IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2019

DELIVERED ON : 26.07.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

Review Application (Writ) No.115 of 2019
and W.M.P.No.15605 of 2019 in
W.P.No.10007 of 2019

1 M/s.Emayam Enterprises,
Rep. by its Proprietor R.Veeramani,
No.48/73, Arya Gowda Road,
West Mambalam, Chennai 600 033.

2 Mr.R.Veeramani

3 M/s.Emayam Aqua Products,
Rep. by its Proprietor Mrs.V.Meenadevi,
No. 221/6 - A3, Erumapatti Village ,
Tirupathur Taluk,
Sivaganagi District-630211.

4 M.Meenadevi .. Applicants

v.

1. Central Bank of India
Asset Recovery Branch
48/49 Ground Floor.
Montieth Road, Egmore.
Chennai 600 008.

2 The Chief Metropolitan Magistrate
Egmore , Chennai -8.

3 Mr.Bharathi,
Advocate Commissioner,
Egmore Bar Associate,
Chennai. .. Respondents

Review Application filed under Order 47 Rule 1 of Civil Procedure Code read with Section 114 of CPC against the order dated 08.04.2019 made in W.P.No.10007 of 2019.

For Applicants : Mr. N.G.R. Prasad
for Mr.R.Dinesh Kumar

For Respondents : Mr.M.L. Ganesh – for R1

Mr.S.N.Parthasarathy,
Government Advocate – for R2

R3 - Not Ready in Notice

ORDER

VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND
M. DURAISWAMY,J.,

The respondents 2 to 5 in the Writ Petition in W.P. No.10007 of 2019 have filed the above Review Application to review the order passed in the said Writ Petition on 08.04.2019.

2. The 1st respondent filed the Writ Petition in W.P. No.10007 of 2019 to issue a Writ of Mandamus to direct the 2nd respondent, viz., the Chief Metropolitan Magistrate, Egmore, Chennai, to change the Advocate Commissioner and consequently to appoint a new Advocate Commissioner for executing the order dated 22.07.2016 passed in Crl. M.P.No.6962 of 2016.

3. It was the 1st respondent's case that in spite of the petition being filed by them as early as in the year 2016 and the Advocate Commissioner being appointed on 22.07.2016 to take possession of the secured assets, the Advocate Commissioner has not executed the warrant of commission so far. In these circumstances, this Court directed the 2nd respondent/the Chief Metropolitan Magistrate to take steps to direct the Advocate Commissioner to execute the warrant of commission issued to him within a period of six weeks and also directed to give suitable direction to the Advocate Commissioner for executing the warrant of commission, if no stay is granted in respect of the said order by a competent forum.

4. It is brought to the notice of this Court by the learned counsel appearing for the 1st respondent/bank that as against the order dated 22.07.2016 passed in Crl. M.P.No.6962 of 2016, the Review Applicants filed a Revision in Criminal Revision Case No.593 of 2017 and the learned Single Judge, by order dated 28.04.2017, granted an order of interim stay on condition that the petitioners depositing 50% of the total outstanding amount as claimed by the bank to the credit of the Crl. M.P.No.6962 of 2016 on the file of the Chief Metropolitan Magistrate Court, Chennai, within a period of six weeks. The learned Single Judge also made it clear that in the event of failure to deposit the said amount, the interim stay shall stand automatically vacated. Thereafter, the Review Applicants, without complying with the conditional order, withdrew the Crl. R.C.No.593 of 2017 on 19.06.2017. The said Crl. R.C.No.593 of 2017 was dismissed as withdrawn on 19.06.2017.

5. Thereafter, the Review Applicants applicants filed a Writ Petition in W.P.No.24328 of 2017 to issue a Writ of Certiorari to call for the records in respect of the order dated 06.02.2017 in unnumbered

M.P.No...../2017 in Crl.M.P.No.6962 of 2016. The Division Bench of this Court, by order dated 08.09.2017, after elaborately considering the case of the parties, dismissed the Writ Petition. While dismissing the Writ Petition, the Division Bench observed as follows:-

> "16. In the supporting affidavit to the instant writ petition, petitioners have not disclosed the details of the interim order, passed in Crl.R.C.No.597 of 2017. When the petitioners have already approached, this Court by invoking the revisional jurisdiction and when Crl.R.C.No.597 of 2017, has been dismissed, we are of the view that by a circuitous method, they have filed a Miscellaneous petition, in Crl.M.P.6962 of 2016 on the file of learned Chief Metropolitan Magistrate, Allikulam, Chennai, to recall and review the order dated 22.07.2016, passed by the learned Magistrate. There is no provision in the SARFAESI Act, 2002, to seek for review or recall of an order passed by the District Magistrate / District Collector under Section 14 of the SARFAESI Act, 2002. Despite the same, still the petitioners have chosen to file an application for the abovesaid prayer and when the same was returned, pointing out that such Miscellaneous Petition is not maintainable, contending inter alia that there is no other alternative and

efficacious remedy, instant writ petition has been filed under Article 226 of the Constitution of India, with a prayer to issue a writ of certiorari, calling for the records culminated in the impugned order dated 06.02.2017in unnumbered M.P.No...../17 in Crl.M.P.No.6962 of 2016 passed by the Hon'ble Metropolitan Magistrate and to quash the same.

