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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Review Application No.95 of 2016
in
C.R.P.(NPD).No.1065 of 2016

State by
Superintendent of Police,
CBI, ACB, Chennai.

..Review Petitioner

Vs.

1.S.Vaikundarajan
2.S.Jagadeesan
3.Janaki

..Respondents

Prayer: This Review Petition is filed under Order XLVII, Rule 1 of Civil Procedure Code R/W Section 114 of Civil Procedure Code, against the order dated 28.04.2016 made in C.R.P.(NPD).No.1065 of 2016.

CRP(NPD) 1065/2016:

Civil Revision Petition filed under Section 115 of CPC against the order dated 23.02.2016 of the Learned District Judge, District Court No.II, Kancheepuram in E.A. No. 33/2015 in E.A. No. 22/2014 in E.P. No. 50/2012 in A.R.C. No. 2/2012 allowing the E.A. Filed by the 1st Respondent/Proposed party to impleaded as party Respondent in E.P. No. 50/2012.

For Review Petitioner	:	Mr.K.Srinivasan Special PP for CBI
For R1	:	Mr.S.Meenakshisundaram Senior Counsel for M/s.Kingsly Solomon J
For R2	:	Mr.S.Ashok Kumar Senior Counsel for Mr.Y.Prakash



O R D E R

(The matter is heard through "Video Conferencing")

This Review Petition is filed to reconsider the order dated 28.04.2016 made in C.R.P.(NPD).No.1065 of 2016 by expunging paragraph Nos.11 & 21 of the order dated 28.04.2016.

2.The review petitioner is 1st respondent in C.R.P.(NPD).No.1065 of 2016 filed by the respondents 1 & 2 herein. The 3rd respondent is 2nd respondent in C.R.P.(NPD).No.1065 of 2016.

Facts of the case:

3.A case was registered in RC MA1 2012 A 0055 against one A.Subbaiah, I.A.S., Secretary, Department of IT, West Bengal, former Chairman of V.O.C. Port Trust, Tuticorin and six others including the 3rd respondent herein, Mother of said A.Subbaiah and one A.Jayaraman, brother of said A.Subbaiah. In the course of investigation of CBI, the petitioner found SB account No.606601508801 of ICICI Bank, Kancheepuram Branch in the name of A.Jayaraman and 3rd respondent herein. The said account was frozen on 03.01.2013 by order under Section 102 of the Code of Criminal Procedure. While so, the respondents 1 & 2 obtained an arbitration award against the 3rd respondent and filed E.P.No.50 of 2012 on the file of the District Court No.II, Kancheepuram. The SB account frozen by the petitioner was opened in E.P. and by the order dated 15.04.2014, the application filed by the respondents 1 & 2 to send the amount was ordered.

3(a).On coming to know about the E.P. and orders passed therein, the petitioner filed E.A.No.33 of 2015 in E.A.No.22 of 2014 in E.P.No.50 of 2012 in A.R.C.No.2 of 2012 for impleading and to set aside the order sending the above amount. The learned II District Judge, Kancheepuram allowed E.A.No.33 of 2015 impleading the petitioner as party.

3(b). The respondents 1 & 2 filed the C.R.P.(NPD).No.1065 of 2016 challenging the order impleading the petitioner. This Court by the order dated 28.04.2016 disposed of the C.R.P.(NPD).No.1065 of 2016 imposing certain conditions.

4.The petitioner has come out with the present Review Application to review the order dated 28.04.2016 made in C.R.P.(NPD).No.1065 of 2016 by expunging paragraph Nos.11 & 21 of the order dated 28.04.2016 and to extend the Bank guarantee ordered by this Court till disposal of the RC55(A)/2012 OF CBI, ACB, Chennai.



5. The learned Special Public Prosecutor for CBI appearing for the petitioner submitted that the investigation by CBI is in progress and not yet completed and final report has to be filed in the case and findings in paragraph Nos. 11 & 21 will weaken the case of the CBI against the accused person. The criminal case was not an issue in the C.R.P. In spite of the same, this Court on 28.04.2016 passed order on merits with regard to criminal case while investigation is still in progress. There is an error apparent in the order of this Court and paragraph Nos. 11 & 21 are liable to be expunged.

6. Per contra, the learned Senior Counsel appearing for the 1st respondent submitted that this Court has made sufficient conditions to safeguard the interest of CBI and there is no necessity to impose further conditions. Unless there is an error on the face of the record of the order, it cannot be reviewed. The Hon'ble Apex Court has held that even if it is a legal error, parties cannot file review petition to review the same. In support of their contention, they relied on the following judgments:

(i) 1995 (1) CTC 493, [The Tamil Nadu Housing Board Rep.... Vs. A. Viswam and 10 others];

" ... 11. The Supreme Court in the above case law, has listed out legal ratio to be followed in the review proceedings in the following words.

