

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, THE CHIEF JUSTICE  
AND  
The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11667 of 2015

Vasanthakumar Vengadessane  
Advocate. ... Petitioner

-vs-

- 1.The Registrar General,  
High Court of Judicature at Madras,  
Chennai.
- 2.The Secretary to Government,  
Law Department, Fort St. George, Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India  
praying for issue of Writ of Mandamus to direct the 1<sup>st</sup> and 2<sup>nd</sup>  
respondents to dispose of the representation of this petitioner  
dated 28.01.2015 in accordance with law within a specified time.

For Petitioner : Mr.Vasanthakumar  
Party-in-person

For Respondents: Mr.S.Haja Mohideen Gisthi for R-1  
: Mr.S.T.S.Moorthy,  
Govt. Pleader  
Assisted by Mr.R.Kamalanathan AGP for R2

सत्यमेव जयते  
O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner, an advocate, has filed the present Public Interest Litigation, faced with the situation where a review application had been placed before a Bench of this Court, who had not passed the original order, even when the Judges, party to the earlier orders, were available to assign the matter, albeit at the Principal Seat, when the matter pertains to the Madurai Bench. This issue arose in a Special Leave Petition filed by the petitioner before the Hon'ble Supreme Court against the order in review, where the verdict was contrary to the original order and the original order had been reviewed.

2. It is the say of the petitioner that in view of the provisions of Order 47 Rule 5 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the said Code'), all review petitions are to be heard by the same Judge, who passed the order. The said provision reads as under:

5. Application for review in Court consisting of two or more Judges : Where the Judge or Judges, or any one of the judges, who passed the decree or made the order a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

3. A reading of the aforesaid provision shows that if the Judge, who passed the order or any one of the Judges who passed the order in a Bench, of which review is applied for, continues to hold office, then the matter must be placed before that Judge, subject to the following conditions:

1. the Judge is not precluded by absence or otherwise for period of six months next after the application for review is filed;
2. and of course, as aforesaid, the Judge should continue to be attached to the Court.

4. The circumstances under which a different Division Bench at Madurai came to examine the review application was on account of the fact that both the earlier Judges, when the review application was filed, were attached to this Court and available, but at the Principal Seat and not at the Madurai Bench. We may note that as per the roster practice, Judges normally go for a tenure of three months to the Madurai Bench unless they are permanently assigned to the Madurai Bench. Thus, the Judges would be available, but at a different Bench. The question is as to what should be done in such circumstances when the Court has more than one Bench?

5. Our task is made easy on account of the pronouncement by the Hon'ble Supreme Court in *Mallesh Gudda Pooja vs. State of Karnataka & Others*, 2012 (3) CTC 59. A similar situation was faced qua the Karnataka High Court and in that context, the Hon'ble Supreme Court observed in para 14 as under:

'14. When the provision for review by the same Judge/s was made, it was made on the assumption that the Judges will be available at the same place. The Rules did not contemplate the court having Benches outside the main seat or Circuit Benches and Judges moving from Bench to Bench or Judges and coming back

after three months or six months. A Judge who sits and hears a matter in a Circuit Bench away from the main seat, may not be available in that particular Circuit Bench for a considerable time which may vary from three to six months or even more. Further, when two Judges heard the matter at a Circuit Bench, the chances of both Judges sitting again at that place at the same time, may not arise. But the question is in considering the applications for review, whether the wholesome principle behind Order 47 Rule 5 of the Code and Rule 5 of Chapter 3 of the High Court Rules providing that the same Judges should hear it, should be dispensed with merely because of the fact that the Judges in question, though continue to be attached to the Court are sitting at the Main bench, or temporarily at another bench. In the interests of justice, in the interests of consistency in judicial pronouncements and maintaining the good judicial traditions, an effort should always be made for the review application to be heard by the same Judges, if they are in the same court. Any attempt to too readily provide for review applications to be heard by any available Judge or Judges should be discouraged. With the technological innovations available now, we do not see why the review petitions should not be heard by using the medium of video conferencing. Or an appropriate rule can be made, if such a rule is not already available, for consideration of the application written submissions alone. For example Order XL Rule 3 of the Supreme Court Rules provides that unless otherwise ordered by the court, an application for review shall be disposed of by circulation without any oral arguments but with written arguments. That will not in any way violate Section 114 of the Code providing for review. The solution may not be to send the review petition to the place where the concerned Judges are holding their sitting in view of the fact that would involve travel, engaging of new counsel, additional cost etc. and defeat the very purpose of having circuit benches. Every effort should be made to achieve the object of review by ensuring that the matter is considered by the Judge or the Bench which rendered the judgment. Be that as it may."

