

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.09.2018

DELIVERED ON : 14.12.2018

CORAM

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

Rev.ApIn.No.226 of 2018 in
CRP(NPD)No.1599 of 2001 and
CMP.No.16133 of 2018

1.P.Lakshmanan
2.P.Vadivelu
3.P.Saibaba

.. Petitioners

VS

1.Meenatchiammal
2.Lakshmi
3.Ponni
4.Sarada
5.Somasundaram
6.Murugane

.. Respondents

PRAYER: Review Applications filed under Order 47 Rule 1 r/w Section 114 of CPC, to review the order dated 22.12.2017 made in C.R.P.(NPD) No.1599 of 2001 on the file of this Court.

For Petitioners

: Mr.R.Natarajan

For Respondents

: Mr.Manisundara Gopal

* * * * *

ORDER

This review application has been filed by the petitioners against the order dated 22.12.2017 passed in C.R.P.(NPD) No.1599 of 2001 on the file of this Court and to recall the same and restore the Civil Revision Petition to file for being heard along with pending first appeals in A.S.Nos.504 and 505 of 2015 pending on the file of this Court.

2.The petitioners herein have filed the suit against the respondents for recovery of possession in O.S.No.79 of 1984 on the file of the Principal Sub Court, Pondicherry. By the decree and judgment dated 21.9.1990, the suit was decreed. Pursuant to the decree, the petitioners have filed E.P.No.18 of 1991 for delivery. Pending E.P.No.18 of 1991, the petitioners have filed E.A.No.51 of 1991 for appointment of qualified Engineer from Public Works Department, Pondicherry to value the existing structure of the suit property. By an order dated 09.12.1996, the said petition came to be allowed.

3. Aggrieved by the order dated 09.12.1996 passed in E.A.No.51 of 1991 in E.P.No.18 of 1991 in O.S.No.79 of 1984 on the file of the Principal Sub Court, Pondicherry, the respondents herein have filed C.R.P.(NPD) No.1599 of 2001. By an order dated 22.12.2017, C.R.P. (NPD) No.1599 of 2001 came to be allowed by setting aside the order and decreetal order made in E.A.No.51 of 1991 dated 09.12.1996 and the matter was remanded back to the Principal Sub Court, Pondicherry for fresh consideration of fixing the value of the building as per the rate available in the Public Works Department, Pondicherry without deductions to the electrical installation and sanitary arrangements. Challenging the order dated 22.12.2017, the petitioners have filed the present review application.

4. Assailing the order impugned in the review application, the learned counsel for the petitioners contended that the respondents have misled and misrepresented besides committed an act of fraud in suppressing the material facts about the pendency of two first appeals preferred by them in A.S.No.504 and 505 of 2015 and also suppressing the judicial orders previously passed by this Court in C.R.P. (NPD) No.1599 of 2001 directing hearing of Civil Revision Petition along with the first appeals by this Court on 22.12.2017 and

hence, the order passed in the Civil Revision Petition dated 22.12.2017 requires to be reviewed and recalled in conformity with the orders already passed for being heard along with the first appeals.

5. The learned counsel further submitted that the respondents have failed to inform the Court about the pendency of the first appeals preferred by them against the judgment and decree passed in O.S.No.79 of 1984 dated 21.9.1990, wherein this Court has granted stay of operation of the decree in O.S.No.79 of 21984 for recovery of possession in C.M.P.No.763 of 1991 in A.S.No.73 of 1991 (later transferred and numbered as A.S.No.504 of 2015) dated 21.9.1991.

6. The learned counsel next contended that the respondents had given projection before this Court at the time of hearing ex parte in the Civil Revision Petition as if the decree passed in O.S.No.79 of 1984 has attained finality and in that way this Court had dealt with the claims of the respondents by holding ex parte of the petitioners as no appearance. The respondents have committed unpardonable act before this Court by suppressing the material facts pertaining to pending first appeals preferred by them. In that view of the matter,

the ex parte order passed by this Court in C.R.P. (NPD) No.1599 of 2001 dated 22.12.2017 is to be reviewed and recalled in the interest of justice and majesty of law. In support, the learned counsel for the petitioners relied upon the decisions of the Hon'ble Apex Court in *Lily Thomas and others v. Union of India and others*, reported in (2006) 6 SCC 224; *M.MThomas v. State of Kerala and another*, reported in (2000) 1 SCC 666 and *Chairman and Managing Director, Central Bank of India and others v. Central Bank of India Scheduled Castes/Scheduled Tribes Employees Welfare Association and others*, reported in (2016) 13 SCC 135.

