

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2017

DELIVERED ON : 07.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Review Application No.214 of 2017

1. Rupal M.Shah
2. Manish B.Shah

.. Applicants

vs

1. Bhupendra C. Shah
2. Jayashree B.Shah

.. Respondents

PRAYER: Review Application filed under Order 47 Rule 1 of CPC to review the order dated 27.03.2017 made in C.R.P.(NPD) No.465 of 2006 on the file of this Court.

For Applicants : Mr.K.Chandrasekaran

For Respondents : Mr.A.Balasingh Ramanujam

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The respondents in the civil revision petition have filed this review application seeking to review the order dated 27.03.2017 passed in C.R.P. (NPD) No.465 of 2006.

2. The review petitioners are the tenants and the respondents are the landlords. In the civil revision petition, it was alleged by the landlords that the first review petitioner herein is a chronic defaulter and that the first review petitioner has sublet the property to the second review petitioner, without obtaining written consent from the respondents herein, and despite several reminders, rent and arrears were not paid. The landlords also pleaded that the petition premises is required for own use and occupation.

3. This Court, by order dated 27.3.2017, allowed the civil revision petition holding that the landlords are entitled to eviction on the ground of own use and occupation. The tenants were granted three months time to vacate the petition premises.

4. The learned counsel for the tenants submits that the even though the Appellate Authority held that there is no proof as to carrying on of business of the landlords, the High Court erroneously concluded that the landlords are carrying on business in the petition premises, without any evidence. It is added that the landlords own five other non residential buildings in the city of Chennai.

5. He further submitted that no steps have been taken for starting the business and hence, the claim of the landlords is not bona fide as per Section 10(3)(a)(3) of the Rent Control Act. He also pleaded that this Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, exercising the revisional powers, cannot invoke its revisional jurisdiction under the cloak of an appeal in disguise and in any event, this Court cannot re-appreciate the evidence and substitute its own conclusion in the place of conclusion of appellate authority.

6. To support his case the learned counsel for the petitioner has produced two judgments in the case of

(i) **S.S.Khader Mohammed Rowther and Co. v. G.S.Sundaram and Brothers** reported in **1978 (1) MLJ 79**, it is stated as follows:

“19. The Supreme Court took the same view in two later decisions. **Ferozilal v. Manmal, AIR 1970 Supreme Court 794** and **Kaushalya v. K.L.Bansal, AIR 1970 Supreme Court 838**, Hedge J. speaking for the court in the latter case observed thus – (at P.796).

“From the facts mentioned earlier, it is seen that at no stage, the court was called upon to apply its mind

to the question whether the alleged subletting is true or not. Order made by it does not show that it was satisfied that the subletting complained of has taken place, nor is there any other material on record to show that it was so satisfied. It is clear from the record that the court had proceeded solely on the basis of the compromise arrived at between the parties. That being so, there can be hardly any doubt that the court was not competent to pass the impugned decree. Hence the decree under execution must be held to be a nullity”.

20. It might have been noticed that Hedge J. in the above said decision had not said that all orders of eviction passed in terms of compromises arrived at between the parties, must be regarded as nullities. There might be cases where either within the four corners of the memorandum of compromise or elsewhere from the record it might be possible to deduce the existence of the statutory grounds for eviction. Hedge J. does not seem to have regarded as invalid orders passed by the tribunals on the basis of compromise terms in such cases. Yet a general impression appears to have gained ground among lawyers that orders of eviction passed by a Tribunal on the basis of agreement between the parties must be held to be invalid on the score that the very presence of an agreement between the parties, must per se rule out

the existence of satisfaction which the statute requires the Tribunal to form as pre-condition for eviction.

26.I do not agree with Mr.Kesava Iyengar's understanding of the ruling in the above case. In my view, Sarkaria J. in the passage relied on by learned counsel, was minded only to summarise what he considered to be the conspectus of the earlier rulings of the Supreme Court. It will be remembered that all those rulings dealt with only one class of cases, namely, cases of compromise, in which the Tribunal or court, as the case may be, was found issuing eviction orders without recording its own finding as to the existence of the relevant statutory grounds for eviction. Not one of those earlier decisions had to deal with an ex parte eviction order suffering from a similar shortcoming. The case in Nagindas v. Dalpatram AIR 1974 Supreme Court 471, itself was yet another, instance of a compromise order of eviction. It seems to me, therefore, reasonable to understand the law stated by Sarkaria J. to be limited in its application to compromise orders of eviction. There are clear indications in the very judgment of the learned Judge to indicate that what he had in mind was only consent orders. The learned Judge made it perfectly clear in his judgment that there must be materials on record on the basis of which alone the Tribunal, in any given case, might be held to have been satisfied about the existence of the

