IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Rev.Appln.(Writ) No.188 of 2015

K.M.Saravanakumar ... Petitioner

vs.

1.The Central Bank of India,
rep.by its Branch Manager,
Tiruppur Branch,
Tiruppur.

2.The Recovery Officer,
Debt Recovery Tribunal,
1670, Tiruchy Road,
Ramanathapuram,
Coimbatore-45.

3.Mrs.Rukmani ... Respondents

Review Petition filed under Order 47 Rule 1 Read with Section 114 of C.P.C., to review the Order dated 05.01.2015 made in W.P.No.34708 of 2014 and consequently allow the W.P.No.34708 of 2014. Petition presented to this court to issue a writ of certiorarified Mandamus to call for the records of the 2nd respondent pertaining to his proceedings R.P.No.21/2002 in DRC No.112/99 in O.A.No.629/1997 and QUASH the order dated 18.11.2014 and consequently direct the 2nd respondent to confirm the sale by issuing Sale Certificate for the sale held on 10.10.2014.

For Petitioner : Mr.R.Sivakumar
For Respondents: No appearance for R1 and R3

ORDER
(Order of the Court was made by M.VENUGOPAL,J.)

The petitioner has focused the instant Review Petition before this Court (as an aggrieved person), as against the Order dated 05.01.2015, in W.P.No.34708 of 2014, passed by this Court, in dismissing the Writ Petition.

2.Heard the Learned Counsel for the Petitioner.

3.In respect of R1/Bank, even though Court notice was served on 15.2.2016, yet there is no appearance on their behalf either in person or through learned Counsel, when the matter is taken up for hearing.

4. In respect of R3, private notice was served on 23.02.2017 and today none appeared on her behalf.

5.The Learned Counsel for the Petitioner submits that W.P.No.34708 of 2014 (filed by the Petitioner) was dismissed by this Court, on 05.01.2015, on an erroneous ground as if the Third Respondent/defaulter, by following the procedure under Rule 60 of Schedule II to the Income Tax Act, 1961, had deposited the sale amount within 30 days from the date of sale i.e. 10.10.2014. In this connection, the Learned Counsel for the Petitioner proceeds to point out that the Petitioner's specific case is that no payment was made within the permissible period of 30 days, because of the fact that even in the Impugned Order, dated 18.11.2014, the date of purported settlement was not made mention of. As such, the finding rendered by this Court to the effect that on perusal of the Impugned Order, dated 18.11.2014, it appears that proper application was made and full amount was deposited, is factually an incorrect one.

6.Advancing his arguments, the Learned Counsel for the Petitioner points out that this Court had incorrectly held in the Writ Petition that the Petitioner, being the highest bidder, was directed to deposit 25% of the total amount, however, the sale was not confirmed and therefore, the Petitioner has not acquired any right 'Before Confirmation of Sale'.

7.The Learned Counsel for the Petitioner takes a plea that it is the specific case of the Petitioner that 25% of the sale amount was paid on the date of sale i.e. 10.10.2014 and the balance sale amount of Rs.9,47,510/- was also paid on 24.10.2014. Thus, the entire sale consideration was paid by the Petitioner and he was the bona fide purchaser and that the sale should have been confirmed in his favour on the expiry of 30 days.

8.Lastly it is the stand of the Petitioner that 'Issuance of Notice' under Rule 63 of Schedule II to the Income Tax Act, 1961, does not arise in the present case, because, the sale was not confirmed in favour of the Petitioner. Apart from that, the notice specified under the Proviso to Sub-Clause (2) to Rule 63 of the Income Tax Act, 1961, is a mandatory one before setting aside the sale on the basis of application made by the defaulter together with the deposit of the sale amount, interest, penalty and other incidental charges.

9.At the outset, this Court pertinently points out that the Petitioner is making a fervent endeavour to project the points already raised in the main Writ Petition (except the fact relating to the proper application being made and further amount was deposited by the defaulter etc).

10.Be it noted, Review Petition will lie only when a Statute or any Law permits in this regard. The scope of 'Review' cannot be an 'Appeal' in disguise. Further, re-hearing is not possible before a Court of Law, when the earlier order passed by the concerned Court does not suffer from any apparent error on the face of record. If an error which can be deciphered on account of a long drawn process of reasoning, then even on that score, a Review Petition will not lie. Also it is not open to a litigant to raise the issues once again, which had cropped up for rumination in Writ Petition, based on which, a final order was passed by the Court concerned. Even at a second look, in a given case, if a different view is possible, then that is also not a ground for 'Review'. After all the scope of 'Review' is very restricted.

11.It is to be mentioned that the 'Power of Review' is not to be confused with an 'Appellate Power', which may enable an Appellate Authority to correct an erroneous order/decision by the process of 're-heard and corrected'. Even on a point of Law afresh, in the guise of 'Review', the High Court would not re-hear the litigants. A 'Review' for correcting an erroneous order/decision does not lie in Law. Ordinarily, 'Review' lies only on the ground of mistake or error apparent on the face of record or for any other sufficient reason. An erroneous decision/order is not an error apparent on record. Further, mistake apparent on the face of record cannot mean an error, which has to be fished out and searched. When there is no self-evident error or mistake apparent on the face of record, then no 'Review' lies.

12.As far as the present case is concerned, even though the petitioner places heavy reliance on the sentence at paragraph No.4 of the order dated 05.01.2014, made in W.P.No.34708, to the effect that ' . . . it appears that proper application was made and full amount was deposited by the defaulter . . . ', etc., this Court finds that the Recovery Officer of the Debts Recovery Tribunal, Coimbatore, in the Letter dated 18.11.2014, addressed to the Petitioner, had observed the following:

> “As per the order of the undersigned the e-auction sale conducted on 10.10.2014 in RP No.21/2012 has been cancelled since the applicant bank has informed on 30.10.2014 that the above case was fully settled with them i.e. before 30 days of e-auction.
>
> The highest bidder is advised to get back the bid amount by submitting petition with copies of proof of deposits of bid amount (date wise/amount wise)”

13.There is no quarrel over the candid fact that the Third Respondent is the owner of the property and owing to her failure to make payment to the Bank, her secured asset was brought into auction and the Petitioner, being the highest bidder, at the earliest point of time, deposited 25% of the total amount and later, according to the Learned Counsel for the Petitioner, the balance amount was paid. However, the fact of the matter is that the sale was not confirmed. When a sale is/was not confirmed to and in favour of a particular person, viz., in the instant case, the Petitioner, then the Petitioner, in Law, cannot claim that he has acquired an indivisible right. To put it succinctly, 'Before Confirmation of Sale', the Petitioner has no vested right. The Recovery Officer of the Debts Recovery Tribunal, Coimbatore, had directed the restoration of property in question to the ownership of the Third Respondent and also the Auction Purchaser was directed to be paid back the money, which he had paid. Even the Recovery Officer of the Debts Recovery Tribunal, has not issued any Certificate in favour of the Petitioner. In any event, the Impugned Order of the Recovery Officer of the Debts Recovery Tribunal, Coimbatore, dated 18.11.2014, in Law, does not suffer from any vice or material irregularities or patent illegalities, in the eye of Law. Viewed in that perspective, the present Review Petition sans merits. Accordingly, the Review Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Branch Manager,
Central Bank of India,
Tiruppur Branch,
Tiruppur.

2.The Recovery Officer,
Debt Recovery Tribunal,
1670, Tiruchy Road,
Ramanathapuram,
Coimbatore-45.

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NM(CO)
EU(31/07/2018)