

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

Review Application No.108 of 2016

Jaya Prakash

.... Petitioner

vs

1. Arjunan
2. Kalaiarasi
3. Pandi Veeran

.... Respondents

Review Application filed under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code against the Order passed in CRP No.170 of 2016 dated 20.07.2016.

For petitioner : Mr.Silambanan
Senior Counsel for
Ms.Alamelu Mangai

For respondents : Mr.S. Manohar

ORDER

The above Revision Application has been filed by the first respondent in the Civil Revision Petition by engaging some other counsel.

2. The Hon'ble Supreme Court of India in the judgment reported in **1997 (2) L.W 326 (M. Poornachandran and another vs State of Tamil Nadu and Others)**, held as follows:

"The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The Review petition has been filed by Shri Prabir Chowdhary who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That apart, he has not obtained " No objection Certificate" from the Advocate-on-Record in the appeal, inspite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to

file the Review Petition. Even otherwise, the Review Petition has no merits. It is an attempt to reargue the matter.

On these grounds , we dismiss the Review Petition."

3. From the Judgment of the Apex Court, it is clear that the Review Application cannot be filed by a new counsel since what transpired between the erstwhile counsel and the Court may not be known to the present counsel. Further, the Apex Court held that it would not be in the interest of the profession to permit such practice.

4. This Court is bound by the decision of the Apex Court. Hence, I do not find any reason to entertain the present Review Application, filed by the first respondent in the Civil Revision Petition.

5. Mr.S. Silambanan, learned Senior Counsel appearing for Ms.Alamelu Mangai, learned counsel for the Review Petitioner, submitted that the petitioner would be satisfied if this Court gives liberty to the petitioner-first respondent to file an application under Order VII Rule 11 of the Civil Procedure Code before the trial Court. Further, the learned Senior Counsel submitted that in Paragraph-8 of the order passed in the Civil Revision Petition, this Court observed

that the issues involved in the suit can be decided only after the full fledged trial and therefore, the trial Court may not entertain the application, filed under Order VII Rule 11 of the Civil Procedure Code.

6. Mr.S. Manohar, learned counsel, appearing for the first respondent-petitioner in the Civil Revision Petition, submitted that even in the absence of any liberty given by this Court, the defendants can file an application under Order VII Rule 11 of the Civil Procedure Code.

7. Though the Review Applicant has raised so many grounds, the learned Senior Counsel has confined his submission only with regard to the liberty in filing an application under Order VII Rule 11 of the Civil Procedure Code.

8. Having regard to the submissions made by the learned counsel on either side and agreeing with the submissions made by the learned counsel, appearing for the first respondent-petitioner in the Civil Revision Petition, even without liberty, the petitioner/first respondent in the Civil Revision Petition can file an application under Order VII Rule 11 of the Civil Procedure Code and in the event of such

an application being filed by the Revision Petitioner, the trial Court shall decide the same, on merits and in accordance with law. With these observations, the Review Application is disposed of. No costs.

04-11-2016

sr

Index:no
website:yes

To

The Subordinate Court, Kallakurichi

M. DURAISWAMY,J.,

sr

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