7. Per contra, the learned counsel for the respondents submitted that though the petitioners have entered appearance in the Civil Revision Petition through their counsel, when the Civil Revision Petition was taken up for hearing on 22.12.2017, there was no representation and having heard the learned counsel for the respondents herein and also perused the materials available on record, this Court passed an order setting aside the order impugned in the Civil Revision Petition and remanded the matter to the Executing Court for consideration of the matter afresh. Since there was no error in the order passed in the Civil Revision Petition, no review is required and

prayed for dismissal of the review application.

8. I have heard Mr.R.Natarajan, learned counsel appearing for the petitioners and Mr.Manisundara Gopal, learned counsel appearing for the respondents and also perused the materials available on record.

9. The grievance of the petitioners is that by suppressing the factum of pendency of the first appeal in A.S.No.504 of 2015 filed against the judgment and decree passed in O.S.No.79 of 1984, the respondents have brought C.R.P. (NPD) No.1599 of 2001 for hearing and getting the order passed in E.A.No.51 of 1991 in E.P.No.18 of 1991 in O.S.No.79 of 21984 set aside taking advantage of no representation on behalf of the petitioners. The further grievance of the petitioners is that the respondents have failed to brought to the knowledge of this Court qua the order of stay of operation of the decree in O.S.No.79 of 1984 for recovery of possession granted in C.M.P.No.763 of 1991 in A.S.No.73 of 1991 (now numbered as A.S.No.504 of 2015) dated 21.9.1991 while taking up the Civil Revision Petition for hearing. The aforesaid act of the respondents is highly condemnable.

10. It appears that on 22.12.2017 when C.R.P. (NPD) No.1599 of 2001 was taken up for hearing, there was no representation on behalf of the petitioners. However, in the order dated 22.12.2017, this Court noted the name of Mr.D.Senthil as the counsel for the petitioners. The Civil Revision Petition is of the year 2001 and after a lapse of nearly 16 years, the Civil Revision Petition was taken up for hearing and disposed of on 22.12.2017. If really, as contended by the petitioners, there was stay of operation of the decree in O.S.No.79 of 1984, nothing prevented the petitioners to inform the same before this Court at the earlier point of time.

11. According to the petitioners, by an order dated 21.9.1991 in C.M.P.No.763 of 1984 in A.S.No.73 of 1991 stay of operation of the decree in O.S.No.79 of 1984 was granted. If really there was a stay of operation of the decree in O.S.No.79 of 1984, the petitioners would have informed the order of stay granted by this Court to the Executing Court not to hear E.A.No.51 of 1991. However, the petitioners have contested E.A.No.51 of 1991 and upon hearing both sides and also looking into the documents produced by both parties, the Executing Court allowed E.A.No.51 of 1991 by an order dated 09.12.1996.

Assailing the order passed in E.A.No.51 of 1991, the respondents herein have filed C.R.P. (NPD) No.1599 of 2001.

12. By the order dated 22.12.2017, while allowing the Civil Revision Petition, this Court observed and ordered as under:

"10. That apart, this court is not able to find out the rates specified by the Executive Engineer in his report for each items is the rate available from Public Works Department. The court below has not considered the above said aspect of the matter. Therefore, interest of justice is required in this case and to meet the ends of justice this civil revision is liable to be allowed. Hence, I am of the opinion that in order to ascertain the correct value of the building as per the rate available in the Public Works Department, Pondicherry and to fix the proper value of the structure of the suit property without giving any deductions to the electrical installation and sanitary arrangements, the matter is liable to be remitted back to the file of the Principal Sub Court, Pondicherry.

11. In the result, (a) this civil revision petition is allowed by setting aside the order and decreetal order made in E.A.No.52 of 1991, dated 09.12.1996 on the file of the learned Principal Sub-Judge, Pondicherry; (b) the matter remanded back to the learned Principal Sub Judge, Pondicherry for fresh consideration of fixing the

value of the building as per the rate available in the Public Works Department, Pondicherry without deductions to the electrical installation and sanitary arrangements; (c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs."

