IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10-07-2017

Pronounced on: 13-07-2017

CORAM:

THE HON'BLE MR.JUSTICE **A.SELVAM**
AND
THE HON'BLE MR.JUSTICE **P.KALAIYARASAN**

Review Application (AS) No.92 of 2017
and
C.M.P.No.10410 of 2017

M/s.The Dhanalakshmi Mills Ltd.,
rep.by its Managing Director ..Applicant

Vs.

1.R.Krishnamurthy
2.S.Krishnamurthy
3.M.Murugesan ...Respondents

Review Application filed under Order 47 Rule 1 read with Sec.114 CPC to review the judgment dated 21.07.2016 passed in A.S.No.858 of 2014.

For Applicant : Mr.S.Parthasarathy,Sr.Counsel
for M/s.Guptha and Ravi

For respondents : Mr. T.R.Rajagopalan,Sr.counsel
for M/s.Ramalingam and Associates
for R1

O R D E R

(Order of the Court was made by A.SELVAM,J.)

A captious litigant, who got successive discomfiture up to the Hon'ble Supreme Court, has made a fatuous attempt to review the judgment and decree dated 21.07.2016, passed in Appeal Suit No.858 of 2014, by way of filing the present review application.

2.The first respondent herein, as plaintiff, has instituted O.S.No.881 of 2008, on the file of the II Additional District and Sessions Court, Tiruppur, praying to direct the defendants/review applicant & respondents 2 and 3 herein to execute a sale deed in pursuance of sale agreement dated 10.01.2004.

3. The material averments made in the plaint are that the suit property is the absolute property of the first defendant. The plaintiff is doing real estate business. The company of the first defendant has become sick and has been referred to the board of Industrial and Financial Reconstruction, New Delhi. The defendants 2 and 3, as strategic investors, have entered into a sale agreement dated 10.01.2004 with plaintiff and thereby agreed to sell the suit property in favour of the plaintiff. The total sale price of the suit

property has been fixed at Rs.9,75,00,000/-. The defendants 2 and 3 have agreed to receive a sum of Rs.1 Crore by way of an advance. The plaintiff has to pay a further sum of Rs.4,75,00,000/- within one month from the date of agreement. The defendants 2 and 3 should obtain requisite consent orders from the Board of Industrial and Financial Reconstruction and also secure other documents. It is further agreed that within four months from the dates of receipt of order of discharge from the Board of Industrial and Financial Reconstruction and other requisite documents, the plaintiff has to pay balance sale consideration. The defendants shall execute a sale deed in favour of the plaintiff without any encumbrance. As per the terms of the contract, the plaintiff has paid a sum of Rs.1 Crore as an advance. The plaintiff has also paid second advance amount of Rs.1,75,00,000/-. In fact, the plaintiff has paid Rs.2,37,20,000/-. The plaintiff is always ready and willing to perform his part of contract. The sale agreement entered into by defendants 2 and 3 has been subsequently ratified on 30.03.2005 by the first defendant and to that effect, a letter has been sent to the plaintiff on 11.4.2005. After some time, the plaintiff has come to know that the proceeding before the Board of Industrial and Financial Reconstruction has come to an end in November/December 2005, but the defendant 2 and 3 have not intimated the same to the plaintiff and subsequently, the plaintiff has issued a legal notice to the defendants. After receipt of the same, the first defendant has not refuted the contentions of the plaintiff. The defendants 2 and 3 have chosen to send a reply notice and the same contains false and untenable contentions. Under such circumstances, present suit has been instituted for the relief sought therein.

4.In the written statement filed on the side of the first defendant, it is averred that the first defendant is not a party to the sale agreement dated 10.01.2004 and therefore, the same is not binding upon the first defendant. Since the first defendant has become sick, a proceeding has been pending before the Board of Industrial and Financial Reconstruction and therefore, the suit sale agreement is totally in violation of Section 33 of SIC Act. Further, various legal proceedings have been instituted and disposed of in the High Court of Madras. It is false to aver in the plaint that the sale agreement in question has been ratified by virtue of resolution dated 30.03.2005. The Board of Director of the first defendant has had no occasion to consider the sale agreement dated 10.01.2004. The documents relied upon by the plaintiff are nothing but forged documents and further, the present suit is barred by limitation. There is no merit in the suit and the same deserved to be dismissed.

5.In the written statement filed on the side of the defendant 2 and 3, it is averred that sale agreement dated 10.01.2004 is not a completed, valid, legally of enforceable agreement. The defendants 2 and 3 have no *locus standi* to create such kind of sale agreement. Each and every transaction has to be made only after getting prior permission from the Board of Industrial and Financial Reconstruction. The suit sale agreement is nothing but an agreement to create an agreement in future. The suit is barred by limitation and there is no merit in the suit and the same deserves to be dismissed.

6.On the basis of the rival pleadings put forth on either side, the trial Court has framed necessary issues and after contemplating both the oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, present appeal suit has been preferred at the instance of the first defendant, as appellant.

