

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Review Application Nos.1420 and 1421 of 2017
in Application Nos.5205 and 5206 of 2016
in C.S.No.884 of 2013

Suraj and Chaand Towers Residents
Welfare Association rep. by its
President Mr.N.C.Kannan
No.128, Lattice Bridge Road,
Thiruvanniyur,
Chennai-600 041. ... Petitioner/Defendant
No.1

Vs.

1. Sri Kapali Building Promoters Private Limited,
rep. by its Director Mr.S.Suresh,
245/57, R.K.Mutt Road, Mylapore,
Chennai-600 004. ... Respondent
1/Plaintiff

2. M/s.Portrucks Equipments Private Ltd.,
rep. by Mr.Pandian,
Ground Floor, Suraj Towers,
No.128, Lattice Bridge Road,
Thiruvanniyur,
Chennai-600 041.

3. Mrs.Usha Raman,
Advocate,
Ground Floor, Suraj Towers,
No.128, Lattice Bridge Road,
Thiruvanniyur,
Chennai-600 041.

.. Respondents 2 and 3/
Defendants 2 and 3

* * *

Prayer : Applications filed under Order XIV, Rule 8 of the
O.S. Rules read with Order XLVII of CPC read with Section
114 of CPC, seeking to review the orders passed in
Applications Nos.5205 and 5206 of 2016 in C.S.No.884 of
2013, dated 07.11.2016 respectively.

* * *

For Petitioner : Mr.V.Kuberan
for M/s.Rank Associates

For Respondents : Mr.M.S.Sampath for R1

ORDER

The above review applications are directed against the order passed in A.Nos.5205 of 2016 and 5206 of 2016.

2. The suit was filed for delivery of vacant possession of the suit property and for damages by the first respondent, who is the plaintiff. The review petitioner is an Association of flat owners. It is stated that after the completion of evidence on the plaintiff side, the first defendant filed the proof affidavit of the President of the Association. Certain applications were also filed for receiving additional documents, but before the applications could be pursued, the learned Master, before whom the trial was being listed, closed the evidence on the petitioner side, since the petitioner did not appear and mark the documents, despite several opportunities being granted. Aggrieved by the same, the petitioner herein had preferred Application Nos.5205 and 5206 of 2016 for reopening and recalling the first defendant as witness. Three other applications were also filed for marking certain documents, including the secondary evidence. The

said applications for marking the documents were rejected by this Court and consequently, the applications for reopen and recall were also closed as unnecessary. The review is now filed against the said order only with reference to the application Nos.5205 and 5206 of 2016, which were filed for reopen and recall.

3. Learned counsel for the petitioner submitted that after the evidence of the plaintiff side was over, the defendants were given opportunity to file the documents and proof affidavit. However, there was a delay in procuring the documents by the defendants. Hence, the learned Master had closed the evidence on the side of the defendants. It is argued by the learned counsel that he is only seeking to review the applications filed for reopen and recall, as the evidence of the defendants is not on record at all, as the same is closed by the learned Master, who has got no power to do so.

4. The review applications are contested by the learned counsel for the first respondent/plaintiff stating that the very review applications are not maintainable and the intention of the petitioner is only to drag on the matter, as the arguments in the suit by the plaintiff is already completed and it is posted for the arguments of the defendants. It is stated by him that after the orders were

passed in the above said applications, the matter was listed on 10.02.2017 and the arguments of the plaintiff was heard in part and the matter was posted again for continuation of the arguments on 15.02.2017. On the said date, the arguments were completed and even the written arguments were filed, after furnishing a copy to the defendants. Later, it was adjourned to 17.02.2017 for the arguments of the defendants. Only on 23.02.2017, it was represented that before the Court that applications to review the order dated 07.11.2016 was filed. Hence, the matter was adjourned to a further date.

5. Learned counsel for the first respondent/plaintiff vehemently argued contending that after the arguments of the plaintiff side is over and written arguments were also filed, the petitioner has filed the review applications for reopening and recalling the defendant side to fill up lacunae.

6. It is also pointed out that earlier there was a direction by this Court to complete the evidence, preferably within a period of three months. Though the plaintiff side had completed its evidence in March, 2016, the petitioner herein has been taking time on one or the other ground. The attempt of the review petitioner in filing Application Nos.5205 to 5208 and 5472 of 2016 were

also negatived by this Court and now the review is sought for only with respect to Application Nos.5205 and 5206 of 2016.

