

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2019

CORAM:

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

Review Application (Writ) No.88 of 2019
against W.P.No.31830 of 2018
and W.M.P.No.11249 of 2019

N.Madhavan

... Petitioner

Vs.

1.R.Karthikraj

2.The District Collector,
Namakkal District, Namakkal.

3.The Revenue Divisional Officer,
Namakkal

4.The Indian Bank,
rep by its Chief Manager & Authorized Officer,
Namakkal Branch,
No.31, Rangar Sannathi Street,
Namakkal - 1.

... Respondents

Review Petition filed under Article 226 of the Constitution of India
read with Order 47 Rule 1 read with Section 114 of the Civil Procedure Code
against the order dated 05.03.2019 made in W.P.No.31830 of 2018

For Review Applicant : Mr.N.Subramaniyan

ORDER

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The 4th respondent in W.P.No.31830 of 2018 has filed the Review Application to review the order dated 05.03.2019 passed in W.P.No.31830 of 2018.

2.By order dated 05.03.2019, after hearing the learned counsel appearing for the respective parties, including Mrs.Hemalatha, learned counsel for the 4th respondent, this Court disposed of the Writ Petition, directing the 1st respondent, the District Collector, Namakkal to proceed further pursuant to the order dated 27.04.2011 for taking possession of the property from the 4th respondent as expeditiously as possible. Now, the 4th respondent has filed the above Review Application to review the order dated 05.03.2019 by engaging another counsel.

3.On a perusal of the Vakalat filed in the review application by the present counsel, it is clear that the learned counsel has filed the Vakalat without obtaining any consent for change of Vakalat from the erstwhile counsel Mr.C.Prakasam. The Vakalat bears only the signature of the review applicant, the learned counsel on record viz., Mr.N.Subramaniyan and Mr.C.Rajapandian and also the attesting Advocate Mr.V.Kalaivannan. The

Hon'ble Supreme Court in the judgment reported in **(1996) 6 Supreme Court Cases 755 [M.Poornachandran and another Vs. State of Tamil Nadu and others]** held that a Review Application filed by way of change of Vakalat and also without obtaining No Objection Certificate from the erstwhile counsel should not be entertained. The judgment of the Apex Court reads as follows:

“1.The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal 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 re-argue the matter.

2.On these grounds, we dismiss the review petition.”

4. When this Court has put a specific question to the learned counsel for the review applicant whether he has obtained No Objection from the erstwhile counsel, the learned counsel replied that he had obtained No Objection from the erstwhile counsel. But on a perusal of the Vakalat filed in the Review Application, it is clear that the answer given by the learned counsel for the review applicant is not correct. Therefore, applying the ratio laid down by the Hon'ble Supreme Court, the Review Application is liable to be dismissed on that ground alone.

5. Even with regard to the merits of the matter, while disposing of the Writ Petition, we took into consideration that an order under Section 14 of the SARFAESI Act was passed as early as on 27.04.2011, however, even after a lapse of nearly eight years, possession has not yet been taken from the 4th respondent. It was also brought to the notice of this Court that the 4th respondent filed an appeal in S.A.(SR).No.558 of 2010 before the Debts Recovery Tribunal, Madurai, along with certain applications for condoning the delay, etc and the said appeal was dismissed for non-prosecution and the 4th respondent/review applicant had filed applications in I.A.Nos.795 to 798 of 2012 to restore the appeal.

6.The learned counsel appearing for the review applicant submitted that this Court granted an order of interim stay in W.P.No.25758 of 2012 and the same was in force till 03.04.2018 and therefore, possession was not taken by the District Collector.

7.The learned counsel appearing for the review applicant relied upon a judgment reported in **(2007) 4 Supreme Court Cases 221 [A.V.Papayya Sastry and others Vs. Govt. of A.P. and others]**, wherein the Hon'ble Supreme Court held as follows:

“...

22.It is thus settled preposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order - by the first Court or by the final Court - has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.”

8.On a perusal of the materials available on record, it could be seen that the petitioner earlier filed Writ Petitions in W.P.No.5688 of 2010 and W.P.No.6972 of 2010 challenging the proceedings initiated by the Bank

under Section 13(2) of the SARFAESI Act and this Court, by order dated 20.04.2010, dismissed the Writ Petitions, giving liberty to move the Debts Recovery Tribunal. Accordingly, challenging the proceedings under Section 13(2) of the SARFAESI Act, the petitioner has filed an appeal in S.A.(SR).No.558 of 2010 before the Debts Recovery Tribunal, Madurai.

