



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2018

Date of Reserving the Order	Date of Pronouncing the Order
12.07.2018	18.07.2018

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

Review Application Nos.181 & 182 of 2018 &
against CRP. 1445/18 & 1444/18
C.M.P.Nos. 11409 & 11410 of 2018

Mohanasundaram .. Petitioner/Appellant
in both Rev. Application
Vs

1.Dr.S.D.Vijayasankar

2.Periyasamy .. Respondents in
Rev.Appl. No.181 of 2018

Dr.S.D.Vijayasankar .. Sole Respondent in
Rev.Appl. No.182 of 2018

Common Prayer:-The Review Applications filed under Article 226 of the Constitution of India read with Order 47 Rule (1) read with Section 114 of CPC against the order dated 24.04.2018, passed in C.R.P.(NPD).No.1445 of 2018 & 1444/2018.

CRP. 1445 & 1444/18 : These Civil revision petition are filed under section 25 of the T.N Building (Lease and Rent Control) Act 1960 against the fair and decreetal order dated 30/06/2017 made in RCA.No.s.1 & 2/15 respectively on the file of the Sub Court, Gobichettipalayam confirming the fari and decreetal order dated 16/06/2015 made in RCOP.No.9/2008 &1/09 respectively on the file of the District munsif court, Gobichettipalayam.

For Petitioner .. Mr.K.M.Vijayan Senior Counsel for
M/s.K.M.Vijayan Associates

For Respondents .. Mr.R.L.Ramani Senior Counsel for
Mr.B.Raveendran



2. These Civil Revision Petitions were filed by the petitioner/appellant herein challenging the fair and decreetal order, dated 30.06.2017, made in RCA Nos.1&2 of 2015 on the file of the Sub Court, Gobichettipalayam, confirming the fair and decreetal order, dated 16.06.2015, made in RCOP Nos.1 of 2009 & 9 of 2008, on the file of the District Munsif Court, Gobichettipalayam. By the concurrent findings of the Court below, the petitioner/appellant was directed to vacate and handover possession to the first respondent landlord.

3. Mr.K.M.Vijayan, learned Senior counsel for the Review Petitioner contended that the existing tenants who were vacated, have been reinducted during the pendency of the Civil Revision Petition. Further, the reconstruction of the building in terms of the approved plan was not done and as of now, the same cannot be constructed, since the validity of the plan itself has expired, as the plan was approved on 06.06.2008. Referring to the grounds of eviction more particularly in paragraph 4 (B) of the Eviction Petition and paragraph 6, it is submitted that the averments itself clearly show that the landlord wanted to demolish and reconstruct the building within a time frame and this averment has not been complied with. Further, it is submitted that in paragraph 4(B) of the Eviction Petition, it is stated that one Dr.Velu, who was running a clinic had agreed to vacate the portion occupied by him and he also vacated, which is incorrect, because he has been re-inducted and there is a board shown as "Bharathi Jute" and the contention raised by the petitioner is incorrect. The learned counsel referred to the findings rendered by the learned Rent Controller in paragraph 2 of the order (page 45 of the typed set of papers) and the finding rendered by the learned Rent Controller Appellate Authority in paragraphs 29 & 30 of the order (pages 114 & 115 of the typed set of papers). Further, it is submitted that there is no multi-storied construction put up by the petitioner as stated in the Eviction Petition nor as per the approved building plan. Further, the landlord cannot pick and choose, the tenants for vacating the premises and therefore, the order passed in the Civil Revision Petition has to be reviewed. Alternatively, the learned Senior counsel submitted that he has opined that a pragmatic solution has to be taken and if the petitioner is granted one year time to vacate the premises, the petitioner will do so and also pay the entire rent in advance. On the



above submissions, the learned Senior counsel prays for review of the order and direction issued in the Civil Revision Petition.

4. Mr.R.L.Ramani, learned Senior counsel appearing for the respondents submitted that the allegations made by the petitioner in the revision petition is absolutely false and no new tenants have been inducted and the construction put up about two years back and it has been completed and it is in accordance with the planning permission, which was obtained by the respondent. Further, it is submitted that "Bharathi Jute", is not a new tenant, but he is the cousin of the first respondent and as somebody has to take care of the property he has been permitted to use a portion of the premises, where he is carrying on his business in jute articles. Further, it is submitted that real intention for filing the petition for resisting eviction as well as for filing this Review Petition is because, the Review petitioner wanted to purchase the property now owned by the respondent/landlord, which has got a road frontage as he has already purchased the rear portion of the property. Further, it is submitted that the first respondent is not agreeable to grant one year time as suggested by the learned Senior counsel for the petitioner.

5. Heard the learned Senior counsels appearing for the parties and carefully perused the materials placed on record.

6. The power of review is not an inherent power, but creature of statute. Scope of an application for review is much more restricted than that of an appeal. The Court of review has only a limited jurisdiction circumscribed by the definite limits fixed by the language of Order 46, Rule 1 CPC, wherein it has been provided that a review may be allowed on three specified grounds, namely, (1) discovery of new and important matters or evidence, which after exercise of due diligence, was not within the applicants 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. The foremost requirement is that the order of which review is sought for, suffers from an error apparent on the face of the order and permitting the order to stand will lead to failure of justice.

7. Thus only if there is a mistake or error apparent on the face of the record, the power can be exercised and it is not permissible for an erroneous decision to be reheard and corrected. A review application also cannot be allowed to be an appeal in disguise. The error apparent on the face of the record, must be such an error, which must strike one on mere looking at record. The Court will not entertain a review



petition with an entire new substratum of issues, as such power cannot be confused with the appellate power, which the appellate Court may correct. The contentions which were raised in the main proceedings cannot be re-agitated under the guise of a review petition.

8. After elaborately hearing the learned Senior counsel appearing for the petitioner, I find that the petitioner has miserably failed to point out any error which is apparent on the face of the record. The Court heard the Civil Revision Petition on various dates and the counsel, who appeared for the Civil Revision Petition is not the counsel in the Review Petition. After elaborate arguments, the concurrent findings of the Courts below have been affirmed. The present attempt of the petitioner is to re-argue the matter. All issues have been considered and in the absence of any error, which is apparent on the face of the order, the Court cannot exercise its review jurisdiction.

9. With regard to the alternate submission made by the learned Senior counsel for the petitioner that the Court may direct the respondent to grant one year time to vacate the premises, the learned Senior counsel appearing for the first respondent on instructions submitted that his client is not willing to grant one year's time. In the light of the same, this Court cannot compel the first respondent to accept any time period.

10. For all the above reasons, the Review Applications being devoid of merits, are dismissed. The petitioner is directed to vacate and handover the vacant portion of the premises to the first respondent landlord, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

pbn



To

1. The District Munsif,
Gobichettipalayam.

2. The Sub Judge,
Gobichettipalayam.

+1cc to Mr.B.Raveendran, Advocate SR.No.48160

+1cc to Mr.K.M.Vijayan Associates, Advocate SR.No.47226

+1cc to Mr.K.M.Vijayan Associates, Advocate SR.No.47226(06/08/18)

Review Application Nos.181 & 182 of 2018 &
C.M.P.Nos. 11409 & 11410 of 2018

RJ(CO)
GN(30/07/2018)