind it would remain incomplete as the parties would still be labouring to inquire who are the legal representatives and find out as to upon whom and against whom the right to sue survives."

20. Admittedly, in this case, even assuming V.S.N.S.D. Aliyar died either during the pendency of the OA or after the disposal of the OA, but, his death was

not intimated to the opposite party for facilitating impleadment of his legal representatives. Purchase made by the petitioner's father was during the subsistence of the mortgage and is hit by *Lis pendis*. The right, if any, flows from the sale deed, is subject only to the mortgage in favour of the respondent bank.

21. In this view of the matter, this Tribunal is of the view that there is no need to recall the order passed by this Tribunal in MA 5/2019 dated 16.12.2025 and the order stands.

22. **In the result**, Misc. Application Dy.No.2832/2025 is dismissed, as not maintainable.

[Dictated to PS (SN) transcribed by him, corrected, signed and pronounced by me in open court, this 25th June, 2026]

Sd/-

**(JUSTICE G. CHANDRASEKHARAN)
CHAIRPERSON**