

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Rev.Appl.No.102 of 2017
in C.R.P.(PD)No.1321 of 2017

M.Chandrakala @ Chandra

.. Petitioner

Vs.

R.Jayachandran

.. Respondent

PRAYER: Review Application has been filed under Order 47 Rule 1 read with 114 of C.P.C., to review the order of this Court made in C.R.P.(PD)No.1321 of 2017, dated 10.04.2017.

For Petitioner : Mr.N.Thiyagarajan, Senior Counsel
for Mr.R.Lakshmi Narayanan

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ORDER

This Review Application is filed to review the order of this Court made in C.R.P.(PD)No.1321 of 2017, dated 10.04.2017.

2. The civil revision petition is filed against the fair and decretal order dated 06.01.2017 made in I.A.No.1579 of 2011 in H.M.O.P.No.819 of 2007 on the file of the District Family Court, Coimbatore.

3. According to the petitioner, there is an error apparent in the order of this Court dated 10.04.2017 made in C.R.P.(PD)No.1321 of 2017 and therefore, the said order has to be reconsidered.

4. The facts of the case are as follows:

(i) The petitioner/wife filed H.M.O.P.No.819 of 2007 against the respondent/husband for decree of divorce on the file of the Family Court, Coimbatore. The respondent filed H.M.O.P.No.651 of 2007 against the petitioner for restitution of conjugal rights. The learned Judge dismissed H.M.O.P.No.651 of 2007 filed by the respondent and allowed H.M.O.P.No.819 of 2007 filed by the petitioner for divorce.

(ii) After the common order dated 02.05.2011 passed in both H.M.O.P., the petitioner filed I.A.No.1579 of 2011 for return of cash, jewels and other articles given to her by her parents at the time of

marriage. After marriage, the petitioner and her parents had given cash to the respondent to establish his business and as advance for house taken on rent by the respondent and petitioner. The respondent filed counter and denied that the articles mentioned in the petition are with the respondent and submitted that the petitioner has taken all her articles, when she left the matrimonial home.

(iii) The respondent filed C.M.A.Nos.106 & 107 of 2012 challenging the common order passed in H.M.O.P.Nos.651 of 2007 and 819 of 2007 and both the C.M.As. are pending on the file of the District Family Court, Coimbatore.

(iv) The learned Judge dismissed the application filed by the petitioner for return of articles on the ground that the application is not maintainable after decree has been passed in H.M.O.P.Nos.651 and 819 of 2007 on 02.05.2011.

(v) Against the said order dated 06.01.2017 made in I.A.No.1579 of 2011, the petitioner has filed C.R.P.(PD)No.1321 of 2017 before this Court. This Court by order dated 10.04.2017 considered all the materials on record, the order of the learned Judge dated 06.01.2017 and Section 27 of the Hindu Marriage Act, dismissed the civil revision petition. The present review petition is to

reconsider the said order.

5. According to the learned senior counsel appearing for the petitioner, an order under Section 27 of the Hindu Marriage Act for return of articles can be passed even after disposal of H.M.O.P. and in support of his contention, he relied on the judgment of this Court reported in **2016 (3) TLNJ 215(Civil) in C.R.P.(NPD)No.998 of 2016 dated 30.03.2016 (Dr.S.P.G.Sundaram and another v. Indu Vedamurthy, D/o.A.Vedamurthy, represented by her father and power of attorney, Agent)**. According to the petitioner, this Court erred in dismissing the civil revision petition on the ground that after decree passed in H.M.O.P., application under Section 27 of the Hindu Marriage Act is not maintainable.

6. Heard the learned Senior Counsel appearing for the petitioner, considered the various contentions raised in the grounds of review and the judgment relied on by the learned Senior Counsel.

7. The petitioner has filed I.A.No.1579 of 2011 after H.M.O.P. filed by her for divorce had been allowed. The learned Judge dismissed the said application on the ground that after the decree passed in H.M.O.P., the application under Section 27 of the Hindu Marriage Act for return of articles is not maintainable. Section 27 of the Hindu Marriage Act reads as follows:

“27. Disposal of property_In any proceeding under this Act, the Court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.”

8. The above section makes it very clear that at the time of passing of decree in H.M.O.P., the Court can pass order with regard to the return of articles, which were given to the parties during marriage or immediately after marriage, which were treated as joint family property. Admittedly, the petitioner has not stated anything about the jewels and other articles mentioned in the petition being retained by the respondent either in the petition filed by her in H.M.O.P.No.819 of 2007 for divorce or the counter filed by her in H.M.O.P.No.651 of 2007, which was filed by the respondent for restitution of conjugal rights. Further she has not taken any steps for return of articles either during pendency of the proceedings or at the time of passing of decree on 02.05.2011. The petitioner has not let in any evidence to substantiate her claim that the articles are with the respondent.