statutory grounds for eviction. In the absence of such materials, it cannot be so held. And, advertent to the question as to what kind of materials might possibly lead to such an inference, the learned Judge cited the compromise memo itself as one such material. Compromise, he said, must be based on an implied admission, and, so treated, can be accepted as the best evidence of the facts admitted. It was in this sense that the learned Judge upheld the compromise order in that case as having been validly made."

(ii) ***Smt.Nai Bahu v. Lala Ramnarayan and others*** reported in **(1978) 1 SCC 58**, it is stated as follows:

"14.It is true that a decree for eviction of a tenant cannot be passed solely on the basis of a compromise between the parties (see K.K.Chari v. R.M.Sheshadri). The Court is to be satisfied whether a statutory ground for eviction has been pleaded which the tenant has admitted by the compromise. Thus dispensing with further proof, on account of the compromise, the Court is to be satisfied about compliance with the statutory requirement on the totality of facts of a particular case bearing in mind the entire circumstances from the stage of pleadings upto the stage when the compromise is effected.

15.When a compromise decree is challenged

as a nullity in the course of its execution the executing Court can examine relevant materials to find out whether statutory grounds for eviction existed in law. If the pleadings and other materials on the record make out a prima facie case about the existence of statutory grounds for eviction a compromise decree cannot be held to be invalid and the executing Court will have to give effect to it."

7. The learned counsel appearing on behalf of the respondents submitted that there is no error apparent on the face of the order passed in the civil revision petition warranting review of the same and, therefore, the review is not maintainable.

8. I heard Mr.K.Chandrasekaran, learned counsel appearing for the applicants and Mr.A.Balasingh Ramanujam, learned counsel for the respondents.

9. The scope of power of review as envisaged under Order 47 Rule 1 of Code of Civil Procedure is very limited and the review must be confined strictly on to the errors apparent on the face of the record. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'. In any event, the review proceedings cannot

be equated with the original hearing of the case and the case cannot be re-heard only on the ground that the law has not been properly considered and applied. If the view taken by the Court in the judgement is a possible view, having regard to the facts discernible from the facts on record, then, it cannot be said to be an error apparent on the face of the record and no review can be made. Re-agitating of the points already decided is impermissible in review proceedings.

10. An error which has to be established by a long drawn process of reasoning on points, where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. An error contemplated under Rule 1 of Order 47 of Code of Civil Procedure for permissibility of review must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one, which must be manifest on the face of the record. If the error is so apparent that without further investigation or enquiry only one conclusion can be drawn in favour of the applicant, the review will lie. Rectification of an order thus stems from the fundamental

principles that justice is above all and it was also held that power for rectification/review is exercised to remove the error and not for disturbing finality.

11. In the instant case, in the civil revision petition, this Court observed that even a single step taken by the landlord to start business is suffice to order eviction of tenant. In the grounds of review, it is the plea of the petitioners that the first respondent has admitted that he is not doing business and only his wife and son are carrying on business.

12. In my view, such a plea cannot be countenanced in the light of the decision of the Hon'ble Supreme Court in *Mehmooda Gulshan v. Javaid Hussain Mungloo*, (2017) 5 SCC 683, wherein it was held that the requirement of the landlord for 'own occupation' would also mean occupation by member of his family. In interpreting the term 'own use', the Court should adopt a practical and meaningful approach guided by the realities of life. It is not confined to mean actual physical user by landlord personally.

13. In the case on hand, this Court on being satisfied that the

respondents are carrying on business, held that the said respondents are entitled to eviction of the tenants on the ground of own use and occupation. In my considered view, a review is neither an alibi to re-argue a case already heard and decided, nor is it an avenue for an additional or special appeal not provided for under the law. The review petition is without any force and this Court does not find any apparent error to review the order passed in the civil revision.

14.Hence, this review application is dismissed. No costs.
Consequently, C.M.P.No.20454 of 2017 is closed.

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vs

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M.V.MURALIDARAN, J.

VS



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