

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Review Petition No.135 of 2017
in W.P.No.725 of 2017

Gandhi Kalvi Nilayam High School,
Represented by its Secretary,
Thenkalapalayam - 636 301,
Namakkal District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department,
Fort.St.George, Chennai - 9.

2.The Joint Director of School Education,
(Secondary Education),
DPI Compound, College Road,
Nungambakkam, Chennai - 6.

3.The Chief Educational Officer,
Namakkal District, Namakkal.

4.The District Educational Officer,
Namakkal.

... Respondents

PRAYER: Review Petition filed under Order 47 Rule 1 read with Section 114 of Civil Procedure Code, to review the order passed in W.P.No.725 of 2017

dated 03.02.2017.

For Petitioner : Mr.R.Ashok Kumar

For Respondents : Mr.C.Munusamy
Special Government Pleader

ORDER

The petitioner has come forward with this Review Petition praying to review the order passed in W.P.No.725 of 2017 dated 03.02.2017.

2. The petitioner wants to review the entire issue, which cannot be accepted. The petitioner has not at all pointed out any defect. According to the petitioner, the building with Mangalore Tiled roofing can be used for the purpose of running the school and there is no prohibition in the enactment or restriction. Taking note of the undertaking given by the petitioner, the Writ Petition in W.P.No.725 of 2017 was disposed of and time was granted to replace the Mangalore Tiled roofing with RCC roofing on or before 31.12.2017.

3. Though there is no order passed to the effect that the School

should run in a building that has RCC roofing and that classes cannot be conducted in the building, which has got Mangalore Tiled roofing, as the petitioner has given an undertaking before the Writ Court in W.P.No.725 of 2017. Even though the petitioner draw the attention of this Court to Chapter-III, Grants for School Buildings - Buildings Sites and Play Grounds of the Tamil Nadu Educational Code, that the Government should extend Grant for the purpose of constructing roof, the same cannot be gone into in the present Review Petition, as it is beyond the scope of review and also the prayer in W.P.No.725 of 2017.

4. To maintain a review application, the review petitioner must satisfy the three requirements of Order 47 Rule 1 of C.P.C., i.e.

(i) From discovery of new and important matter or evidence which after exercise of due diligence, was not within his knowledge (or) could not be produced by him at the time when the decree was passed (or) order made;

(ii) there is some mistake (or) error apparent on the face of the record in the judgment under review, and

(iii) or any other sufficient reasons.

5. Further, in the case on hand, there is no error apparent on the

face of record to review the order passed in the Writ Petition. The basic principle to entertain a Review Application under Order 47 Rule 1 C.P.C. is to correct the errors, but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes *functus-officio* and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the review petitioner without altering or substituting its view in the judgment under review; the review court cannot entertain the arguments touching the merits and demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is ultimately to see that there should not be miscarriage of justice and shall do justice for the sake of justice only and review on the ground that the judgment is erroneous cannot be sustained.

6. In the case of Meera Bhanja Vs. Nirmala Kumari Choudhury, reported in (1995) 1 SCC 170, the Supreme Court, while considering the

scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as under:

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226."

7. Further, the Supreme Court in the decision reported in 2013 (8) SCC 320 (Kamlesh Verma Vs. Mayawati), considered the scope of the review jurisdiction and summarised the factors as to when the review will be maintainable and when the review will not be maintainable and the same reads as follows:

"Summary of the principles

20. Thus, in view of the 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 the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram Vs. Neki* ((1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112) and approved by this Court in *Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulouse Athanasius* (AIR 1954 SC 526 : (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.* ((2013) 8 SCC 337 : 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 reheard 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."

8. Moreover, a Review Application cannot be entertained, following the judgment of the Supreme Court reported in 1997 (9) SCC 736 (Tamil Nadu Electricity Board Vs. N.Raju Reddiar), wherein in paragraph 1, it has been observed as follows:

"1. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court

spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. ..."

9. Further, in another decision of the Honourable Supreme Court reported in 2014 (5) SCC 75 (Subramanian Swamy Vs. State of T.N), it has been observed in paragraph 52 as follows:

"52. ... Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, *finality attached to the judgment/order cannot be disturbed.* (Vide - *Rajender Kumar Vs. Rambhai* - 2007 (15) SCC 513 : 2010 (3) SCC (Cri) 584 : AIR 2003 SC 2095)."

10. In "Shanmuga Sundara Nadar Vs. Tamil Nadu Housing Board, rep. by its Chairman, Madras and others", reported in 1988 (2) LW 57 (Mad), this

Court held as under:

"The power to review is a restricted power which authorises the Court to look through the judgment not in order to substitute a fresh or second judgment but in order to correct it or improve it, because some material which it ought to have considered has escaped consideration or failed to be placed before it for any other reason or because it suffers from a patent error which cannot be sustained by any process of reasoning. The Court cannot under cover of review arrogate to itself the power to decide the case over again because it feels then that the assessment of evidence, etc., done formerly was faulty or even incorrect. An erroneous view of evidence of law is not a ground for review. A wrong exposition of the law, a wrong application of the law and failure to apply the correct law have been held to be not a ground of review."

11. Further, in respect of filing a review petition, it has to be observed that an error on the face of record must be such an error, which must strike one or mere looking at the record and would not require any long drawn process of reasoning. The power of Review is not to be confused with an Appeal in disguise, which enables an Appellate Court to correct an

erroneous decision by the process of "Rehearsing and Corrected". Review and Appeal cannot go together and Re-arguments in a case are not permissible in Review.

12. According to the petitioner, the undertaking ought not have been read in a truncated manner, and it cannot be reviewed and if at all the petitioner is aggrieved, the remedy is to file a Writ Appeal challenging the order passed in the Writ Petition in W.P.No.725 of 2017.

With the above observations, this Review Petition is dismissed. No costs.

07.06.2018

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To

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