13. Admittedly, while setting aside the order of the Executing Court in E.A.No.51 of 1991 dated 09.12.1996, this Court has not gone into the merits of the matter and this Court simply remanded the matter for fresh consideration of fixing the value of the building as per the rate available in the Public Works Department.

14. It is to be noted that before the Executing Court itself the petitioners have questioned the value given by the Engineer by stating that the Engineer had adopted higher value. As stated supra, while allowing C.R.P. (NPD) No.1599 of 2001, this Court has not expressed anything on merits of the valuation report submitted by the Engineer.

15. The learned counsel for the petitioners contended that when the Civil Revision Petition was taken up for hearing on 22.12.2017, in the cause list of this Court, the name of the counsel for the petitioners was not printed and any order/judgment passed

without printing the name of the lawyer who has filed vakalat on behalf of the party in the cause-list becomes a nullity. In support, the learned counsel relied upon the decision of this Court in *the Management, Lucas TVS Limited, Padi, Chennai v. M.Gunaseelan and another*, reported in (2005) 4 MLJ 515.

16. In the *Management, Lucas TVS Limited, Padi, Chennai v. M.Gunaseelan and another*, supra, the Hon'ble First Bench of this Court held as under:

"3. In the High Court it is the practice that notice is issued to the party by printing the name of the lawyer who has filed the vakalath on behalf of the party in the cause-list. Obviously, if the name of the lawyer is not shown in the cause-list, the lawyer will not know that the case is on board and may be taken up for hearing. Hence, any judgment passed without printing the name of the lawyer who has filed vakalath on behalf of the party in the cause-list becomes a nullity. ..."

17. It is not the case of the petitioners herein that before 22.12.2017, the name of their counsel was not printed and shown in the cause list. In the order passed in the Civil Revision Petition, in appearance column, this Court noted the name of the counsel for the

petitioners. Since there was no appearance, the same has been noted in the order, which would clearly establish that on the particular date i.e., on 22.12.2017 alone, there was no representation on behalf of the petitioners. Therefore, in the facts and circumstances of the case, the decision in the *Management, Lucas TVS Limited, Padi, Chennai v. M.Gunaseelan and another*, supra, cited by the learned counsel for the petitioners will not be applicable to the case on hand.

18. As far as merits of the review application against the order passed in C.R.P. (NPD) No.1599 of 2001 is concerned, no review would be maintainable, as this Court has not passed any adverse orders against the petitioners and this Court only remanded the matter to the Executing Court for fresh consideration.

19. It is settled that the Court has the power to review, when there was error apparent on the face of the record. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.

20. The error pointed out by the petitioners in this review is despite the order of this Court in A.S.No.73 of 1991 that both the appeals and the Civil Revision Petition were to be heard together, the petitioners suppressing the said order, brought the Civil Revision Petition alone for hearing and getting the order set aside without opportunity to the petitioners. When such being the plea of the petitioners, the review would not lie and their remedy is only by way of appeal. It is to be noted that while allowing the Civil Revision Petition, this Court has not gone into the merits of E.A.No.51 of 1991 and also no adverse order was passed. Admittedly, the petitioners have failed to point out the error committed by this Court. On the contrary, the petitioners are challenging the order passed by this Court in the Civil Revision Petition and the said challenge cannot be decided in the review application.

21. The power of a Civil Court to review its judgement/decision is traceable in Section 114 of C.P.C. The grounds on which review can be sought are enumerated in Order 47, Rule 1 of C.P.C. It may allow review on three specific grounds, namely,

"(1) discovery of new and important matter of 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 or order was made;

(2) mistake or error apparent on the face of the record;
or

(3) for any other sufficient reason."

22. The review proceeding is not by way of an appeal. Holding that the review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence on record for finding the error would amount to exercise of Appellate Jurisdiction, which is not permissible, in *Meera Bhanja v. Nirmala Kumari Choudhury*, reported in (1995) 1 SCC 170, the Hon'ble Supreme Court held as under:

"8. It is well settled that 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, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma ((1979 (4) SCC 389), speaking through Chinnappa Reddy, J.,

has made the following pertinent observations:

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC 1909), there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. 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 power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

9. Now it is also to be kept in view that in the

impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, 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:

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."

