

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2018

DELIVERED ON : 02.01.2019

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Review Application Nos.86 and 87 of 2017
in CRP (NPD) Nos.1948 and 1949 of 2009
and CMP.Nos.9743 & 9744 of 2017
and CMP.Nos.12820 & 12821 of 2018

Umadevi

.. Petitioner/
Respondent in both the cases

vs

Lakshmi Ranga Complex,
rep. by its Partners,

1.K.R.Kandasamy
2.R.Shanmughasundaram
Carrying on business at
D.No.64, Cross Cut Road,
Gandhipuram,
Coimbatore-12.

.. Respondent/
Petitioner in both the cases

PRAYER: Review Applications filed under Order 47 Rule 1 r/w Section 114 of CPC, to review the order dated 01.02.2017 made in C.R.P.(NPD) Nos.1948 and 1949 of 2009 on the file of this Court.

For Petitioner : Mr.Sundaravadanam
for M/s.N.Chinnaraj

For Respondent : Mr.T.R.Rajagopalan
Senior Counsel
for M/s.P.Veena Suresh

COMMON ORDER

These review applications have been filed by the petitioner against the order dated 01.2.2017 passed in C.R.P.(NPD)Nos.1948 and 1949 of 2009.

2. The respondent herein filed C.R.P.(NPD)Nos.1948 and 1949 of 2009 against the order dated 10.2.2009 passed by the learned Rent Control Appellate Authority in R.C.A.Nos.83 and 84 of 2006. R.C.A.No.83 of 2006 has been filed against the order of the learned Rent Controller dated 3.8.2006 passed in R.C.O.P.No.208 of 2001. Similarly, R.C.A.No.84 of 2006 has been filed against the order of the learned Rent Controller passed in R.C.O.P.No.206 of 2001.

3. The petitioner is the tenant and the respondent herein is the landlord. The landlord filed R.C.O.P.No.206 of 2001 for eviction of the tenant in relation to the premises bearing Door No.63, Cross Cut

Road, Gandhipuram, Coimbatore-12 on the ground of wilful default and owners occupation for carrying out their business. R.C.O.P.No.208 of 2001 has been filed by the landlord for fixation of fair rent.

4. By separate order dated 03.8.2006, the learned Rent Controller allowed R.C.O.P.No.208 of 2001, thereby fixed the fair rent at Rs.5,500/- per month for the premises in question and dismissed R.C.O.P.No.206 of 2001. As against fixation of fair rent, the tenant filed appeal in R.C.A.No.4 of 2007 and aggrieved over the quantum of rent, the landlord filed appeal in R.C.A.No.83 of 2006. By a common order dated 10.2.2009, the learned Rent Control Appellate Authority dismissed R.C.A.No.4 of 2007 filed by the tenant and allowed R.C.A.No.83 of 2006 filed by the landlord thereby enhanced the fair rent from Rs.5,500/- to Rs.6,260/- per month.

5. Aggrieved over the dismissal of eviction petition, the landlord filed R.C.A.No.84 of 2006. By an order dated 10.2.2009, R.C.A.No.84 of 2006 came to be dismissed. Aggrieved over the same, the landlord preferred C.R.P. (NPD) No.1949 of 2009. Being dissatisfied with the fixation of fair rent, the landlord filed C.R.P. (NPD) No.1948 of 2009.

6. It appears from the records that both C.R.P (NPD) Nos.1948 of 1949 of 2009 were heard together and disposed of by the common order dated 01.2.2017. By the common order dated 01.2.2017, C.R.P.No.1949 of 2009 came to be allowed thereby setting aside the order of the Courts below and allowed the appeal. The tenant was directed to vacate the premises within a period of two months from the date of the order. As far as C.R.P. (NPD) No.1948 of 2009 is concerned, the same came to be allowed thereby this Court fixed the fair rent at the rate of Rs.7,500/- per month.

7. Now the tenant seeking to review the common order dated 01.2.2017 passed in C.R.P.Nos.1948 and 1949 of 2009 contending that she had engaged Mr.G.B.Saravana Bhavan, Advocate as her counsel to represent before this Court in the Civil Revision Petitions and the learned counsel also promptly appeared and represented before this Court without any failure. The earlier cause list also reflected her counsel name. When the tenant approached the landlord to pay her monthly rent, they informed that the Civil Revision Petitions had been disposed of by this Court on 01.2.2017 and they will accept only the revised rent.

8. The petitioner further contended that when she enquired her counsel, she came to know that her counsel name was wrongly printed as M/s.Sarvabhauman Associates for the hearing on 01.2.2017 instead Mr.G.B.Saravana Bhavan in the cause list. Since there was wrong printing, her counsel had not appeared before this Court on 01.2.2017. Since the order dated 01.2.2017 passed without hearing the original counsel for the petitioner, she prayed for reviewing the said order stating that the non-appearance of her counsel on 01.2.2017 was mainly due to the mistake committed by the Registry printing her counsel name wrongly in the cause list. With the above arguments, the learned counsel for the petitioner seeks to review the order dated 01.2.2017 passed in C.R.P.Nos.1948 and 1949 of 2009.

