



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.07.2017
CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

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Review Application (MD) No.109 of 2017
in
CRP (MD) No.674 of 2016 (PD)

1. Chief Engineer
Gauge Conversion
Southern Railway
Arasardai
Madurai - 625 016.

2.Chief Engineer
Southern Railway
Egmore,
Chennai

... Petitioners / Respondents

Vs.

Dominic Savio
The Proprietor
M/s.Savio Industrial and
Structural Corporation
96/5, KN Colony,
Opp. to Co-operative Industrial Estate
Salem.

... Respondent / Petitioner

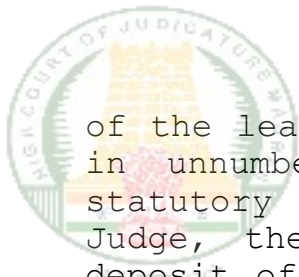
Prayer : Review Application is filed under Section 114 and Order XLVII Rule 1 & 2 of CPC to review the order passed in CRP (MD) No.674 of 2016 dated 28.02.2017 whereas the CRP was filed against the Order dated 03.9.15 made in I.A.No.1735 of 2015 in unnumbered Arbitration OP No.80 of 2015(on the file of Principal District Judge, Madurai) and strike of the same as not maintainable.

For Petitioners : Mr.A.Haja Mohideen

O R D E R

This Review Application is filed by the petitioners to review the order passed in CRP (MD) No.674 of 2016 dated 28.02.2017 against I.A.No.1735 of 2015 in unnumbered Arbitration OP No.80 of 2015 (on the file of Principal District Judge, Madurai).

2. The petitioners herein are respondents and the respondent herein is the petitioner in CRP (MD) Nos.674 & 675 of 2016. The respondent herein filed the above said CRPs to set aside the order



of the learned Judge dated 03.09.2015 passed in I.A.No.1735 of 2015 in unnumbered Arbitration O.P No.80 of 2015 dispensing with statutory deposit of 75% of the award amount. Before the learned Judge, the petitioners sought for dispensing with the statutory deposit of 75% of award amount on the ground that they were unable to deposit the said amount at the time of filing of the OP as they have to get necessary permission from the higher authorities.

3. The learned Judge accepted the contention of the learned counsel for the petitioners and allowed the application. When the Civil Revision Petition was taken up for hearing, this Court, considering the fact that one year and nine months has lapsed from the date of dispensing the amount, directed the petitioners to deposit the amount within a period of four weeks from the date of receipt of the copy of the order.

4. It is not the case of the petitioners either before this Court or before the Trial Court that the petitioners are not liable to furnish security in view of the provisions of Order 27 Rule 8A & B and Order 41 Rule 5 (3) CPC. The petitioners did not advance this argument when the order was passed in I.A.No.1735 of 2015 or in the Civil Revision Petition before this Court filed by the respondent. The only contention of the review petitioners was that they could not deposit the amount immediately as they have to get necessary permission from the higher authorities. The relevant portion of the affidavit filed in support of the application is extracted herein.

3..... Further the statutory deposit amount of 75% of the award amount is time being not available with us. We have to forward necessary communication to the higher authorities for necessary sanction.

5. This Court, by order dated 28.02.2017 granted four weeks time to the petitioners to deposit the said amount. The petitioners have not pointed out any error in the said order but has put forth a new plea that they are not liable to make deposit as per Order 27 Rule 8A & B and Order 41 Rule 5 (3) of CPC. The review petitioners are not entitled to raise a new plea in the review petition. There is no error in the order passed by this Court in CRP (MD) Nos.674 & 675 of 2017 and the petitioners have not made out any case for re-consideration of the order dated 28.02.2017 passed by this Court.

6. Even though the review petitioners have referred to Order 27 Rule 8A & B of CPC, they did not seek to dispense with the deposit as per the said provision. They had sought for dispensing with the statutory deposit only for time being.

7. 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, over 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

8. 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], in which, I [V.M. VELUMANI, J.] am a party, 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)



9. 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 this Court can be re-considered 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 Petitioners failed to raise any ground, reason or cause, warranting interference at the hands of this Court.

10. Therefore, I do not find any error apparent on the face of record in the order dated 28.02.2017 passed by this Court in CRP (MD) Nos.674 & 675 of 2016 dated 28.02.2017. Accordingly, the Review Application fails.

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

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Judge,
Madurai

+One cc to M/s.A.Haja Mohideen, Advocate, SR.No.65910

rgr

RL/3C/4P/KKR/SAR2/16/8/2017

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