

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19 /12/2019

C O R A M

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Reveiw Application.Nos.158 to 160 of 2016

in

Writ Petition.Nos.7070, 5923 & 5924 of 2006

WMP.Nos.34044 and 34045 of 2016

Arasu Rubber Corporation Limited,
Rep. by its Managing Director,
Vadaseri, Nagercoil.

...

Petitioner/
4th respondent

Vs

1. a) S.Sundar,
Plantation Worker,
Arasu Rubber Corporation Ltd.,
Mylar Division, Chittar Cyclone Colony PO,
Kanyakumari District 629 161. ... 1st respondent/petitioner
In Rev.Applw.No.158/2016

- b) B.Vickraman,
Plantation Worker,
Arasu Rubber Corporation Ltd.,
Mylar Division, Chittar Cyclone Colony PO,
Kanyakumari District 629 161. ... 1st respondent/petitioner
In Rev.Applw.No.159/2016

- c) P.Denson,
Plantation Worker,
Arasu Rubber Corporation Ltd.,
Mylar Division, Chittar Cyclone Colony PO,
Kanyakumari District 629 161. ... 1st respondent/petitioner

In Rev.Applw.No.160/2016

2. The State of Tamil Nadu,
Rpe. by its Secretary to Government,
Environment and Forest Department,
Secretariat, For.St.George,
Chennai - 600 009. ... 2nd respondent/1st
respondent
2. The Principal Chief Conservator of Forests
Pamagal Building, Saidapet,
Chennai 600 015. ... 3rd respondent/2nd
respondent
3. The district Forest Officer,
Kanyakumari Division,
Nagerkoil,
KK District 629 001. ... 4th respondent/3rd
respondent

Common Prayer : Review Application filed under Order 47 Rules 1
and 2 read with Section 114 of Civil Procedure Code, to review the
orders passed by this Court in W.P.No.7070 of 2006, dated
24.01.2012.

For petitioner ... Mr.Anand Gopalan
M/s.T.S.Gopalan and Co

For respondents ... S.R.Shase for R1
Mr.M.Elumalai, G.A. for R2 to R4

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COMMON ORDER

The present Applications are to review the order dated 24.01.2012 in WP.Nos.7070, 5923 & 5924 of 2006. This order relates to the regularisation of individuals working as Forest Watchers in the applicant/Review petitioner's company.

2. The first respondent petitioners were all employed in the service of the Tamil Nadu Forest Department. They were on daily wages in the Government Rubber Plantations, which were under the control of the Tamil Nadu Forest Department. These rubber plantations later became Arasu Rubber Corporation, a company fully owned by the Government of Tamil Nadu on 01.10.1984. The petitioners have been working in this Corporation without interruption. They approached the Court filing WP.Nos.7070, 5923 & 5924 of 2006, for regularisation of their service as Forest Watchers. The respondents in these writ petitions claimed that the petitioners were only employed on daily wages to protect the rubber plantations and not as Forest Watchers in the Forest Department.

3. The writ petition was allowed by order dated 22.12.2011.

The Corporation was directed to make the petitioners permanent employees in the last grade of service and to grant scale of pay and other benefits accordingly. The learned Single Judge reached this conclusion by relying on Sections 2 and 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to workmen) Act, 1981. It was held that the Corporation is an industrial establishment as per Sections 2 & 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to workmen) Act, 1981 and that the writ petitioners were in the employment of the Corporation for a period of 480 days in 24 calendar months. Thus the writ petitioners were to be regularised into the service of the Corporation.

4. The Corporation has filed this Review Application challenging the order of the learned Single Judge in so far as it directs the writ petitioner applicant / first respondent to be appointed to the "last grade of service". The petitioners have contended that this direction suffers from an error apparent on the

face of the record as the judgment fails to consider that the petitioners were employed on the terms of certified Standing Orders and settlements made under Section 12(3) of the Industrial Dispute Act and have been regularized in their employment in a different capacity. The petitioners have also claimed that the "last grade of service" mentioned in the judgment of the learned Single Judge does not in fact exist for the writ petition and that the order cannot be implemented for this reason. The respondents claimed that such "last grade of service" does exist as far as the writ petitioners are concerned.

5. For a Review Application to be sustainable, it must meet the requirements of order 47 Rule 1, which read as follows:-

"ORDER XLVII- REVIEW

1 . Application for review of judgment— (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or

evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[441] [Explanation—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]"

6. Reliance may be placed on the judgment of the Hon'ble Supreme Court in **Haridas Das Vs. Usharani Banik**, (2006) 4 SCC 78.

The relevant paragraphs are extracted here under:-

"13.In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely

*states that it “may make such order thereon as it thinks fit”. The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing “on account of some mistake or error apparent on the face of the records or for any other sufficient reason”. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in *Thungabhadra Industries Ltd.v.Govt. of A.P.*[(1964) 5 SCR 174 : AIR 1964 SC 1372] held as follows: (SCR p. 186)*

“There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. ... where without any elaborate argument one could

point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

14.In *Meera Bhanjav.Nirmala Kumari Choudhury*[(1995) 1 SCC 170 : AIR 1995 SC 455] it was held that:

*“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in *Aribam Tuleswar Sharmav.Aribam Pishak Sharma*[(1979) 4 SCC 389 : AIR 1979 SC 1047] speaking through Chinnappa Reddy, J. has made the following pertinent observations:*

‘It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence

was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.’ ” (SCC pp. 172-73, para 8)

15.A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16.In Aribam Tuleshwar Sharmav.Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p. 390, para 3)

“It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

17.The judgment in Aribam case[(1979) 4 SCC 389 : AIR 1979 SC 1047] has been followed in Meera Bhanja[(1995) 1 SCC 170 : AIR 1995 SC 455] . In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn

process of reasoning. The following observations in connection with an error apparent on the face of the record in Satyanarayan Laxminarayan Hegdev. Millikarjun Bhavanappa Tirumale [(1960) 1 SCR 890 : AIR 1960 SC 137] were also noted: (AIR p. 137)

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.” (SCR pp. 901-02)

18. It is also pertinent to mention the observations of this Court in Parsion Devi. Sumitri Devi [(1997) 8 SCC 715]. Relying upon the judgments in Aribam [(1979) 4 SCC 389 : AIR 1979 SC 1047] and Meera Bhanja [(1995) 1 SCC 170 : AIR 1995 SC 455] it was observed as under: (SCC p. 719, para 9)

“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'."

A perusal of the above judgment and the extracts of the various judgments it relies on reveals that a Review Application can only be sustained if there is an error apparent on the face of the record. This error must be self evident and the application must not be an appeal in disguise.

7. In the present case, the petitioner has made assertions which have been denied by the respondent and these issues require the Court to delve deeper into the matter, beyond a *prima facie* examination. It is clear that the issues raised by the petitioner are not errors apparent on the face of the record and that these would require an appeal to a higher Court.

8. With these observations, these Review Applications are dismissed. No Costs. Consequently, the connected miscellaneous petitions are closed.

19/12/2019

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
Pkn.

To

1. The State of Tamil Nadu,
Rpe. by its Secretary to Government,
Environment and Forest Department,
Secretariat, For.St.George,
Chennai - 600 009.
2. The Principal Chief Conservator of Forests
Pamagal Building, Saidapet,
Chennai 600 015.
3. The district Forest Officer,
Kanyakumari Division,
Nagerkoil,
KK District 629 001.



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SUBRAMONIUM PRASAD, J

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