

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Review Application No.306 of 2018
in C.R.P(NPD).No.928 of 2015

Rajesh Kumar Bagmar ..Petitioner

Vs.

Swathi @ Nagina ..Respondent

PRAYER: Review Application filed under Order 47 Rule 1 read with Section 114 of C.P.C, to review the order dated 27.04.2018 made in C.R.P(NPD).No.928 of 2015, on the file of this Court.

For Petitioner : M/s.Shah and Shah

For Respondent : Mr.M.Habeeb Rahman
for M/s.Edwin Prabakar

ORDER

Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

2.The petitioner in the Review Application has come out with the present Review Application to review the order dated 27.04.2018 made in C.R.P(NPD).No.928 of 2015, on the file of this Court.

3.This Review Application is filed by changing the counsel who appeared in the Civil Revision Petition. The present counsel who is appearing for the Review Applicant has raised various grounds on merits and also new points, which were not put forth at the time of hearing of the Civil Revision Petition. It is well settled that in a Review Application, the counsel for the review petitioner is not entitled to re-argue the matter or put forth any new points. Only when there is an error in the order sought to be reviewed, the Review Application can be entertained. The learned counsel for the petitioner has not pointed out any error in the order dated 27.04.2018 made in C.R.P(NPD).No.928 of 2015.

4.The learned counsel for the respondent relied on the judgments reported in **MANU/UP/0079/2005 [Mohan Lal Bagla Vs. Board of Revenue and others.]** and **(1997) 9 SCC 736 [Tamil Nadu Electricity Board and another Vs. N.Raju Reddiar and another]**, wherein, it has been held that in a Review Application, change of counsel is not maintainable as the present counsel will not be knowing the points put forth by the earlier counsel. The relevant paragraphs of the judgments relied on by the learned counsel for respondent are as

follows:

(i)(1997) 9 SCC 736 [Tamil Nadu Electricity Board and another Vs. N.Raju Reddiar and another]:

"1.It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. 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."

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(ii)MANU/UP/0079/2005 [Mohan Lal Bagla, son of Late Gopi Kishan Bagla Vs. Board of Revenue and others]:

"11.Otherwise also for a new counsel it may not be proper to move for the reasons as indicated below. In respect to question involved and to the argument

which were advanced by learned counsel appearing for the party and in respect to queries which were made by the Court whether were satisfactorily replied or not, it cannot be possibly in the knowledge of another counsel who was not appearing at the time of first hearing of case. Take a case that a question was put to a counsel but he was not in a position to answer it, a particular document in support of claim was asked to be placed but learned advocate is not in a position to show and refer to the relevant document, and on a particular aspect, he might have virtually surrendered for the reason that he probably had no valid reply and thereafter, judgment comes, dealing with all the aspects. Now review petition is filed on the ground that something was not considered which was argued or there is wrong observation about certain facts or on alike ground then it has to be said that a new counsel is debarred from raising all these objections or objection of a like nature....."

5.The scope of review was considered by the Hon'ble Apex Court in a judgment reported in **2000 (6) SCC 224 [Lilli Thomas and Others Vs. Union of India and Others]**, wherein, in paragraph 52, it was held as under:

"52.The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the

*review is the creation of a statute. This Court in **Patel Narshi Thakershi Vs. Pradyumansinghji Arjunsinghji** [1971 (3) SCC 844 : AIR 1970 SC 1273] held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. 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."*

(emphasis supplied)

6.A Division Bench of this Court in a judgment reported in "**2014 (3) TLNJ 245 (Civil) [M.Jai Kavitha Vs. The Authorised Officer, Syndicate Bank, Regional Office, Chennai - 1 and others]**," has considered the scope of judicial review, wherein the decision of the Honourable Apex Court was noted with approval. Paragraph No.9 of the said Judgment reads as under:

"9.The power of review under Order 47 Rule 1 of CPC can be exercised by a court of law, if the order in question comprises a mistake or an error apparent on the face of record. Once an order is pronounced, it should not be altered, unless there is an apparent error. Law is well settled that erroneous finding is not a ground for review, so also improper consideration for that matter. In review application, the court does not sit in appeal over its own judgment and the said application cannot be treated as an appeal. This position has been ruled by the Supreme Court in Lily Thomas Vs. Union of India [2000 (6) SCC 224]. Therefore, in the absence of any error apparent on th face of record, we are not inclined to interfere with the order in question, except to the extent of deleting of the portions in paragraphs 14 and 15 of the impugned order, with which the applicant is concerned as to having an impact on the proceedings pending before the tribunal, as stated in the foregoing paragraph."

(emphasis supplied)

7.In the judgments reported in:

(i)2017 4 SCC 692 [Sasi (dead) through legal representatives Vs. Aravindakshan Nair and others], the Hon'ble Apex Court in paragraph Nos.8 & 9 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'".

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."

(ii)C.R.P(PD).No.3747 of 2011 & M.P.No.1 of 2011 [Ramasamy

Vs. Pushpa]:

"31.In Jolly George (Supra), the Hon'ble Supreme Court clearly ruled that based on his earlier financial position, a person cannot be send to civil prison. His current financial position alone have to be taken into account to. Thus, the second ground taken by the Execution Court to send the petitioner to jail is also not correct."

8.The two decisions in **MANU/UP/0079/2005 and (1997) 9 SCC 736** were also followed by me in Review Application (MD) No.142 of 2014, dated 25.11.2014, wherein it has been held that a person in review is not entitled for re-hearing the issue.

9.In the light of the dicta laid down by the Honorable Apex Court as well as by the Division Benches of this Court, I am of the considered view that the earlier order of the Court can be reconsidered only if there is an error of fact or law apparent on the face of record and in that event, the said error can be rectified. Otherwise, a Review Application is not maintainable. The ratio in the judgment of the

Hon'ble Apex Court is squarely applicable to the facts of the present case. In the present case on hand, the Review Applicant failed to raise any ground, reason or cause, warranting to review the earlier order. I do not find any error apparent on the face of record in the order, dated 27.04.2018 made in C.R.P(NPD).No.928 of 2015. Accordingly, the Review Application fails.

10. In the result, the Review Application is dismissed. No costs.

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Index : Yes/No

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V.M.VELUMANI, J.

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