6. In our view, thus, the issue is no more res integra and that the course of action to be followed in such a situation has to be in conformity with the observations made in para 14 aforesaid. In fact, it has been observed that the practical difficulties, if any, can really be obliterated with the technical innovations now available.

7.The reasons for the conclusion as set out by the Hon'ble Supreme Court are also enunciated in the prior paragraph 13, i.e. that Judges, who decided the matter, would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered and thus, would be in a better position to appreciate the point in issue when the grounds of review are raised. On the other hand, when the matter is placed before a freshly constituted Bench, it would take time for that Bench to familiarize itself with the matter. More importantly, when the matter is placed before some other Bench, there is always a chance that the members of the new Bench may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case. In this context, the observations of Benjamin Cardozo's celebrated statement in the Nature of Judicial Process (page 12) has been extracted in the aforesaid judgment as under:

"There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognize and cannot name, have been tugging at them - inherited instincts, traditional beliefs, acquired convictions; .... In this mental background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eye except our own."

8.There is every likelihood, thus, for the matter to be looked at slightly differently from the manner in which the author of the judgment looked at it and thus, the rule of consistency and finality of decisions mandate that the review application should be considered by the same Bench or at least, by a Bench consisting of one of the two Judges subject to the circumstances which may make it impossible or impractical for the original Bench to hear it. Thus, it has been clearly enunciated that only where both Judges are not available would the application for review have to be placed before some other Bench, as there is no alternative. But, where both Judges are available or at least one of them is available, who rendered the Judgement and continues to be the members or member of the Court and available to perform normal duties, all efforts should be made to place it before them and that requirement should not be routinely dispensed with. It is, thereafter, in para 14, the observations have been made that even if it would require to have a decision on the basis of written submissions alone, that would be the appropriate course of action to follow, where hearing at a different Bench may require additional cost.

9. In the aforesaid context, the petitioner has also prayed that video conferencing facility should be made available and be utilised where necessary for posting such review applications. In so far as this prayer is concerned, especially keeping in mind the observations made by the Hon'ble Supreme Court in Malthesh Gudda Pooja's case, supra, we are of the view that the State Government, through its Home Department (stated to be the concerned Department) should make necessary arrangements and complete the process within a period of three (3) months from today, in the larger interest of the litigating public. We understand that the video conferencing facility is available, but possibly requires upgradation and arrangement in a manner where urgent directions are required, may be addressed in this manner.

10. In the end, we may note that the uncalled for counter-affidavit earlier filed making unnecessary allegations stands withdrawn. In so far as the present counter-affidavit is concerned, we are of the view that instead of taking a stand that the Law Department plays no role in sanctioning funds for such facility, a more constructive approach could have been made by forwarding the proposal to the concerned Home Department.

11. We, thus, direct that in entertaining review applications to be decided by any of the two Benches of this Court, the aforesaid principles must be followed.

12. Writ Petition, accordingly, stands disposed of. No costs.

Sd/-

Asst. Registrar (J )

