

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

Review Application No.54 of 2016
and CMP No.5781 of 2016

S. Umapathy

.... Petitioner

vs

1. Ezhilarasi
2. Varadhan

..... Respondents

Review Application filed under Order 47 Rule 1 and SEction 114
of the Code of Civil Procedure Code against the order dated
08.03.2016 passed in CRP (PD) No.4169 of 2015.

For petitioner : Mr.S. Diwakar

ORDER

The respondent in CRP (PD) No.4169 of 2015 had filed the
Review Application, stating that the revision petition, filed by the
respondents herein, is not maintainable for the reason that the

impugned order, passed in I.A.No.14346 of 2015 in O.S No.4922 of 2010 dated 08.10.2015, is an appealable order.

2. This Court, while deciding the Civil Revision Petition, held that the impugned order, passed by the trial Court is not an appealable order and the revision, filed under Article 227 of the Constitution of India, is very much maintainable. This Court had given a categorical finding that the Civil Revision Petition is maintainable. The petitioner cannot re-argue the matter on the guise of review application. If the petitioner is aggrieved over the order passed by this Court in the Civil Revision Petition, the remedy open to the petitioner is only to file an appeal before the Hon'ble Supreme Court of India with regard to the said finding.

3. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court reported in **1995 Supp (4) SCC 725 (Altaf Khan vs Mohd. Amin Khan and Others)**, wherein, the Apex Court held that where, the High Court took on record the documents, which the Appellate Court has disallowed, instead of deciding itself the case on merits, the High Court should have remitted back to the opinion of the appellate Court, as the same was the final

court of fact.

4. It is settled position that if an application is filed under Order 41 Rule 27 of the Civil Procedure Code and if the said application is allowed by the appellate Court, in such a case, the matter should be remitted back to the trial Court for proving the said document under Order 41 Rule 28 of Civil Procedure Code. But, in the case on hand, the respondents, who are the defendants in the suit, have filed an application, seeking permission of the trial court to produce the documents at the time of trial. As stated in the order passed in the Civil Revision Petition, the suit is in the trial stage and the defendants' witness is in the box. This Court, while disposing of the Civil Revision Petition, has also held that even if the documents were produced along with the written statement, the documents should be marked only at the time of trial.

5. As already stated, the defendants' witness is in the box before the trial court and in such a case, the judgment relied upon by the learned counsel for the petitioner does not apply to the facts and circumstances of the present case. This Court had considered all aspects, while disposing of the Civil Revision Petition. The grounds,

M. DURAISWAMY,J.,

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now raised by the petitioner in the Review Application, shall not come within the purview of Order 47 Rule 1 of Civil Procedure Code. None of the grounds raised by the petitioner, point out an error apparent on the face of the record, warranting interference in the Review Application. Since there is no error apparent on the face of the record, I do not find any merits in the Review Application and the Review Application is liable to be dismissed and accordingly the same is dismissed. No costs. Consequently, connected CMP is closed.

31-03-2016

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Index:no

Website:yes

Note: Issue order copy today

Rev.Appln No.54/2016