

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.07.2014

CORAM:

THE HON'BLE MR.JUSTICE V.DHANAPALAN

and

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

REVIEW APPLICATION No.79 of 2013

in

W.P.No.35198 of 2012

M.Jai Kavitha

... Petitioner

vs.

1. The Authorised Officer,
Syndicate Bank,
Regional Office,
I Floor, Leelavathi Building,
No.69, Armenian Street,
Chennai 600 001.
2. S.R.Manickavasagam
Proprietor,
M/s. Morvi Exports,
NH7, New Madurai Bye Pass Road,
Karur 639 001, Karur District.
3. M/s.Power Creating Zone (P) Ltd.,
rep. by its Managing Director,
Mr.S.Karunanithi,
S/o.Subramanian
Madurai Salem Bye Pass Road,
Sukkaliyur Check Post,
Karur Taluk and District.

... Respondents

(R3 impleaded as per order dated 08.04.2013 in M.P.No.3/2013)

Review Petition filed under Order 47 Rule 1 r/w Section 114 of the Code of Civil Procedure, praying to review the order of this Court, dated 08.04.2013 in W.P.No.35198 of 2012.

For Review Petitioner : Mr.S.Parthasarathy
for Mrs.Ananda Gomathi Sivakumar

For Respondents : Mr.G.Masilamani, for R1
Senior Counsel
for M/s.Sheela & Sekar

No appearance for R2

Mr.R.Krishnamoorthy, for R3
Senior Counsel
assisted by Mr.V.Ayyadurai,
for Mr.V.Balamurugane

ORDER

(Order of the Court was made by V.Dhanapalan,J.)

Heard Mr.S.Parthasarathy, learned Senior Counsel appearing for Mrs.Ananda Gomathi, learned counsel for the Review Petitioner; Mr.G.Masilamani, learned Senior Counsel appearing for M/s.Sheela & Sekar, learned counsel for the 1st respondent Bank and Mr.R.Krishnamoorthy, learned Senior Counsel assisted by Mr.V.Ayyadurai, learned counsel appearing for Mr.V.Balamurugane, learned counsel for the 3rd respondent.

2. The Review Petitioner is before this Court for review of the order dated 08.04.2013 made in Writ Petition No.35198 of 2012, on the plea that this Court has proceeded to give a finding without appreciating that the matter involves placing of complicated facts which cannot be gone into a writ petition and also that the Court failed to appreciate that the DRT is seized of the matter and the finding given by this Court would adversely affect the findings which would be rendered by DRT.

3. Learned Senior Counsel appearing for the Review petitioner would mainly contend that the observation in paragraph 14 of the order impugned as **'two contrary stands have been taken in the affidavit and the Settlement Deed, which itself creates a doubt in the mind of the Court as to whether a stage has been set up to dodge the repayment of loan'** would have an impact on the pending proceedings before DRT and therefore, it has to be clarified. He would further point out that the said observation finds place in paragraph 15 also.

4. On the other hand, learned Senior Counsel appearing for the 1st respondent Bank would vehemently contend that any finding rendered

by this Court is a matter of appeal and there is no error apparent on the face of record. He would further contend that the observation made by this Court cannot be a matter for review and any interference would amount to altering the findings of the Court.

5. Similarly, learned Senior Counsel appearing for the 3rd respondent would contend that there is no scope of reviewing the matter, as things would be otherwise in interfering with the findings of this Court, in the absence of any error apparent on the face of record.

6. For better appreciation of the case, relevant portions of the order in question are extracted hereunder:

“14. We are not able to agree with this stand of the learned counsel for the petitioner for the reason that as per the settlement deed, which has been enclosed in the typed set of papers at page No.192, out of love and affection, the settlement deed was executed. But, as per the averment in the affidavit filed in support of the writ petition, due to misunderstanding between the petitioner and the 2nd respondent, settlement was arrived at.

Two contrary stands have been taken in the affidavit and the Settlement Deed. This itself creates a doubt in the mind of the Court, as to whether a stage has been set up to dodge the repayment of loan.

15. Yet another factor to be noted is that no document has been produced before this Court to establish that the Settlement deed executed in the year 2010 has been brought to the notice of the 1st respondent Bank. Further, the learned counsel for the petitioner had relied on a legal notice issued on 07.08.2012, which has been enclosed at page No.23 of the additional typed set of papers-II filed by the petitioner. If actually the settlement deed has been executed for the purpose for which the same was executed, nothing prevented the petitioner from bringing the fact of execution of settlement deed to the notice of the Bank. Apart from this, the stand of the learned counsel for the petitioner is that since the petitioner is the owner of the property as on date, she should be put on notice. Though the learned counsel for the petitioner had relied on the legal notice dated 07.08.2012, even according to him, on 08.04.2012 what prevented the petitioner from bringing the fact

of execution of settlement deed to the notice of the Bank has not even been explained. Apart from this, having brought a third party purchaser before the Bank, now totally taking a different stand is unsustainable. The letter of the 2nd respondent is dated 16.4.2012 and proposed sale is subsequent to this. When the settlement deed was executed out of love and affection, the stand of the petitioner that she is put in dark by her husband cannot be allowed to stand since in the opinion of this court, this has been created or set up to dodge the repayment of loan to the bank."

7. Considering the above submissions, as the Review Petitioner is mainly concerned with the impact on the pending proceedings, if the observation in the last line of paragraph 14 of the order impugned as to 'This itself creates a doubt in the mind of the Court, as to whether a stage has been set up to dodge the repayment of loan', is allowed to remain, undoubtedly, it will have impact on the pending proceedings and hence, we feel it appropriate that the said observation could be deleted from the order impugned.

8. Accordingly, the last line of paragraphs 14 and 15, as reiterated below, stand deleted.

“14. ... This itself creates a doubt in the mind of the Court, as to whether a stage has been set up to dodge the repayment of loan.”

15. ... since in the opinion of this court, this has been created or set up to dodge the repayment of loan to the bank”.

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 v. Union of India*, (2000) 6 SCC 224. Therefore, in the absence of any error apparent on the 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.

The Review Petition stands disposed of accordingly.

[V.D.P.,J.] [M.D.,J.]

Index : Yes

18.07.2014

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To :

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