7.After hearing arguments on both sides, this Court has dismissed Appeal Suit No.858 of 2014 and thereby confirmed the judgment and decree passed in O.S.No.881 of 2008, by the trial

Court. The present Review Application has been filed so as to review the judgment and decree passed in A.S.858 of 2014.

8.Before contemplating the rival submissions made on either side, the Court has to analyse as to under what grounds a judgment and decree can be reviewed.

9.The learned Senior counsel appearing for the Review Applicant/first respondent/first defendant has accited the following authorities:

(i) In **AIR 1954 Supreme Court 526(1)-Moran Mar Basselios Chatholicos and another vs. Most Rev.Mar Poulose Athanasius and Others**, at paragraph No.34, it is observed as follows:

> *"34. . . . There appear to be no rules on the subject. In this situation, says the learned Attorney-General, if all the members of the Association attended the meeting the defect to want of proper notice does not matter. But did all member attend, even if the defendants' party who had adopted Ex.AM be left out. It does not appear that either of the two majority Judges of the High Court adverted to either of these aspects of the matter, namely,*

service of notice to all churches and competency of the persons who issued the notice of the Karingasserai meeting and in any case did not come to a definite finding on that question. The majority judgements, therefore, are defective on the face of them in that they did not effectively deal with and determine an important issue in the case on which depends the title of the plaintiffs and the maintainability of the suit. This, in our opinion, is certainly an error apparent on the face of the record."

(ii) In **2005(4) Supreme Court Cases 741-Board of Control for Cricket in India and Another vs. Netaji Cricket Club and Others,** at paragraph No.88, the Hon'ble Supreme Court has observed that "we are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be *ex facie* bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit."

10.The learned Senior counsel appearing for the first respondent/plaintiff has cited the decision reported in **2013(4) CTC 882-Kamlesh Verma vs. Mayawati & Others**, wherein, the Hon'ble Supreme Court has culled out the following grounds of Review:

> *"(i)Discovery of new and important matter or evidence which, affect the exercise 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 the record;*
>
> *(iii)Any other sufficient reason"*

Further the Hon'ble Supreme Court has culled out the following grounds on which a Review application is not maintainable.

> *"(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
>
> *(ii)Minor mistakes of inconsequential important;*
>
> *(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 negatived."

11.From a conjoined reading of the decisions referred to supra, it is easily discernible to the effect that if there is any error or mistake on the face of the record, a Review Application is maintainable. Likewise, discovery of new and important matters or evidence subsequently, in such a situation, a review application is also maintainable. But at the same time, a review application is not maintainable so as to advance old and overruled arguments.

12.With these legal backdrops, the Court has to analyse the contentions urged on the side of the Review Applicant/first respondent/first defendant.

13.The learned Senior counsel appearing for the Review Applicant has repletedly contended to the effect that the plaintiff and defendants 2 and 3 have entered into a sale agreement dated 10.1.2004 and the same has been marked as Ex.A1; likewise, the defendants 2 and 3 have not at all been authorised by the first defendant to enter into the sale agreement in question. On the side of the plaintiff an authorisation has been marked as Ex.A.19. Since Ex.A.1 and A.19 have not been executed by the review applicant/first defendant, the first respondent/plaintiff is not legally entitled to institute Original Suit No.881 of 2008, on the file of the trial Court. Both the trial Court as well as this Court have committed error apparent on the face of the record and further, this Court has not at all considered Section 293 of the Companies Act, 1956. Under such circumstances, so as to review the judgment and decree passed in Appeal Suit No.858 of 2014, the present Review Application has been filed.

14.As a repartee to the contentions urged on the side of the review applicant/first respondent/first defendant, the learned Senior counsel appearing for the plaintiff/first respondent has succinctly contended to the effect that the point raised on the side of the review applicant has already been elaborately dealt with by this Court and ultimately found that the same sans merit and under such circumstances, on the side of the review applicant, old arguments are advanced and in view of the decision of the Hon'ble Supreme Court reported in **2013 (4) CTC 882-Kamlesh Verma vs. Mayawati & Others**, for advancing such arguments, the present review application is not legally maintainable and therefore, the same deserves to be dismissed.

15.The consistent case of the first respondent/plaintiff is that the defendants 2 and 3, as strategic investors of the first defendant, have entered into a sale agreement dated 10.1.2004, whereby sale consideration has been fixed at Rs.9,75,00,000/-. The defendants 2 and 3 have received Rs.1 Crore by way of an advance.

Further, so many stipulations have been made in the sale agreement dated 10.1.2004. The further contention of the first respondent/plaintiff is that the sale agreement has been subsequently ratified on 30.03.2005. Further, the proceeding pending before the Board of Industrial and Financial Reconstruction has come to an end during November/December 2005. Since the defendants 2 and 3 are not ready to execute the sale deed in favour of the plaintiff, the suit in question has been instituted.