9. Per contra, the learned counsel for the respondent submitted that it is not correct to say that on 01.2.2017, the learned counsel for the petitioner was not appeared. In fact, this Court, after hearing both sides and recording the submissions of the learned counsel on either side, passed the order. Taking advantage of printing mistake in the cause list, the petitioner has filed the present review applications and there was no bona fide in these revisions and the

review applications are liable to be dismissed.

10. In the review applications, the learned counsel for the petitioner argued merits of the Civil Revision Petitions by contending that there was no bona fide in the requirement of the landlord as the landlord owns alternate place to carry on their business and the petitioner is willing to pay the arrears of rent, if reasonable breathing time is given.

11. By relying upon the decision of the Hon'ble Apex Court in *Bhupinder Singh Bawa v. Asha Devi*, reported in 2017 (1) CTC 329 and the order of this Court dated 25.1.2017 passed in *C.R.P. (NPD) No.4412 of 2012 (R.Ranga Babu and others v. AR.Devendran)*, the learned Senior Counsel submitted that the tenant cannot dictate terms of landlord to utilise alternate place and this Court by an order dated 01.2.2017, rightly set aside the order of the Courts below and ordered eviction of the tenant. This Court is in full agreement with the proposition that tenant cannot dictate terms to landlord to utilise alternative place.

12. Whether the order seeking to review was passed without

hearing the learned counsel for the petitioner is the point to be considered in these review applications and nothing more.

13. On a perusal of the order dated 01.2.2017, it is seen that only after hearing the learned counsel Mr.Saravanabhavan appearing for the petitioner herein, this Court passed the order. It is true that the cause list dated 01.2.2017 in respect of the C.R.P. (NPD) Nos.1948 and 1949 of 2009 contains wrong counsel name. The further perusal of the docket sheet of Civil Revision Petitions show that the Court Officer noted the presence of Mr.G.B.Saravanabhavan, as the counsel for the respondent therein. Therefore, the petitioner cannot take advantage of the wrong printing of the counsel name in the cause list and contend that her counsel has not appeared before the Court when the matter was taken up. In fact, as stated supra, the counsel on record for the petitioner has appeared before the Court on 01.2.2017 and upon hearing the submissions of both sides only, this Court passed the order. It is nowhere the case of the petitioner that only on this occasion in the cause list the name of the counsel has been erroneously printed.

14. As far as merits of the matter is concerned, this Court

while passing the order, considered the rival submissions of both the counsel and passed the order. If really, the petitioner is aggrieved over the same, she ought to have preferred an appeal. Instead of filing appeal before the appropriate forum, she had chosen to use the method of filing review applications contending that there was error in the order dated 01.2.2017 passed in C.R.P.Nos.1948 and 1949 of 2009.

15. In the order passed in the Civil Revision Petitions, in appearance column, this Court noted the name of the counsel for the petitioner, which would clearly establish that on the particular date i.e., on 01.02.2017, there was representation on behalf of the petitioner.

16. The power of a Civil Court to review its judgement/decision is traceable in Section 114 C.P.C. The grounds on which review can be sought are enumerated in Order 47, Rule 1 C.P.C.

It may allow review on three specific grounds, namely,

"(1) discovery of new and important matter of evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made;

(2) mistake or error apparent on the face of the record;

or

(3) for any other sufficient reason."

17. The review proceeding is not by way of an appeal. Holding that the review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence on record for finding the error would amount to exercise of appellate jurisdiction, which is not permissible, in *Meera Bhanja v. Nirmala Kumari Choudhury*, reported in (1995) 1 SCC 170, the Hon'ble Supreme Court held as under:

"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 of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma ((1979 (4) SCC 389), speaking through Chinnappa Reddy, J., has made the following pertinent observations:

"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 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."

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any

other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale (AIR 1960 SC 137) wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

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."

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18. In *Kerala SEB v. Hitech Electro thermics & Hydro power Limited*, reported in (2005) 6 SCC 651, the Hon'ble Supreme Court held as follows:

".... In a review petition it is not open to this Court to re-appreciate the evidence and reach a different conclusion, even if that is possible..... If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto.

19. Considering the scope of review jurisdiction and holding "mistake or error apparent on the face of the record must be self evident and does not require a process of reasoning, in *Parsion Devi v. Sumitri Devi*, reported in (1997) 8 SCC 715, the Hon'ble Supreme Court has held as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* (AIR 1964 SC 1372 = (1964) 5 SCR 174) (SCR at p.186) this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be

erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for 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.

