

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

RP.No. 43 of 2010 ()

AGAINST THE JUDGMENT IN AS 31/1995 DATED 24-09-2009

REVIEW PETITIONERAPPELLANT :

D.RAVICHANDRAN,
S/O.DANDAPANI CHETTIAR
VANIYAMKULAM VILLAGE, OTTAPPALAM TALUK
PALAKKAD DISTRICT.

BY SENIOR ADVOCATE SRI.P.N.KRISHNANKUTTY ACHAN
BY ADV.SRI. K. MOHANAKANNAN

RESPONDENTS/RESPONDENTS IN AS :

1. A.M.HABEEB RAHIMAN,
S/O.LATE ABDUL LATHEEF, THOTTAKKARA,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

2. A.M.ABDUL MAJEED,
THOTTAKKARA, OTTAPPALAM TALUK,
PALAKKAD DISTRICT.

R1 BY ADVS. SRI.T.C.SURESH MENON
SRI.P.S.APPU

R2 BY ADVS. SRI.M.V.BOSE
SRI. VINOD MADHAVAN
NISHA BOSE
JAYASREE S.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 21-07-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

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P.B.SURESH KUMAR, J.

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Review Petition No.43 of 2010

in

A.S.No.31 of 1995.

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Dated this the 21st day of July, 2015.

ORDER

The appellant in A.S.No.31 of 1995 seeks review the judgment dismissing the said appeal in this proceedings. A.S.No.31 of 1995 was an appeal preferred by the review petitioner against the decree and judgment dismissing O.S.No.140 of 1989 on the file of the Sub Court, Ottapalam.

2. Heard the learned counsel for the review petitioner as also the learned counsel for the respondents.

3. O.S.No.140 of 1989 was a suit filed by the review petitioner for realisation of money allegedly payable by defendants 1 and 2 as per Ext.A1 agreement. The trial court found that Ext.A1 agreement is not a genuine document and that even if it is accepted as a genuine document, the same is unconscionable and hence not enforceable. The decision of the

trial court was challenged by the review petitioner in the appeal referred to above mainly on the ground that the finding of the trial court that Ext.A1 agreement is not a genuine document is incorrect. This court, on an appraisal of the materials on record, came to the conclusion that the finding of the trial court that Ext.A1 agreement is not a genuine document does not call for interference. This court also found that Ext.A1 agreement is an unconscionable agreement. It is on the said findings, the appeal preferred by the review petitioner was dismissed.

4. The case of the plaintiff is that he was running a partnership firm with the defendants and one Oli Mohammed under the name and style 'Sumangali Garments' and that as per the terms of Ext.B4 retirement-cum-release deed, the plaintiff and Oli Mohammed retired from the firm. According to the plaintiff, Oli Mohammed was paid a sum of Rs 200,000/- at the time of retirement towards the value of his share in the partnership and the plaintiff was paid only a sum of Rs.8,800/- towards the value of his share on the understanding that he will be paid a sum of Rs.3,000/- per month for a further period of 20

years from 2.8.1988. It is the case of the plaintiff that Ext.A1 is the agreement executed in furtherance of the said understanding.

5. The learned counsel for the review petitioner contended that the judgment sought to be reviewed was rendered on the basis that the plaintiff has not established his case that Oli Mohammed was paid a sum of Rs 2 lakhs at the time of retirement from the firm, as claimed by him. According to the learned counsel, PW2 who was an attesting witness to Ext.A1 agreement was examined to prove the said fact and that PW2 had deposed that a sum of Rs.2 lakhs was paid by the firm to Oli Mohammed at the time of his retirement. It was contended by the learned counsel that this Court had not correctly appreciated the evidence tendered by PW2 in that connection. It was also contended by the learned counsel for the review petitioner that it is in lieu of the substantial amounts paid to Oli Mohammed, the defendants have agreed to pay a sum of Rs.3,000/- per month to the review petitioner for a period of 20 years. According to the learned counsel, this aspect of the matter was also not considered by this Court while rendering the

judgment sought to be reviewed. The learned counsel for the review petitioner further pointed out that the finding rendered by the learned Single Judge that Ext.A1 is not a genuine agreement is also incorrect. According to the learned counsel, in the peculiar facts of this case, it cannot be said that Ext.A1 is an unconscionable agreement and the finding of the learned Single Judge that Ext.A1 is unconscionable is also unsustainable.

6. In **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma** (1979(4) SCC 389), the Apex Court reiterated the scope of the review jurisdiction of the court under Order 47 Rule 1. The relevant portion of the judgment reads thus:-

“The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

7. I am afraid, none of the arguments of the learned counsel for the review petitioner are arguments that could be raised in a review petition. The contentions raised by the learned counsel for the review petitioner are contentions to establish that the factual findings rendered by this Court while dismissing the appeal are either incorrect or erroneous. As held by the Apex Court in the decision referred to above, an incorrect or erroneous decision on facts cannot be corrected in exercise of the review jurisdiction. The review petition, in the circumstances, is devoid of merits and the same is, accordingly, dismissed.

Sd/-
P.B.SURESH KUMAR,
(JUDGE)

Kvs/-

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PA TO JUDGE.