" The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C. The review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground. An 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 points where there may conceivably be two opinions. The limitation of powers of court under Order 47 Rule 1 C.P.C. is similar



to the jurisdiction available to the High Court while seeking review of the orders under Article 226."

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(ii) 2009 (5) CTC 365, [Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs.];

" ... 10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order. Review is not appeal in disguise.

In Lily Thomas v. Union of India [AIR 2000 SC 1650], this Court held :

'56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise.'

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



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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'."

(iii) 2019 (1) CWC 540, [Asharfi Devi (D) thr. L.Rs. Vs. State of U.P. and Ors.];

" ... 23. We find no merit in any of his submissions for more than one reason. First, as mentioned above, this appeal does not arise out of the main order but arises out of review order only and, therefore, we cannot examine the legality and correctness of the main order in this appeal like an Appellate Court."

The learned Senior Counsel appearing for 1st respondent referred to the counter filed by the petitioner in Civil Revision Petition and submitted that the petitioner invited the findings in paragraph Nos.11 & 21 by making allegations against the respondents. Aggrieved by the order, they have to file an appeal only before the Hon'ble Apex Court and they cannot file a review applicatio to reconsider the order dated 28.04.2016 made in C.R.P.(NPD).No.1065 of 2016 as there is no error in the order



of the learned Judge and prayed for dismissal of the review application.

7. Mr. S. Ashok Kumar, learned Senior Counsel appearing for the 2nd respondent submitted that this Court only after considering the materials available, passed an order and findings in paragraph Nos. 11 & 21 are in order. This Court considered the check period with regard to alleged disproportionate sale and the fact that 3rd respondent purchased the property long before the check period and passed the order. Only when there is an error apparent in the order, the said order can be reviewed. In the present case, there is no error in the order and prayed for dismissal of the review application.

8. Heard the learned Special Public Prosecutor for CBI appearing for the petitioner as well as the learned Senior Counsel appearing for the 1st respondent and the learned Senior Counsel appearing for the 2nd respondent and perused the entire materials on record.

9. From the order dated 28.04.2016 made in C.R.P. (NPD). No. 1065 of 2016, it is seen the issue before the Court is whether impleading the petitioner in E.P. No. 50 of 2012 pending on the file of the District Court No. II, Kancheepuram as party is correct or not. This Court considering the materials, held that there are two sets of facts namely, one set leading to civil dispute and another set leading to investigation and nothing being done by the petitioner with regard to disproportionate wealth case. Having held so, an error is crept in order namely, the Court has given a finding in paragraph Nos. 11 & 21 in respect of criminal case being registered and investigated, when the F.I.R. and criminal case are not put up before the Court in C.R.P.

10. The contention of the learned Special Public Prosecutor appearing for the petitioner that the investigation is in progress and final report is not filed and criminal case is not an issue in C.R.P. and findings in paragraph Nos. 11 & 21 have to expunged has considerable force and it is acceptable. When an error is pointed out by the party, it is for the Court to set aside the same.

11. For the above reason, paragraph No. 11 and words "(which of course does not appear to be correct)" and "(if need be)" in paragraph No. 21 in the order dated 28.04.2016 made in C.R.P. (NPD). No. 1065 of 2016 are expunged.

12. This Court to safeguard the interest of petitioner, in paragraph No. 23, directed the respondents 1 & 2 to furnish the



Bank guarantee, but no time limit was fixed. In view of the same, the respondents 1 & 2 are directed to furnish Bank guarantee and keep it alive till the disposal of criminal case in RC55(A)/2012 of CBI, ACB, Chennai.

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13. With the above directions, this Review Petition is allowed. No costs.

Sd/-
Assistant Registrar
//True copy//

Sub Assistant Registrar

krk

To

1. The District Judge
District Court No.II
Kancheepuram

+1 CC to Mr.Y.Prakash, Advocate sr 2493

+1 CC to M/s. Kingsly Solomon, Advocate sr 2363

**+1cc to Mr.K.Srinivasan, Spl.P.P.for CBI,
High Court, Madras (Letter dated 17.03.2022)**

Review Application No.95 of 2016
in C.R.P.(NPD).No.1065 of 2016

AD(CO)
SP(02/03/2022)

RGA(24/03/2022)