17. Having chosen to file a revision viz., Crl.R.C.No.597 of 2017, before this Court, by invoking revisional jurisdiction and suffered an adverse order, it is not open to the petitioners to invoke the remedy under Article 226 of the Constitution of India and reagitate the same subject matter, which in our view is nothing but an abuse of process of law.

6. The learned counsel appearing for the Review Applicants in support of his contention, has relied upon the following judgments:-

(i) **2007(5)CTC 881 [S. Bagirathi Ammal v. Palani Roman Catholic Mission]**, wherein the Hon'ble Supreme Court held as follows:-

"... 5. Since we have already narrated the case of both the parties in the paragraphs supra, there is no need to traverse the same once again. Before considering the rival claims made by both the parties, it is useful to refer the provisions under Order XLVII Rule 1 C.P.C. relating to Review which read as under:

"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.

[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.)"

A reading of the above provision makes it clear that Review is permissible (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason. If any of the conditions satisfy, the party may apply for a review of the judgment or order of the Court which passed the decree or order. The provision also makes it clear that an application for Review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the appellant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled re-hearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set at right by reviewing the order. With this background, let us analyze the impugned judgment of the High Court and find out whether it satisfy any of the tests formulated above.

(ii) **AIR 2012 Madras 90 [M/S. Palpap Ichinichi Software International Ltd. v. M/S. Indian Bank]** wherein the Division Bench of this Court held as follows:-

"... 21. The Bank is a responsible body. The SARFAESI Act gives wide powers to the Bank to take action to recover the amount and for the purpose of such recovery, to take possession of the property and to sell the same, without reference to Court. Therefore the Bank is expected to conduct the procedure in a bona fide manner. The dealings of the Bank should be fair and transparent. When the amount due from the borrower is more than Rs.4 cores, the attempt of the Bank should be to auction the property for the maximum amount and to adjust it towards the dues and in case of any excess amount after meeting the liability, to refund the same to the borrower. By reducing the market value and the reserve price and by purchasing the property for the alleged distress value by the secured creditor themselves, the public sale has become a mockery.

22. The Authorised Officer is none other than the officer of the Bank. The auction was conducted at the premises of the respondent Bank. Admittedly there were no other bidders. In case the Bank was having an idea to purchase the property, they should

have given prior intimation to the borrower. The fact that there is no statutory prohibition against the secured creditor taking part in the auction, will not enable them to purchase the property by re-fixing the market price as well as the reserve price and to purchase the property at such reduced rate. This is absolutely not the intention of the law makers while enacting the SARFAESI Act. ..."

(iii) An unreported judgment dated 31.07.2009 made in Civil Appeal Nos. 4970-4971 of 2009 [**M/S Sardar Associates & Ors v. Punjab & Sind Bank & Ors]** wherein the Hon'ble Supreme Court held as follows:-

" ... 46. As regards the Reserve Bank of India guidelines, it was the direction of the Appellate Tribunal that the Respondent-Bank should settle the case of the appellants under the RBI guidelines through a One Time Settlement and should invite a proposal for settlement and recovery of the agreed amount. ..."

7. The learned counsel appearing for the 1st respondent

submitted that there is no error apparent on the face of the record warranting interference in the Review Application.

8. The learned counsel on either side submitted that the order passed by the Chief Metropolitan Magistrate, dated 22.07.2016 has become final.

9. It is settled position that unless there is an error apparent on the face of the record, the Review Application should not be entertained. The Review Applicants cannot be allowed to re-argue the matter in the guise of Review Application. The Review Application cannot be treated as an appeal in disguise.

10. The Review Applicants having failed in W.P.No.24328 of 2017, cannot have any say with regard to the correctness of the order passed in Crl. M.P.No.6962 of 2016. When the order was passed as early as on 22.07.2016, the Review Applicants have managed to remain in possession of the property even after a lapse of three years.

11. While disposing of the Writ Petition in W.P.No.10007 of

2019, we made it clear that if no stay is granted in respect of the order dated 22.07.2016 made in Crl. M.P.No.6962 of 2016, the Chief Metropolitan Magistrate can direct the Advocate Commission to execute the warrant of commission issued to him within a period of six weeks. In spite of all these directions, the 1st respondent is not in a position to take the possession of the property.

12. When the order dated 22.07.2016 has become final, it cannot be allowed to remain as a paper order and it is meant for execution. Unless the order passed in Crl. M.P.No.6962 of 2016 has been set aside or stayed by the appellate forum, the 2nd respondent/Chief Metropolitan Magistrate should ensure that the order is executed. In these circumstances, we have directed the Chief Metropolitan Magistrate to give direction to the Advocate Commission to execute the warrant within a period of six weeks.

13. Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned counsel for the Review Applicants, since the facts and circumstances of the present case are totally different, the said judgments are not applicable.

14. For the reasons stated above, we do not find any error apparent on the face of the record warranting interference in the Review Application. The Review Application is devoid of merits and the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(V.K.T., CJ.) (M.D., J.)
26.07.2019

Index : Yes/No
Speaking Order/Non Speaking Order
Rj

To

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   Asset Recovery Branch
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   Montieth Road, Egmore.
   Chennai 600 008.

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   Egmore , Chennai -8.

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THE HON'BLE CHIEF JUSTICE
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