9.Now, the issue is with regard to the order passed by the District Collector under Section 14 of the SARFAESI Act. In W.P.No.25758 of 2012, the review applicant/4th respondent challenged the proceedings of the Revenue Divisional Officer, Namakkal dated 17.08.2012. In the said Writ Petition, the petitioner sought for an order of interim stay of the proceedings dated 17.08.2012 on the file of the Revenue Divisional Officer and this Court had also granted an order of interim stay, which, according to the review applicant, was in force till 03.04.2018 on which date the Writ Petition was disposed of, giving liberty to the petitioner to challenge the order dated 27.04.2011 passed by the District Collector in the manner known to law. Therefore, from the materials available on record, it is clear that the order dated 27.04.2011 has not been challenged by the petitioner or an order of stay was granted in respect of the said order. When the review applicant has not challenged the order dated 27.04.2011 passed by the District Collector and no order of stay was granted in respect of the said

order, we have disposed of the Writ Petition giving a direction to the District Collector to proceed further pursuant to the order dated 27.04.2011 for taking possession of the property from the review applicant as expeditiously as possible. Therefore, absolutely there is no error apparent on the face of the record warranting interference in the Review Application.

10. It is also settled position that the review applicant cannot re-argue the matter in the guise of Review Application.

10.1. In the judgment reported in **AIR 1995 Supreme Court 455 [Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury]**, the Hon'ble Supreme Court held that the Review Court cannot re-appreciate the entire evidence and reverse the finding of Appellate Court. Further, the finding given by the Appellate Court cannot be reviewed even though it was erroneous.

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10.2. In the judgment reported in **AIR 2000 Supreme Court 1650 [Lily Thomas, etc. Vs. Union of India and others]**, the Apex Court held that the power of review can be exercised for correction of a mistake and 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 as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Further, once a review petition is dismissed, no further petition to review can be entertained.

10.3. In the judgment reported in 2006 (1) CTC 161 [*The Government of Tamil Nadu, represented by its Secretary, Backward Classes and Most Backward Classes Welfare (BCC) Department, Secretariat, Chennai-9 and another Vs. Registration Department SC/ST and M.B.C Employees' General Welfare Sangam, Pattinampakkam, Chennai-28 rep. by its General Secretary, Thiru.S.Balakrishnan and others*], a Division Bench of this Court held that the power of review cannot be exercised to seek review of judgment already delivered for purpose of rehearing and fresh decision. Further, the Division Bench held that under Order 47 Rule 1 of the Code of Civil Procedure "any other sufficient cause" must mean reason sufficient on grounds at least analogous to those specified in rule. Further, the power of review may be exercised on discovery of new and important matter and evidence which after exercise of due diligence was not within the knowledge of person seeking review or could not be produced by person seeking review.

10.4. In the judgment reported in **2006 (2) CTC 809 [L.Jegannath and another Vs. The Land Acquisition Officer & Revenue Divisional Officer, Palani and others]**, a Division Bench of this Court held that review petition cannot be allowed to be an appeal in disguise and it is not permissible for an erroneous decision to be reheard and corrected.

10.5. In the judgment reported in **AIR 2009 SC (Supp) 476 [State of West Bengal and Ors. Vs. Kamal Sengupta and Anr.]**, the Apex Court held that an order or decision or judgment cannot be corrected merely because it is erroneous in law or on ground that a different view could have been taken by the Court on a point of fact or law. Further, the Apex Court held that the Court cannot sit in appeal over the judgment in a review application.

11. It is settled position that the Review Applicant cannot re-argue the matter on merits. The present Review Petition does not come within the purview of Order 47 Rule 1 of the Code of Civil Procedure warranting review of the order. Since the facts and circumstances of the case on hand differs, the judgment relied upon by the learned counsel for the Review Applicant is not applicable.

12. In these circumstances, we find no error apparent on the face of the record to interfere with the order passed in W.P.No.31830 of 2018. In these circumstances, the Review Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Review Application is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes
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(V.K.T., CJ.) (M.D., J.)
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THE HON'BLE CHIEF JUSTICE
AND
M. DURAISWAMY,J.

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