IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Review Application Nos.261 & 263 of 2018
in S.A.Nos.53 & 54 of 2018
and C.M.P.Nos.19621 & 19741 of 2018

Rev.Appl.No.261/2018

1.S.Dallas
2.S.Pappa
3.S.Dayala Mary
4.S.Vimala
5.Allen David ..Petitioners/Appellants/Defendants

Vs.

A.S.Rani Clementia ..Respondent/Respondent/Plaintiff

PRAYER: Review Application filed under Order 47 Rule 1 read with Section 114 of C.P.C, to review the judgment and decree dated 29.08.2018 made in S.A.No.53 of 2018, on the file of this Court.

Second Appeal filed under Section 100 of CPC as against the Judgment and decree dated 28.11.2017 made in A.S. No. 20/2015 on the file of the Additional District Judge, Chengalapttu confirming the Judgment and decree dated 02.06.2015 made in O.S. No. 220/2009 on the file of Subordinate Judge, Tambaram.

For Petitioners : Mr.S.V.Jayaraman, Senior Counsel
for Mr.R.Baskaran

For Respondent : Mr.A.R.Nixon

Rev.Appl.No.263/2018

1.S.Pappa
2.S.Dallas
3.S.Dayala Mary
4.S.Vimala ..Petitioners/Appellants/Defendants

Vs.

1.A.S.Rani Clementia
2.A.S.Raimond ..Respondents/Respondent/Plaintiff

PRAYER: Review Application filed under Order 47 Rule 1 read with Section 114 of C.P.C, to review the judgment dated 29.08.2018 made in S.A.No.54 of 2018, on the file of this Court.

Second Appeal filed under Section 100 of CPC as against the Judgment and decree dated 28.11.2017 made in A.S. 21/2015 on the file of the Additional District Judge, Chengalapttu confirming the Judgment and decree dated 02.06.2015 made in O.S. 358/2012 on the file of the Subordinate Judge, Tambaram.

For Petitioners : Mr.S.V.Jayaraman, Senior Counsel
for Mr.R.Baskaran

For Respondents : Mr.A.R.Nixon

C O M M O N O R D E R

The present Review Applications are filed to review the order dated 29.08.2018 made in S.A.Nos.53 & 54 of 2018, on the file of this Court.

2.Heard the learned Senior Counsel appearing for the petitioners as well as the respondent/respondents in the Review Applications respectively.

3.The learned Senior Counsel appearing for the review applicants made submissions on the merits of the case. It is well settled that the Review Application is not an appeal and power of Courts to re-consider the earlier order is very limited. The review applicants cannot re-argue the issue on merits and also raise new points in the Review Application. The Hon'ble Apex Court in the judgment reported in 2017 4 SCC 692 [Sasi (dead) through legal representatives Vs. Aravindakshan Nair and others] in paragraph Nos.8 & 9 has held as follows:

> "8.In Parsion Devi V. Sumitri Devi Parsion Devi Vs. Sumitri Devi, 1997 8 SCC 715, the Court after referring to Thungabhadra Industries Ltd., Meera Bhanja (Smt) V. Nirmala Kumari Choudhury (Smt). Meera Bhanja (Smt) V. Nirmala Kumari Choudhury (Smt)., 1995 1 SCC 170 and Aribam Tuleshwar Sharma V. Aribam Pishak Sharma Aribam Tuleshwar Sharma V. Aribam Pishak Sharma, 1979 4 SCC 389, held thus:
>
> > "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'".
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> 9.The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings."

4.The Honbl'e Apex Court has referred to the earlier judgment wherein Order XLVII Rule 1 of C.P.C was extracted and held that error in the order must be self-evident and is not to be found out by the process of reasoning. The Review Application can be entertained only if the applicant satisfies the ingredients of Order XLVII Rule 1 of C.P.C. The Order XLVII Rule 1 of CPC clearly defines the nature, scope and ambit of power to entertain the Review Application. The ratio of the Hon'ble Apex Court in the said judgment is squarely applicable to the facts of the present case and the Review Applications are liable to be dismissed as not maintainable.

5.Further, the present Review Applications are also not maintainable on the ground that Mr.S.V.Jayaraman, learned Senior Counsel now appearing for the review applicants is not the counsel who appeared and argued in the Second Appeals. One Mr.G.R.Lakshmanan, learned counsel only appeared and argued in the Second Appeals, that are sought to be reviewed. This practice of engaging different counsel to argue the Review Application has been deprecated by the Hon'ble Apex Court in the judgment reported in (1997) 9 SCC 736 [Tamil Nadu Electricity Board and another Vs. N.Raju Reddiar and another], in paragraph Nos.1 to 3, which reads as follows:

> "1.It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is croppingup. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious

plea that the order is not clear and unambiguous. 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 not that 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. In Review Petition No.2670/96 in CA No.1867/92, a Bench of three Judges to which one of us, K. Ramaswamy,J., was a member, has held as under:

"The record of the appeal indicates that Shri Sudarsh Menon was heard and decided on merits. The Review Petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That part, he has not obtained " No Objection Certificate" from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to file the Review Petition. Even otherwise, the Review Petition has no merits, It is an attempt to reargue the matter on merits.

On these grounds, we dismiss the Review Petition".

2.Once the petition for review is dismissed, no application for clarification should be filed, much less with the change of the advocate-on-

record. This practice of changing the advocates and filing repeated petitions should be deprecated with heavy had for purity of administration of law and salutary and healthy practice.

3.The application is dismissed with exemplary costs of Rs.20,000/- as it is an abuse of the process of court in derogation of healthy practice. The amount should be paid to the Supreme Court Legal Aid Services Committee within four months from today. If the amount is not paid, it should be recovered treating this direction as decree of the Court by the Supreme Court Legal Services Committee. The Registry is directed to communicate this order to the Supreme Court Legal Service Committee."

6.In the present case on hand, the Review Applicants failed to raise any ground, reason or cause showing error apparent in the judgments warranting to review the earlier judgment. I do not find any error apparent on the face of record in the judgments, dated 29.08.2018 made in S.A.Nos.52 & 53 of 2018. Accordingly, the Review Applications fail.

7.In the result, the Review Applications are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge
   Chengalapttu.

2. The Subordinate Judge, Tambaram.

3. The Section officer
   VR Section, High Court, Madras 104.

+1 CC to Mr.A.R.Nixon, Advocate sr 88596.
+2 Ccs to Mr.R.Baskaran, Advocate sr 88126 & 88127.

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SP(11/01/2019)