23. In *Kerala SEB v. Hitech Electrothermics & Hydropower*

Limited, reported in (2005) 6 SCC 651, the Hon'ble Supreme Court held as follows:

".... In a review petition it is not open to this Court to re-appreciate the evidence and reach a different conclusion, even if that is possible..... If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto."

24. Considering the scope of review jurisdiction and holding "mistake or error apparent on the face of the record must be self evident and does not require a process of reasoning, in *Parsion Devi v. Sumitri Devi*, reported in (1997) 8 SCC 715, the Hon'ble Supreme Court has held as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P.(AIR 1964 SC 1372 = (1964) 5 SCR 174) (SCR at p.186) this Court opined:

"What, however, we are now concerned with is

whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. 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. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must

be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

25. Holding that the review is not an appeal in disguise and that the review Court cannot sit in appeal over its own order and rehearing of the matter is impermissible in law, in *Inderchand Jain (dead) through Lrs vs. Motilal (dead) through Lrs*, reported in (2009) 14 SCC 663, the Hon'ble Supreme Court held as under:

"8. An application for review will lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In Rajendra Kumar v. Rambai (2007) 15 SCC 513), this Court held:

"6. The limitations on exercise of the power of review are well settled. 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 permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed."

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise

of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is permissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India (2000) 6 SCC 224, this Court held (SCC p. 251, para 56):

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. 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."...

26. As held by the Hon'ble Supreme Court in Satyanarayan Laxminarayan Hegde vs. Mallikarjun Bhavanappa Tirumale, reported in

AIR 1960 SC 137, the error must be apparent on the face of the record i.e., error must be self-evident and not which has to be established by a long drawn process of reasoning or which has to be searched. In other words, it must be an error and it must be one which must be manifest on the face of the record. Under the guise of review, parties are not entitled to rehearing of the same issue. An error can be said to be apparent on the face of the record only if such error is patent and can be located without any elaborate argument and without any scope for controversy with regard to such error, which stares at the face even by a mere glance of the judgement.

27. In the light of the well settled principles, when this Court considers the contentions raised by the petitioners, the review filed by them is not maintainable for the reason that while allowing the Civil Revision Petition, this Court has not passed any adverse order and the matter was remanded to the Executing Court for fresh consideration of fixing the value of the building as per the rate available in the Public Works Department. This Court had arrived at such a conclusion for the reason that qua the valuation report of the Engineer in question, before the Executing Court, both the petitioners and the respondents have not satisfied. The petitioners contended that the Engineer had

adopted higher rate. On the other hand, the respondents stated that the value adopted by the Engineer was low and the deductions made by him was not proper. In that situation only, this Court remanded the matter to the Executing Court. When there were objections to the valuation report by both parties and the same was recorded by this Court, how the petitioners can plead that there was an error in the order dated 22.12.2017 in C.R.P. (NPD) No.1599 of 2001.

28. In view of the categoric finding as aforesaid based on the materials on record, I do not propose to delve into the various decisions relied by the learned counsel for the petitioners and the decisions cited by them are in different factual matrix.

29. As observed above, the order passed in the Civil Revision Petition is a reasoned order with factual discussion of the respective parties and this Court finds that there is no error apparent on the face of the record. Further, the error pointed out by the petitioners are on flimsy grounds and also to drag on the proceedings. There is no patent/manifest error warranting review of the order passed in the Civil Revision Petition dated 22.12.2017.

30. The uniform principle that runs through catena of decisions is that "a mistake apparent on record" must be obvious and apparent mistake and not something, which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. The points raised by the learned counsel for the petitioners herein, in my considered view, are upon the merits of the matter and the Review Court, sitting as Appellate Court and exercising Appellate jurisdiction, cannot go into the merits of own findings.

31. As stated above, review proceeding is not by way of an appeal and that the review must be confined to error apparent on the face of the record and re-appraisal of the entire materials on record for finding the error would amount to exercise of appellate jurisdiction, which is not permissible.

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32. In my considered view, the order passed in the Civil Revision Petition do not suffer from any error apparent on the face of the record warranting review of the order dated 22.12.2017 and the review application is liable to be dismissed and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2018

vs

Index : Yes

Internet : Yes



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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
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