

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.2311 OF 2004

K.A.Harikrishnan

... Petitioner/ Petitioner

Vs.

1. Sri Bhuvaneswari Textiles Farm
32, Market Street,
Gugai,
Salem - 6.

2. S.Pachaiappan

3. V.M.Annamalai

4. P.Athiappan

5. P.Sitheswaran

6. G.Gnanasekaran

... Respondents/Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order in I.A.No.1196/2003 in O.S.No.55/2002 on the file of Additional District Judge (Fast Track Court No.2) Salem.

For Petitioner : Mr.S.Kalyanaraman

For Respondents : Mr.M.Krishnappan
2, 3 and 6 Senior Counsel for Ms.R.Swarnalatha

For Respondent 4 : No appearance

For Respondents : Not ready
1 and 5

O R D E R

This Civil Revision Petition arises out of the order dated 14.07.2004 passed in I.A.No.1196/2003 in O.S.No.55/2002 by the learned Additional District Judge (Fast Track Court No.2) Salem.

2.The petitioner is the plaintiff in O.S.No.55 of 2002, which was filed against the respondents/defendants for recovery of Rs.6,65,333/-. The case of the petitioner is that the sixth defendant in the suit has given a letter of guarantee in Ex.A10 and therefore, he is liable to pay the suit claim. However, the sixth defendant in his written statement dated 20.09.2000 has categorically denied the execution of the guarantee letter dated 01.03.1995. After trial, the learned Additional District Judge held that the guarantee letter was not proved by the plaintiff. The suit was decreed against the first defendant on 25.08.2003.

3.Subsequently, the plaintiff filed I.A.No.1196 of 2003 to review the order stating that as per the guarantee letter in Ex.A10, the sixth defendant is also liable to pay the decree amount. The said application was resisted by the respondents / defendants. The learned Additional District Judge (Fast Track Court No.2) Salem, dismissed the application on 14.07.2004. Challenging the order, the present Civil Revision Petition is filed.

4.Mr.S.Kalyanaraman, learned counsel for the petitioner submitted that Ex.A10 guarantee letter was marked without any objection from the defendants and therefore, it does not require formal proof. It is further contended that after the documents are allowed to be marked, the defendants had taken out an application to cross examine the plaintiff witness and only thereafter, a finding was given that Ex.A10 was not proved. It is further submitted that the Trial Court in para 12 of its judgment has held that Ex.A10 was proved by the plaintiff, but subsequently has given a finding that Ex.A10 was not proved in accordance with law.

5.Per contra, Shri. M.Krishnappan, learned Senior Counsel for the respondents submitted that after appreciation of evidence, the Trial Court held that the guarantee letter in Ex.A10 was not proved and therefore, the plaintiff cannot file an application to review the judgment. If at all, the plaintiff should have filed an appeal against the judgment of the Trial Court. It is further submitted that review is not reconsideration of the entire evidence. In support of his contention, the learned Senior Counsel for the respondents has relied upon the Division Bench judgment of this

Court in THE STATE OF TAMIL NADU AND OTHERS VS. JEEVANA SCHOOLS, PONMENI AND OTHERS [2014 WRIT L.R. 972].

6.It is seen that the Trial Court after considering the evidence of the parties held that Ex.A10 guarantee letter was not proved by the plaintiff. The review application was filed by the plaintiff to make the sixth defendant liable to pay the decree amount only on the basis of the guarantee letter in Ex.A10. The Trial Court rightly dismissed the review application holding that Ex.A10 was not proved and the plaintiff cannot re-agitate the same, which is already decided.

7.In para 15 of the judgment reported in 2014 WRIT L.R. 972, the Division Bench of this Court has held as follows:

"15.Now, coming to the Review Applications, in R.A.[MD]. Nos.97, 98 of 2012 and 14 of 2014, which have been filed against the order, dated 21.03.2012. 07.03.2012 and 21.01.2014, made in W.A.[MD].Nos.181, 182 of 2012 and 81 of 2014, we are of the considered view that in view of the conclusions arrived at, as above, we do not find any reason to take a different view than the one taken by the earlier Division Benches. Moreover, when there is no error apparent on the face of record, the Review Applications need not be entertained, in the light of the Judgment of a Division Bench of this Court in Union of India, rep. by the Senior Divisional Commercial Manager, Chennai, Vs. The Registrar, Central Administrative Tribunal, Madras Bench, reported in CDJ 2014 MHC 241, wherein the Division Bench has made a complete survey of several Judgments of the Supreme Court, on this question, and has ultimately, in Paragraph No.10, held as follows:-

