

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

CORAM

THE HONOURABLE MR.JUSTICE.M.V.MURALIDARAN

Rev.Application No.15 of 2017
in C.R.P.No.4217 of 2013 and
CMP.No.2917 of 2017

V.Rajamani

.. Review applicant

Vs.

Danabalan

.. Respondent

Prayer: This Review Application is filed under Order 41 Rule 1 r/w 114 of Civil Procedure Code praying to review the order passed in C.R.P.No.4217 of 2013 dated 25.10.2016.

For review applicant : Mr.C.Saifullah

For Respondent : Mr.C.Jagadish

ORDER

This review application has been filed by the review applicant to review the order dated 25.10.2016 passed in C.R.P.No.4217 of 2013.

2. For the sake of convenience, the parties are referred to as per their rank in the suit in O.S.No.641 of 2008.

3. This review applicant is the plaintiff and the respondent is the defendant in O.S.No.641 of 2008 on the file of District Munsif Court, Erode, which was filed, seeking the relief of specific performance. Pending the suit, the defendant has filed I.A.No.390 of 2013 in O.S.No.641 of 2008 to get handwriting expert opinion. The Court below, by order dated 10.10.2013, allowed the said application and appointed an Advocate Commissioner and directed him to get the documents concerned for comparison of signature from the court and handed it over to the Forensic Department and again he should obtain the report from the Forensic Department and submit before the court as early as possible. Aggrieved over the same, the plaintiff filed the civil revision petition before this Court. This Court by an order dated 04.07.2016 dismissed the said revision petition, against which, the plaintiff has filed the present review application.

4. It is contended by the review applicant that the respondent has admitted in his application in I.A.No.390 of 2013 his signature in 1st page of

Ex.A1 sale agreement as genuine, however, in para-4 of his written statement, has stated Ex.A1 as a forged one. Apart from that, the suit is now posted for trial. At this stage, sending Ex.A1- Sale Agreement for Forensic Expert opinion is unwarranted, as it will only prolong the proceedings. Thus, the learned counsel prayed to review the order passed by this court.

5. Per contra, learned counsel for the respondent supports the order passed by the trial Court as well as this Court. According to him, no interference is warranted by way of reviewing the order passed by this Court.

6. Heard the submission made by the learned counsel on either side and perused the materials before this Court.

7. Before going into the issue involved herein, it is appropriate to consider the legal principles with regard to the scope of review. A Division Bench of this Court, in the case of *Union of India, represented by the Senior Divisional Commercial Manager, Chennai Division, Southern Railway, Chennai - 600 003 and another v. The Registrar, Central Administrative Tribunal, Madras Bench, Chennai - 600 104 and another* [Review Application

No.163 of 2013, decided on 22.01.2014], has dealt with the scope of review and held as follows:

"6. The scope for review is borrowed from Order XLVII of CPC. Recalling the earlier order must be done only in exceptional circumstances as the resultant effect would set at naught the actions taken in compliance of the earlier orders. There must be an error apparent on the face of the record or some evidence, which though could not be produced after due diligence if produced, would result in a different decision or for any other sufficient reason, provided the person seeking review must prove that the existence of the document was not within his knowledge earlier. If even on the consideration of the document same decision is possible, the Courts would refrain to interfere.

7. In the judgment reported in **(1999) 9 SCC 596 [AJIT KUMAR RATH vs. STATE OF ORISSA]**, the Hon'ble Apex Court has in paragraphs 30 and 31 held as follows:

"30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a counter under Section 114 read with Order 47 CPC. The Power is not absolute and is hedged in by the restrictions

indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on the account of some mistake or error apparent on the fact of record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression “any other sufficient reason” used in order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of liberty given to the Tribunal under the Act to review its judgment”.

8. In the judgment reported in **(2013) 7 SCC 615 [KHELA BANERJEE AND ANOTHER vs. CITY MONTESSORI SCHOOL AND OTHERS]**, the Hon'ble Apex Court dismissed the Application for Review holding that the error was not germane to the controversy adjudicated.

9. In the judgment reported in **(1980) 2 SCC 167 [NORTHERN INDIA CATERERS (INDIA) LTD. vs. Lt. GOVERNOR OF DELHI]** in paragraph 9 the Hon'ble Apex Court held as follows:

“Now, besides the fact that most of the legal material so assiduously collected and placed before us by the learned Additional Solicitor General, who has now been entrusted to appear for the respondent, was never brought to our attention when the appeals were heard, we may also examine whether the judgment suffers from an error apparent on the face of the record. Such an error exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record”

10. In yet another judgment reported in **(2013) 8 SCC 320 [KAMLESH VERMA vs. MAYAWATI AND OTHERS]**, the Hon'ble Apex Court after examining various judgments passed earlier has held as follows:

“12. This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.....”

In the above judgment, the Hon'ble Apex Court has laid down the principles as under:

“19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review

jurisdiction.