/true copy/

Sub Asst. Registrar

sra

To

1. The Registrar General,  
High Court of Judicature at Madras,  
Chennai.

2. The Secretary to Government,  
Law Department, Fort St. George, Chennai.9

3. The Secretary to Government  
Government of Tamilnadu (Home) Courts  
Fort St. George Chennai-9

Copy to

1. The Section Officer  
Writ Section,  
High Court, Madras

2. The Section Officer  
Judicial Section,  
High Court, Madras

3. The Section Officer  
Criminal Section,  
High Court, Madras

4. The Sub Assistant Registrar  
Original Side Section,  
High Court, Madras

5. The Section Officer  
Legal Cell  
High Court, Madras

6. The Deputy Registrar (AS)  
High Court, Madras

7. The Deputy Registrar (Writs)  
High Court, Madras

8. The Deputy Registrar (Judicial)  
High Court, Madras

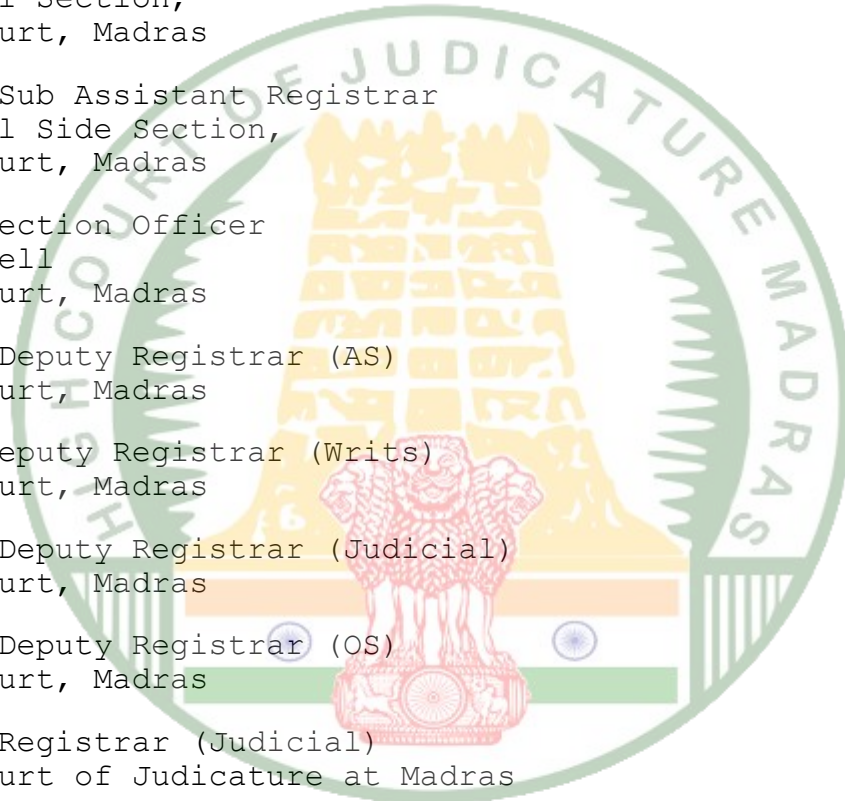
9. The Deputy Registrar (OS)  
High Court, Madras

10. The Registrar (Judicial)  
High Court of Judicature at Madras  
Chennai

11. The Registrar (Judicial)  
Madurai Bench of Madras High Court  
Madurai

12. The Section Officer  
F Section,  
High Court, Madras

13. The Section Officer  
Writ Section,  
Madurai Bench of Madras High Court,  
Madurai



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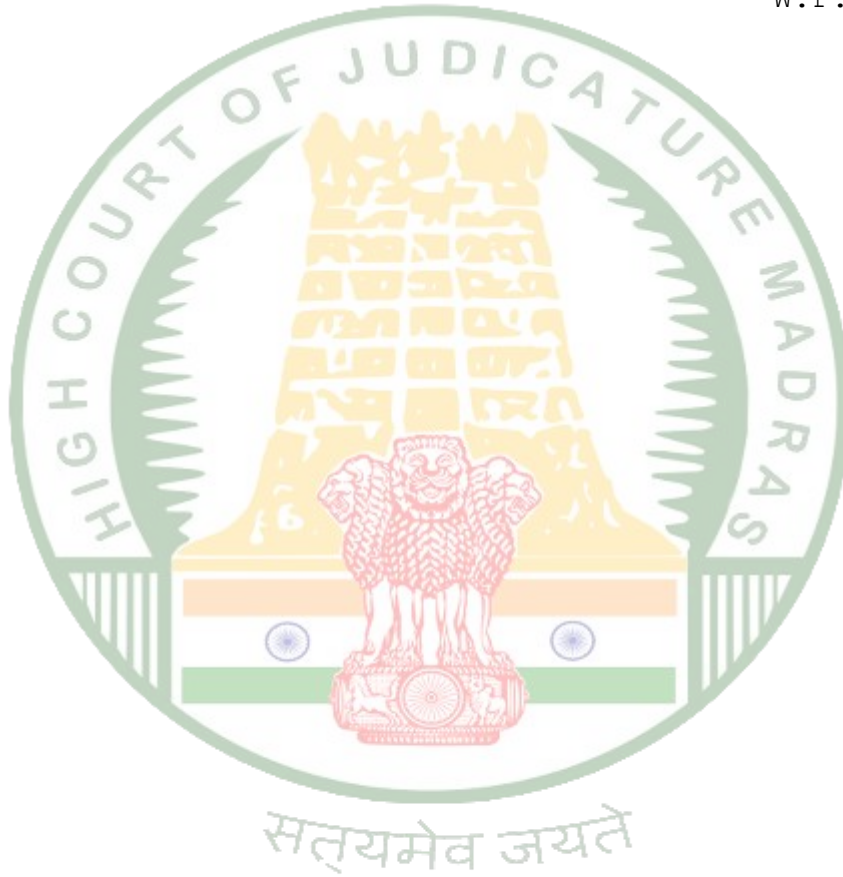
14. The Section Officer  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai

15. The Section Officer  
(Judicial Section)  
Madurai Bench of Madras  
High Court, Madurai

1 cc to Mr.V.Vasanthakumar, Advocate, Sr. 28407  
1 cc to Government Pleader, Sr. 28080

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