

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2015

CORAM:

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Rev.Appln.No.35 of 2015
in CRP(NPD)No.1600 of 2014

G.Dayalan : Petitioner/Tenant

vs.

D.Gopal : Respondent/Landlord

Prayer:- Review Application filed under section 114 r/w Order XL VII Rule 1 of Civil Procedure Code against the order passed by this court, dated 17.12.2014 in CRP(NPD)No.1600 of 2014.

For Petitioner : Mr.L.Chandrakumar
for Mr.Selvakumar

O R D E R

This Review Application is directed against the order passed by this court in CRP(NPD)No.1600 of 2014, dated 17.12.2014.

2.The respondent, as landlord filed an eviction petition in RCOP No.1204 of 2003 on the ground of willful default and own use and occupation. The learned Rent Controller, on appreciation of the oral and documentary evidence, held that the requirement of the landlord is bona fide and ordered eviction. Aggrieved by the order, the petitioner preferred an appeal in RCA No.664 of 2011 and the Appellate Court concurring with the findings of the Rent Controller, dismissed the appeal. Challenging the order, the petitioner filed a revision petition in CRP(NPD)No.1600 of 2014.

3.This court, after elaborately hearing the submissions of the learned counsel for the petitioner, dismissed the revision petition on 17.12.2014. After pronouncement of the order, the learned counsel for the petitioner sought time to vacate and hand over the possession to the landlord. Considering the submission of the learned counsel for the petitioner, this court granted

time till 31.03.2015. The certified copy of the order was made ready on 24.12.2014 and this review application was filed on 03.02.2015 and brought for hearing on 27.03.2015. It reveals that the petitioner has enjoyed the benefit of the order almost in entirety.

4.The petitioner has brought up this review application mainly contending that the findings of the Rent Controller are not correct and the Court below failed to evaluate the evidence as a whole and adopted pick and chose method and that the respondent has not established the landlord-tenant relationship by producing any document as contemplated under section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1969 and therefore, the finding of the courts below is perverse and the same may be construed as an error apparent on the face of the record.

5.Heard the learned counsel for the petitioner.

6.Rule (1) of Order 47 of the Civil Procedure Code, reads as follows:-

(1) Any person considering himself

aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

7.If the review application is found to be lack of

the above said ingredients, then it is liable to be dismissed.

8.The Hon'ble Apex Court in **Moran Mar vs. Mar Poullose** [1954 SC 526: LNIND 1954 SC 100], has enumerated the following three principles for entertaining a review application:-

(i) Discovery of new and important matter or evidence, which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or made;

(ii) Mistake or error apparent on the face of the record;

(iii) For any other sufficient reasons.

9.In the judgment reported in **2009(5) CTC 365** in the case of **Inderchand Jain (D) through Lrs vs. Motilan (D) through L.Rs.**, the Hon'ble Apex Court has held as follows:-

"25.*The High Court had rightly*

noticed the review jurisdiction of the Court, which is as under:

"The law on the subject - exercise of power of review, as propounded by the Apex Court and various other High Courts may be summarized as hereunder:

(i) Review proceedings are not by way of Appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, C.P.C.

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on the points where there may be conceivable be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a Court or even an Advocate.

(v) An Application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit"

10. In the judgment reported in **(2010)2 MLJ 1177 in**

the case of M.Jagadeesan vs. K.Selvam and others, this court has held as follows:-

"27.Be that as it may, on a careful consideration of respective contentions, though this Court is A Court Of Record with plenary powers, yet this Court is of the considered view that the power of Review is restricted under Code of Civil Procedure and by means of review substantial reliefs cannot be asked for and in the grab/guise of review, this Court cannot rehear the parties on the point of law afresh and also there can be no reappraisal and re-appreciation of evidence based on the overall assessment and facts of the matters in issue and moreover the reappraisal of entire evidence on record for finding out the errors will amount to exercise of Appellate Jurisdiction, which is not permissible in law and viewed in that perspective, the review applications are

not maintainable and they fail."

11. In the light of the decisions cited above, I do not find any grounds to review the order. In the result, the review application is dismissed without costs. Consequently, connected Miscellaneous Petitions are closed.

31.03.2015

Index : Yes/No
Internet : Yes/No
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Note : Issue order copy by 09.06.2015

K. KALYANASUNDARAM, J

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Rev.Appln.No.35 of 2015
in
CRP (NPD) No.1600 of 2014

31.03.2015

T.MATHIVANAN, J.

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To
The Principal Subordinate Judge,
Trichy.

CRP.(NPD)(MD)No.214 of 2014

Dated :03.04.2014