"In yet another Judgment reported in 2013 (8) SCC 320, [Kamlesh Verma Vs. Mayawati and others], the Hon'ble Apex Court, after examining various Judgments passed earlier has held as follows"

"12.This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A

mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

In the above Judgment, the Hon'ble Apex Court has laid down the principles as under:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles:

20. Thus, in view of the above, the following grounds of review are maintainable, as stipulated by the statute:

20.1 When the review will be maintainable:-

(i). Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

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

(iii). Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chhajju Ram Vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poullose Athanasius & Others [1955] 1 SCR 520, to mean, "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have

been reiterated in Union of India Vs. Sandur Manganese & Iron Ores Ltd., ors., JT (2013) 8 SC 275.

20.2. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable, unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

Applying the said legal principles to the facts of the present case, if we analyze the grounds of review, we find no error apparent on the face of record in the Judgments of the Division Benches. Thus, the Review Applications are liable to be dismissed."

8.In the light of the judgment of the Division Bench of this Court, I do not find any illegality or irregularity in the order impugned in this Civil Revision Petition. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

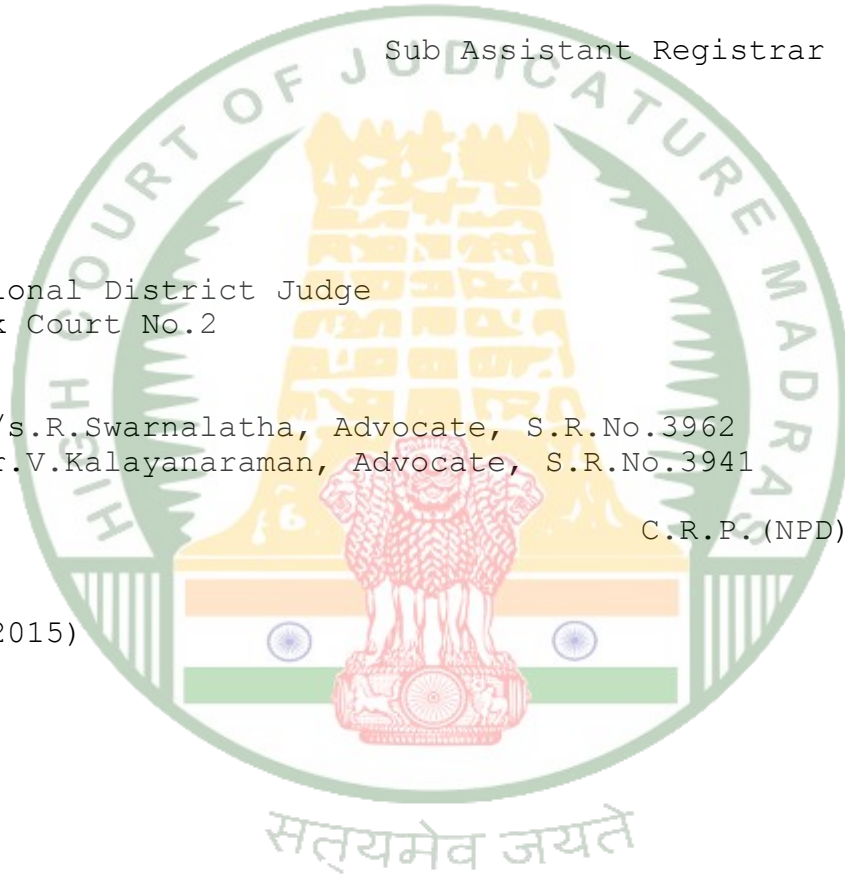
To

The Additional District Judge
Fast Track Court No.2
Salem.

+1cc to M/s.R.Swarnalatha, Advocate, S.R.No.3962
+1cc to Mr.V.Kalayanaraman, Advocate, S.R.No.3941

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