16.The main defence taken on the side of the review applicant/first defendant is that the suit sale agreement dated 10.1.2004 is not binding upon the review applicant/first defendant. Likewise, the defence put forth on the side of the defendants 2 and 3 is that the suit sale agreement dated 10.01.2004 is not legally valid.

17.As mentioned supra, the suit sale agreement has been marked as Ex.A1. The agreement which has come into existence on 05.11.2011, between C.R.Sethuramanlingam and three others with the defendants 2 and 3, has been marked as Ex.A19, thereby authorised defendants 2 and 3 to deal with the properties of the first defendant. Further, during the relevant period, various properties of the first defendant have been sold and sale deeds have been marked as Exs.A.31 to A.45. The minutes of the first defendant has been marked as Ex.A.48. In fact, the main defence taken on the side of the Review Applicant/first defendant has been elaborately dealt with in paragraph No.20 of the judgment passed in A.S.No.858 of 2014.

18.The learned Senior counsel appearing for the Review Applicant/first respondent/first defendant has repletedly contended to the effect that by virtue of Ex.A19, the respondents 2 and 3/defendants 2 and 3 are not authorised to deal with the properties of the first defendant.

19.In Ex.A.48, it is stated like thus:

> *"To confirm the minutes of the previous meeting held on 28th March, 2005.*
>
> *The Chairman informed the Board the strategic investors have entered into an agreement of sale dated 10.01.2004 with one R.Krishnamurthy to discharge the debts and has sought for ratification - so ratified."*

20.It is not an adulation to say that in Ex.A19, in various places, it has been specifically stated that only on behalf of the review applicant/first defendant, Ex.A19 has come into existence. Therefore, it is quite clear that the respondents 2 and 3/defendants 2 and 3 are legally empowered to execute the suit sale agreement, viz., Ex.A1, in favour of the plaintiff. Further, the act of the respondents 2 and 3/defendants 2 and 3 has been ratified by virtue of Ex.A.48. Under the said circumstances, it is needless to say that on the side of the review applicant/first respondent/first defendant, it is contended unnecessarily to the effect that Ex.A.1 and Ex.A.19 are not binding upon the Review Applicant/first defendant. Further, this aspect, as stated supra, has already been dealt with in the judgment passed in A.S.No.858 of 2014.

21.The Hon'ble Supreme Court in the decision reported in **2013 (4) CTC 882-Kamlesh Verma vs. Mayawati & Others** has clearly held to the effect that for advancing old or rejected contentions, a review application is not legally maintainable.

22.In the instant case, as pointed out earlier, the main point raised in the review application has already been discussed and decided against the review applicant/first respondent/first defendant. Under the said circumstances, this review application is not at all legally maintainable.

23.It is true that in the judgment passed in A.S.No.858 of 2014, Section 293 of the Companies Act, 1956 has not been dealt with, since the learned counsel appearing for the review applicant/first respondent/first defendant has not brought the same to the notice of the Court.

24.Section 293 of the Companies Act, 1956 reads as follows:

> *"(1)The Board of Directors of a public company, or of a private company which is a subsidiary of a public company, shall not, except with the consent of such public company or subsidiary in general meeting,-*
>
> *(a)sell, lease or otherwise dispose off the whole, or substantially the whole, of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking."*

25.From a cursory look of the said provision, it is made clear that without the knowledge of public company or subsidiary, sale, lease etc., cannot be made.

26.It has already been pointed out that Ex.A19 has come into existence only for the benefit of the first defendant. Further, the execution of Ex.A1 in favour of the plaintiff by the defendants 2 and 3 has been clearly ratified by virtue of Ex.A.48.

27.The learned Senior counsel appearing for the review applicant/first defendant has advanced a residual argument to the effect that this Court has failed to consider the entire evidence given by D.W.1 during the course of cross-examination and to that effect, he relied upon the decision reported in **(2000) 9 Supreme Court Cases 214-Boramma vs. Krishna Gowda and Others**, wherein, the Hon'ble Supreme Court has held that relying upon isolated answers given by a witness during cross-examination to draw inference is not inconsistent with the sound rules of appreciation of evidence.

28.In fact, this Court has completely analysed the entire evidence given by D.W.1 and D.W.1 has given admission in respect of vital documents filed on the side of the plaintiff. Therefore, the residual contention put forth on the side of the review applicant/first respondent/first defendant also goes without merit.

29.In view of the foregoing elucidation of both factual and legal aspects, this Court is of the view that there is no succulence in the contentions urged on the side of the review applicant/first respondent/first defendant; whereas, the contention put forth on the side of the first respondent/plaintiff is really having subsisting force and therefore, this review application deserves to be dismissed.

In fine, this review application is dismissed with cost. Connected miscellaneous petition is dismissed.

(A.S.J.) **(P.K.J.)**

msk **13.07.2017**

A.SELVAM,J.
AND
P.KALAIYARASAN,J.

msk

Pre-delivery Order in
Review Application No.92 of 2017

13-07-2017