

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

Review Application No.662 of 2017

in

W.P.No.14452 of 2015

K.Rathinam Murugesan

... Applicant

.. Vs ..

1. The Principal Secretary,
Government of Tamil Nadu,
Home (Courts-I) Department,
Fort St, George, Chennai-9.
2. The Registrar General,
High Court of Judicature at Madras,
Chennai - 104.
3. Tr.M.N.Mohammed Ali, B.Sc., M.L.,
Principal District Judge, (Enquiry Officer),
Thiruvavarur.
4. Tr.Balasubramanian
(Presenting Officer),
Chief Judicial Magistrate,
Thiruvavarur.

... Respondents

Prayer: Review Application filed under Article 226 of the Constitution of India r/w. Section 114 of Order 47 Rule 1 of C.P.C. to review the order passed by this Court dated 07.03.2017 in Writ Petition No.14452 of 2015.

For Applicant : Mrs.K.Rathinam Murugesan
Party-in-person

For R-1 : Mr.R.Govindasamy,
Special Government Pleader

For RR-2 to 4 : M/s.E.K.Kumaresan

ORDER

(Order of the Court was made by
S.M.SUBRAMANIAM, J.,)

The review applicant appearing in person attempted to canvass before us in respect of the merits of the case adjudicated in the writ petition by the Division Bench. The applicant, who preferred this review application in person, contended that the Division Bench of this Court dismissed the writ petition without determining the important issues raised as grounds in the writ petition.

2. According to the petitioner, as per the law laid down by the Supreme Court of India in the case of *Union of India Vs. Gyan Chand Chattar* reported in (2009) 12 SCC 78 and also as per the judgment delivered in the case of *Anil Kilurker Vs. Bilaspur Raipur Kshetriya Gramin Bank* reported in (2011) 14 SC 379, the entire enquiry would be vitiated and the same would materially affect the result of the case. The applicant, thus urged that the charges framed against her are vague in nature and the same cannot be construed as serious. Further, it is contended that the charges are not providing the details of any specific incident and the term "modus operandi" referred to in the charge must contain the minutes and details of every aspect and this aspect has not been considered by the Division Bench.

3. The applicant also raised a ground that the charges framed against the applicant were not proved before the enquiry and that the enquiry conducted by the enquiry officer was not in accordance with the principles of natural justice. By citing Article 311 (1) and 311 (2) of the Constitution of India, the applicant contended that the second show cause notice issued enclosing a copy of the enquiry report is in violation of such Constitutional provisions. She further contended that

the punishment of termination proposed in the second show cause notice is per se illegal and the Disciplinary Authority ought not to have prescribed the nature of punishment, at the time of issuing the second show cause notice and the same portrays the predetermined decision taken by the Disciplinary Authority, even before considering the explanations/objections to be submitted on the second show cause notice.

4. The applicant states that the learned Presenting Officer, during the enquiry proceedings, stepped into the shoes of the learned Enquiry Officer and closed the defence witnesses on 25.03.2014, in view of the fact that the learned enquiry officer was serving in the cadre of District Judge and the learned Presenting Officer was serving in the cadre of Chief Judicial Magistrate. Thus, the endorsement made before the Presenting Officer to be construed as invalid in the eye of law so also it is to be treated as denial of reasonable opportunity of being heard of charges as per the provisions of Article 311 (2) of the Constitution of India.

5. It is contended that it was not brought to the notice of the Division Bench that the learned Enquiry Officer did not inform the charges to the applicant on the day of her appearance before the enquiry officer on 18.12.2013 and thereby, the applicant was denied with an opportunity to deny the charges framed against her. Summons were issued to the witnesses even prior to the appearance of the applicant before the Enquiry Officer which is in violation of the Constitutional mandate as found in Article 311(2) of the Constitution of India. The review applicant further proceeded by arguing that the documents produced before the enquiry officer by her were not considered in accordance with law and so also those factors were not considered by the Division Bench while delivering the judgment in W.P.No.14452 of 2015.