Summary of the Principles:

20. Thus, in view of 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 petitioner or could not be produced by him;*

(ii) *Mistake or error apparent on the face of record;*

(iii) *Any other sufficient reason. The words “any other sufficient reason” has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Others (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 Vs Sandur Manganese & Iron Ores Ltd. & Ors., 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 re-heard 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 negated.”

11. Upon perusal of the order dated 16.04.2012, we find

that the merger of posts from 01.01.2006 was raised repeatedly before all forums including this Court, and the same was rejected. The Tribunal had considered that the juniors of the second respondent were promoted by proceedings dated 04.05.2006 and therefore after the expiry of the penalty, the second respondent was entitled to be promoted as Deputy Chief Ticket Inspector and fixed in the same scale of pay of 5500-9000 with effect from 22.09.2008. No additional material or new argument has been put forward before us by the writ petitioners. All that is sought is a change of opinion on the same facts and documents. Once a point has been raised and negatived, the same point cannot be argued under the guise of review. The Review Application cannot be used as a tool for change of opinion. This Application squarely falls in the second limb of the principles laid down by the Hon'ble Apex Court in the judgment reported in **(2013) 8 SCC 320 [KAMLESH VERMA vs. MAYAWATI AND OTHERS]**.

8. Keeping in mind the dictum laid down in the decisions of the Honourable Supreme Court as dealt with in the aforesaid judgment of the Division Bench of this Court, I am of the view that the scope of review is very narrow and the Review Court cannot sit in appeal over its own order and rehearing of the matter is impermissible in law.

9. Even otherwise, this Court, after hearing both sides and upon perusal

of the entire materials placed before it, has dismissed the revision petition filed by the plaintiff, by the order under review, which in my considered opinion, does not call for any interference.

10. At this juncture, it is submitted that pursuant to the order of this Court, the Advocate Commissioner has filed his report dated 16.03.2017. In view of the same, the petitioner is at liberty to work out his remedy before the appropriate forum, if he is aggrieved over the report of the Advocate Commissioner.

11. In the result, this review application is dismissed by giving liberty to the petitioner to work out his remedy before the appropriate forum, if he is aggrieved over the report of the Advocate Commissioner. No costs. Consequently, connected miscellaneous petition is closed.

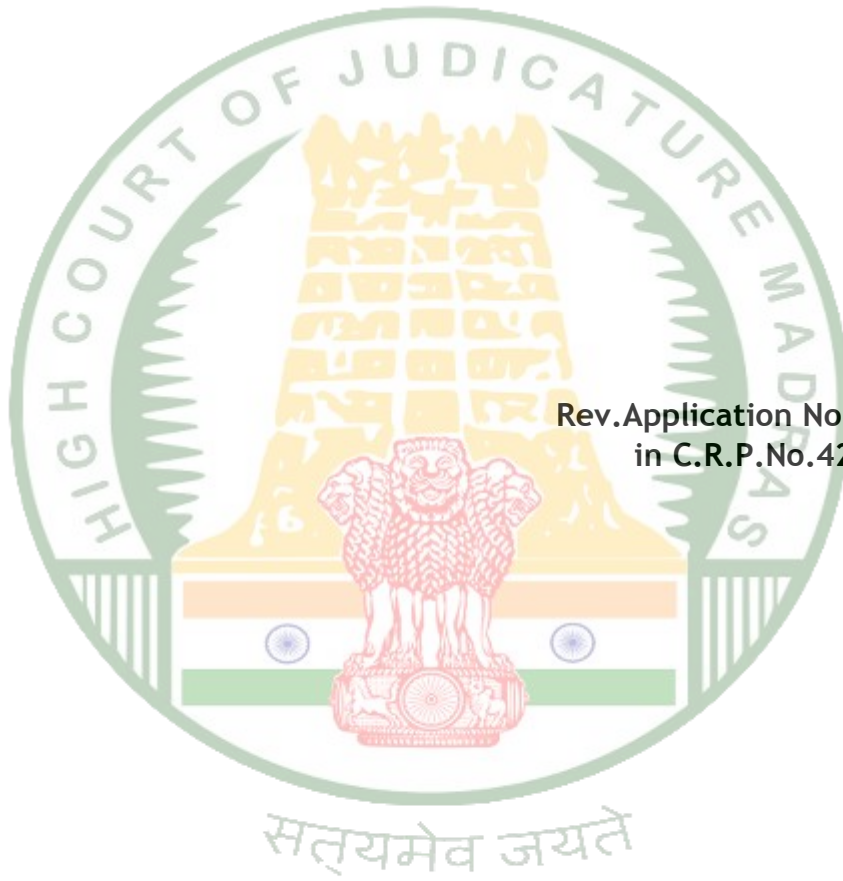
WEB COPY

24.07.2017

Index : Yes/No
Internet : Yes/No
kkd

M.V.MURALIDARAN,J

kkd



Rev.Application No.15 of 2017
in C.R.P.No.4217 of 2013

24.07.2017

WEB COPY