9. The scope of the review is very limited and it is not an

appeal or revision. The petitioner has no right to re-argue the matter on merits or raise any new plea now. The scope of review was considered by the Hon'ble Apex Court in a judgment reported in **2000 (6) SCC 224 [Lilli Thomas and Others Vs. Union of India and Others]**, wherein, in paragraph 52, it was held as under:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in **Patel Narshi Thakershi Vs. Pradyumansinghji Arjunsinghji [1971 (3) SCC 844 : AIR 1970 SC 1273]** held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying

the error."

(emphasis supplied)

10. A Division Bench of this Court in a judgment reported in **2014 (3) TLNJ 245 (Civil) [M.Jai Kavitha Vs. The Authorised Officer, Syndicate Bank, Regional Office, Chennai - 1 and others]**, has considered the scope of judicial review, wherein the decision of the Honourable Apex Court was noted with approval. Paragraph No.9 of the said Judgment reads as under:

"9.The power of review under Order 47 Rule 1 of CPC can be exercised by a court of law, if the order in question comprises a mistake or an error apparent on the face of record. Once an order is pronounced, it should not be altered, unless there is an apparent error. Law is well settled that erroneous finding is not a ground for review, so also improper consideration for that matter. In review application, the court does not sit in appeal over its own judgment and the said application cannot be treated as an appeal. This position has been ruled by the Supreme Court in Lily Thomas Vs. Union of India [2000 (6) SCC 224]. Therefore, in the absence of any error apparent on the face of record, we are not inclined to interfere with the order in question, except to the extent of deleting

of the portions in paragraphs 14 and 15 of the impugned order, with which the applicant is concerned as to having an impact on the proceedings pending before the tribunal, as stated in the foregoing paragraph."

(emphasis supplied)

11. In the light of the dicta laid down by the Honourable Apex Court as well as by the Division Bench of this Court, I am of the considered view that the earlier order of the Court can be reconsidered only if there is an error apparent on the face of record and in that event, the said error can be rectified. Otherwise, a Review Application is not at all maintainable. In the present case on hand, the Review Applicant failed to raise any ground, reason or cause, warranting interference at the hands of this Court.

12. In the result, the Review Application is dismissed. No costs.

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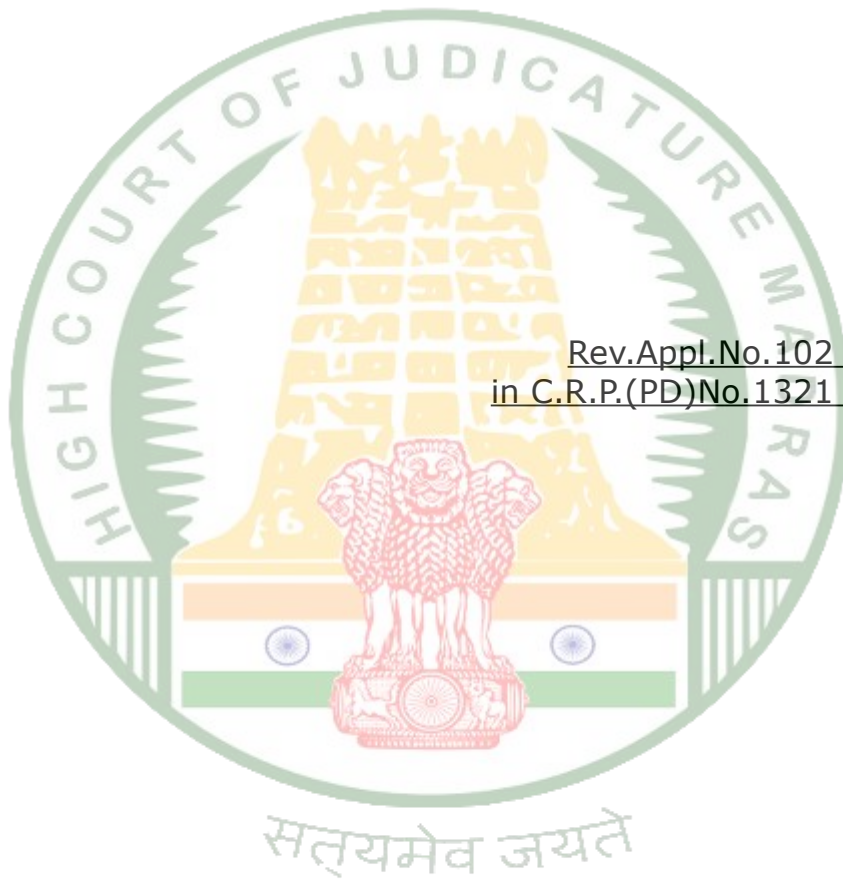
Index:Yes/No

Speaking/Non-Speaking Order

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V.M.VELUMANI,J.

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