

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

Review Application No.67 of 2015

in

S.A.No. 359 of 2013

N.Dhanasekaran ... Review Petitioner/Appellant

Vs

1. A.Vinoba

2. M. Arumugham ... Respondents/ Respondents

Prayer : Review Application filed under Section 114 of CPC to review the final order dated 09.02.2015 passed by this Court in S.A.No.359 of 2013.

Prayer in S.A.No.359 of 2013:

This Second Appeal has been filed under section 100 of CPC against the judgment and decree of the Subordinate Judge, Kanchipuram made in A.S. No.36 of 2010 dated 21.04.2011 confirming the judgment and decree of the District Munsif cum Judicial Magistratem, Uthiramerur made in OS.NO.112 of 2006 dated 11.03.2010.

For Petitioner	: Mr.SL.Sudarsanam
For Respondents	: Mr.Y.Jothish Chander

ORDER

This petition has been filed to review the order passed by this Court in the second appeal on 09.02.2015, wherein the second appeal was dismissed on the ground that no substantial questions of law are involved in the second appeal, warranting admission of the second appeal.

2. Heard, Mr. SL.Sudarsanam, learned counsel appearing for the petitioner and Mr.Y.Jothish Chander learned counsel appearing for the respondents.

3. This Court has carefully gone through the grounds raised in the review petition and also the submissions made on either side.

4. The scope of the review petition was considered in detail by the Hon'ble Supreme Court of India in Haryana State vs Mawasi & Ors reported in 2012 (7) SCC 200. The relevant portions are extracted hereunder.

27. The aforesaid provisions have been interpreted in several cases. We shall notice some of them. In *S. Nagaraj v. State of Karnataka* 1993 Supp (4) SCC 595, this Court referred to the judgments in *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* AIR 1941 FC 1 and *Rajunder Narain Rae v. Bijai Govind Singh* (1836) 1 Moo PC 117 and observed:

"19. Review literally and even judicially means re- examination or re- consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* that an order made by the Court was final and could not be altered:

... nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. Basis for exercise of the power was stated in the same decision as under:

It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, for any other sufficient reason in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice".

28. In *Moran Mar Basselios Catholicos v. Most Rev. Mar Poullose Athanasius* AIR 1954 SC 526, the three-Judge Bench referred to the provisions of the Travancore Code of Civil Procedure, which was similar to Order 47 Rule 1 CPC and observed:

"32. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited

jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record, and (iii) for any other sufficient reason.

It has been held by the Judicial Committee that the words any other sufficient reason must mean a reason sufficient on grounds, at least analogous to those specified in the rule. See *Chhajju Ram v. Neki* AIR 1922 PC 12 (D). This conclusion was reiterated by the Judicial Committee in *Bisheshwar Pratap Sahi v. Parath Nath* AIR 1934 PC 213 (E) and was adopted by the Federal Court in *Hari Shankar Pal v. Anath Nath Mitter* AIR 1949 FC 106 at pp. 110, 111 (F). Learned counsel appearing in support of this appeal recognises the aforesaid limitations and submits that his case comes within the ground of mistake or error apparent on the face of the record or some ground analogous thereto".

29. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* (1964) 5 SCR 174, another three-Judge Bench reiterated that the power of review is not analogous to the appellate power and observed:

"11.A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out".

30. In *Aribam Tuleshwar Sharma v. Aibam Pishak Sharma* (1979) 4 SCC 389, this Court answered in affirmative the question whether the High Court can review an order passed under Article 226 of the Constitution and proceeded to observe:

"3. ...But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court".

31. In *Meera Bhanja v. Nirmala Kumari Choudhury* (1995) 1 SCC 170, the Court considered as to what can be characterised as an error apparent on the face of the record and observed:

"9.it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* AIR 1960 SC 137 wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

17.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. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ".

32. In *Parsion Devi v. Sumitri Devi* (1997) 8 SCC 715, the Court observed:

"9.An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the

face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC.. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise”.

33. In Lily Thomas v. Union of India (2000) 6 SCC 224, R.P. Sethi, J., who concurred with S. Saghir Ahmad, J., summarised the scope of the power of review in the following words:

“56.Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised”.

34. In Haridas Das v. Usha Rani Banik, the Court observed :

“13.The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing on account of some mistake or error apparent on the face of the records or for any other sufficient reason. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict”.

35. In State of West Bengal v. Kamal Sengupta (2008) 8 SCC 612, the Court considered the question whether a Tribunal established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed:

“21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the

judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

22. The term mistake or error apparent by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment / decision".

6. It is clear from the above judgment that the key for entertaining the review petition is that there must be a mistake or an error apparent on the face of the judgment. It is also possible to review the judgment for any other sufficient reason which must also be apparent on the face of the record.

7. In the present case, this Court found that the findings of both the Courts below was based on evidence and hence this Court refused to interfere with the findings since it was not within the scope of Section 100 of CPC. This Court found that there were no substantial questions of law involved even to admit the second appeal.

8. A careful reading of the grounds raised in the review petition shows that the appellant is virtually attempting to re-argue the entire second appeal once again. Whatever has been pointed out in the review petition are all facts which was dealt with by both the Courts below and this Court found that there was no ground to interfere with the same. Therefore, if this review petition is heard based on the grounds raised, it will virtually amount to rehearing the second appeal. The grounds raised are beyond the scope of a review petition as could be found from the judgment of the Hon'ble Supreme Court of India referred *supra*.

9. In the result, the review petition is dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To,

1.The Subordinate Judge, Kanchipuram.

2.The District Munsif cum Judicial Magistrate,Uthiramerur.

+1 cc to Mr.SL.Sudarsanam, Advocate Sr.NO.12283

+1 cc to Mr.Y.Jothish Chander, Advocate Sr.NO. 11760

Review Application No.67 of 2015
in

S.A.No. 359 of 2013

GJ(CO)

A.SK(16/03/2022)