6. Another contention raised by the applicant is that the charge memo had not been approved by the Disciplinary Authority as found in para 4 of the counter affidavit filed by the respondents. It is stated that after necessary approval, charges were framed and communicated to the applicant to submit the written statement of defence. However, the same did not contain the number of the

proceedings and the date. Therefore, an inference is to be drawn that no approval was accorded by the Disciplinary Authority in respect of the charges framed against the applicant.

7. Heard the applicant at length.

8. This Division Bench is of the opinion that the review applications are not maintainable either under Section 114 of CPC or under Order 47 Rule 1 of CPC for the reasons that the review application can be maintained under any of the ingredients of Order 47 Rule 1 of CPC and more importantly, only when there is a mistake or an error apparent on the face of the record. The review applicant has not made out even a single ground for reviewing the said judgment and there is no defect or error apparent on the face of the record. The review applicant did not make out any ground so as to attract the ingredients of Order 47 Rule 1 CPC and not pointed out any error apparent on the face of the record. The Supreme Court of India in the case of *Persion Devi and Ors v. Sumithra Devi & Ors* reported in **[1997 (8) SCC 715]**, held that reviewing a judgement on error apparent on the face of the record, is distinct from erroneous

decisions. An erroneous decision, even assuming to be, will not provide a cause for filing a review application. The Supreme Court has made out a distinction between the error apparent on the face of the record and erroneous decisions. But, the grounds raised in the present review application do not establish any error apparent on the face of the record and thus, the present review application deserves to be rejected.

9. Further, the Supreme Court of India held that the review jurisdiction cannot be used as an Appellate Jurisdiction. The “mistake” or “error” must exist apparent on the face of the record to seek for review. As per Order 47 Rule 1 CPC, the judgement may be opened to review, *inter alia*, if there is a mistake or an error apparent on the face of the records. An error which is not self-evident and has to be detected by a process of reasoning can hardly said to be an error apparent on the face of the record justifying the Court to exercise its power of review in exercise of the jurisdiction under Order 47 Rule 1 CPC. It is impermissible for an erroneous decision to be “re-heard and corrected” and there is a clear distinction between an erroneous decision and an error apparent on the face of the record.

10. The review application has a limited scope and cannot be allowed to be argued as an Appeal in disguise. In many cases across the country it is held that, where the grounds enumerated under Order 47 Rule 1 CPC is imminent and in the absence of satisfying the ingredients, no review application would lie. The review application is not a process of re-hearing of the whole matter, which had been earlier finally disposed of and the review application filed by the present applicant herein exactly attempts to do the same. Acceptability or rejection of the review application has to be decided only with reference to the grounds on which the review is permissible and not on the merits of the claim. The Supreme Court of India in the case reported in **AIR 2000 SC 1650** held that a review application is for a correction of mistake and not for substitution of views. A point which may be a ground for an appeal is certainly not a ground for review. Thus, an erroneous view of evidence or of law is no ground for a review, though, it may be a ground for an appeal. The grounds of review application presently filed by the applicant does not make out an evidence of error apparent on the face of the order of this Court.

11. The two Judges Bench of the Supreme Court of India in the case of ***Kamlesh Verma Vs. Mayawati***, reported in **2013 (8) SCC 320**, summarise the principles in respect of the maintainability of the review application under Order 47 Rule 1 CPC. Paragraph Nos.20 and 21 of the said judgment are extracted hereunder.

"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 applicant or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* [AIR 1954 SC 526 : (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 v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : 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 reheard 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 negatived.

21. Keeping the above principles in mind, let us consider the claim of the applicant and find out whether a case has been made out for interference exercising review jurisdiction."

12. The principles are broadly enumerated in the judgment cited supra and we are of the view that the same are to be applied to the case on hand to reject the review. The principles laid down are to be fit in with the grounds raised in the present review application. On reading of the entire grounds raised in the review application this Court is of the view that an attempt has been made by the applicant to re-agitate the merits of the matter which is impermissible in the revision jurisdiction.

13. In this view of the matter, we are of the considered view that the applicant has not made out any case for entertaining the

present review application and accordingly, the review application stands dismissed. However, there shall be no order as to costs.

[K.R.C.B,J.]

[S.M.S.,J.]

20.12.2017

Index : Yes
Internet: Yes
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To

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