7. Heard the learned counsel for the petitioner and the learned counsel for the first respondent/plaintiff.

8. A perusal of the affidavits filed in support of Application Nos.5205 and 5206 of 2016 would show that the applications were filed to reopen and recall the defendants side witness for the limited purpose. In paragraph 5 of the said affidavits, it is stated that the production of copies of the documents described in the schedules to the petitions filed for collateral purpose would be essential for the purpose of the case. Hence, the applications were filed seeking leave of the Court to produce those documents for collateral purpose and also for receiving other documents on the side of the defendant. As in the meanwhile, the learned Master had closed the defendant side evidence, the applications were filed for reopen and recall. In the affidavits, it is not stated that the learned Master had no jurisdiction to close the evidence, which power is only vested with the Court. However, it is argued by the learned counsel for the review petitioner that the order of the learned Master was without jurisdiction. This Court, based on the affidavit, on a

perusal of the documents and after hearing the counsels, had passed the orders, that were sought to be reviewed.

9. The documents that were to be produced as evidence for collateral purpose and as secondary evidence were rejected by this Court as inadmissible, as they were insufficiently stamped. As the applications for reopen and recall were only for the purpose of marking all those documents and when the marking of documents itself was rejected, the consequential relief that were sought in those applications would serve no purpose. Hence, the applications were closed.

10. Now the petitioner is seeking to review the said order, which would amount to re-arguing the matter. Unless an error apparent on the face of the record is found in the order sought to be reviewed, the same cannot be subjected to review. If the petitioner is in disagreement with the said order, it is open to them to challenge the same in an appeal and not file review applications. As pointed out earlier, the conduct of the defendant is only to protract the proceedings and they have no intention to bring the litigation to an end.

11. In fine, the review petitions are dismissed, as there is no error apparent on the face of the record.

Sd/-P.S.N.J

14/03/2018

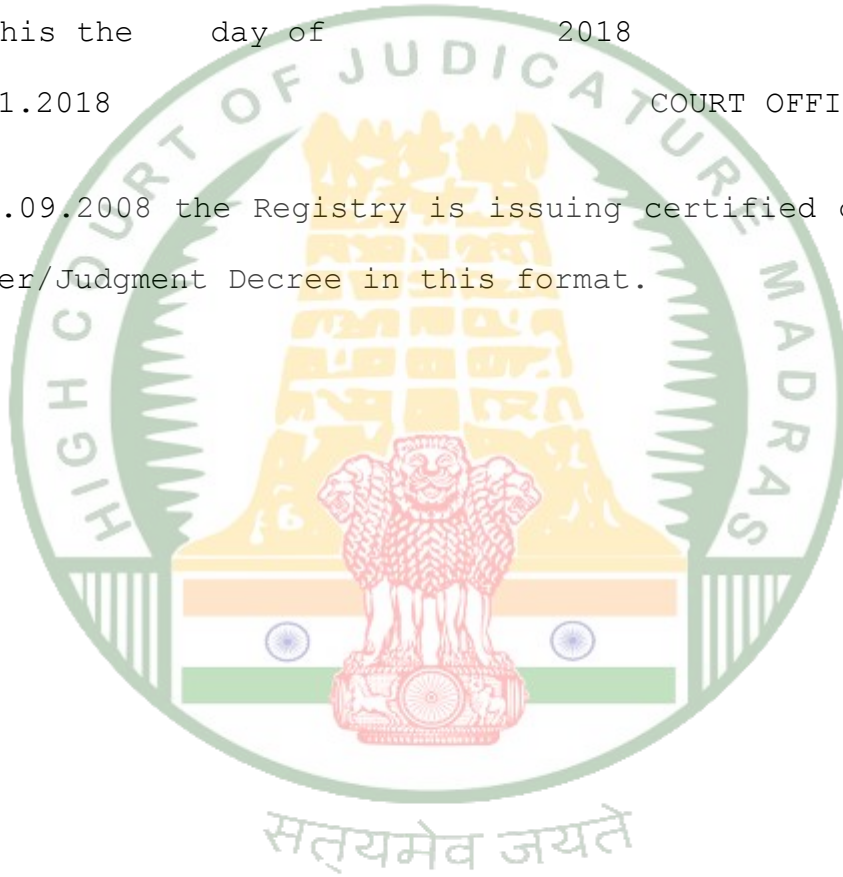
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Dated this the day of 2018

JJ 15.11.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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