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".*

20. Holding that the review is not an appeal in disguise and that the review Court cannot sit in appeal over its own order and rehearing of the matter is impermissible in law, in *Inderchand Jain*

(dead) through Lrs vs. Motilal (dead) through Lrs, reported in (2009) 14 SCC 663, the Hon'ble Supreme Court held as under:

"8. An application for review will lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In Rajendra Kumar v. Rambai (2007) 15 SCC 513, this Court held:

"6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed."

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review

court does not sit in appeal over its own order. A rehearing of the matter is permissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India (2000) 6 SCC 224, this Court held (SCC p. 251, para 56):

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake but 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 like an appeal in disguise."...

21. As held by the Hon'ble Supreme Court in Satyanarayan Laxminarayan Hegde vs. Mallikarjun Bhavanappa Tirumale, reported in AIR 1960 SC 137, the error must be apparent on the face of the record i.e., error must be self-evident and not which has to be established by a long drawn process of reasoning or which has to be searched. In other words, it must be an error and it must be one which must be manifest on the face of the record. Under the guise of review, parties are not entitled to rehearing of the same issue. An error can be

said to be apparent on the face of the record only if such error is patent and can be located without any elaborate argument and without any scope for controversy with regard to such error, which stares at the face even by a mere glance of the judgement.

22. In the light of the well settled principles, when this Court considers the contention raised by the petitioner, the review applications filed by her are not maintainable. In fact, the error alleged by the petitioner is not an error on the face of the record, inasmuch as the name of the counsel has been printed in the order and his submissions have also been recorded and the case was considered and disposed of only on merits. Therefore, there is no necessity to review the order of this Court dated 01.2.2017 passed in C.R.P. Nos.1948 and 1949 of 2009.

23. The uniform principle that runs through catena of decisions is that "a mistake apparent on record" must be obvious and apparent mistake and not something, which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. The points raised by the learned counsel for the petitioner, in my considered view, are upon the merits of the

matter and the Review Court, sitting as Appellate Court and exercising appellate jurisdiction, cannot go into the merits of own findings.

24. As stated above, review proceeding is not by way of an appeal and review must be confined to error apparent on the face of the record and re-appraisal of the entire materials on record for finding the error would amount to exercise of appellate jurisdiction, which is not permissible.

25. In my considered view, the order passed in the Civil Revision Petitions do not suffer from any error apparent on the face of the record warranting review of the order dated 01.2.2017 and the review applications are liable to be dismissed and accordingly, the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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vs

Index : Yes/No

Internet : Yes/No

To

1.The Rent Controller,
(District Munsif),
Coimbatore.

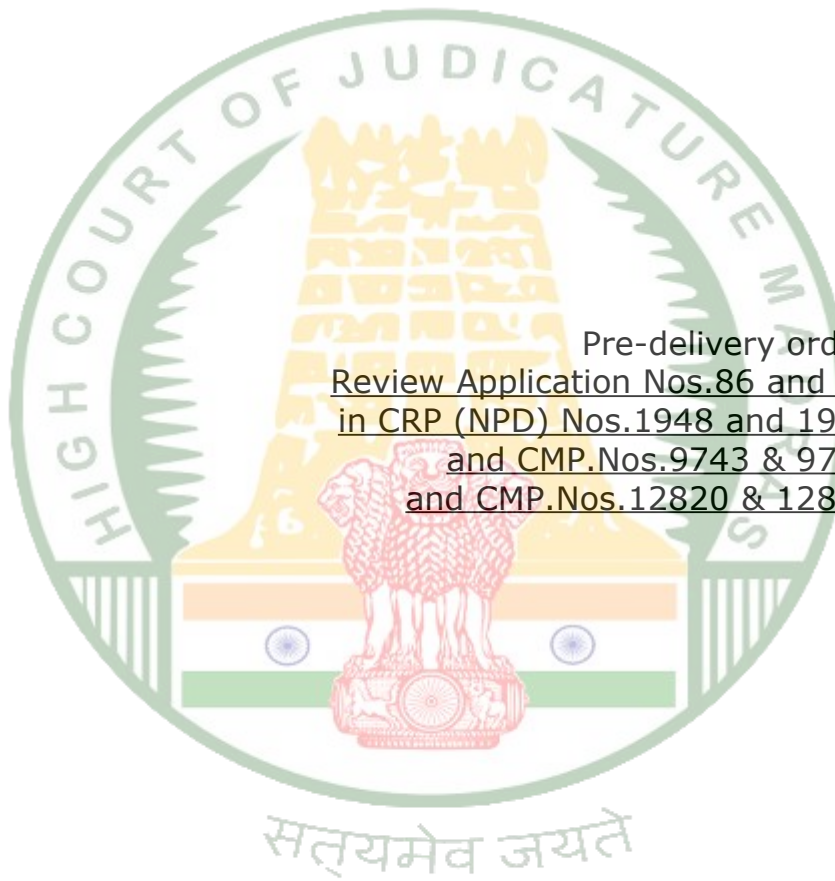
2.The Rent Control Appellate Authority,
(Principal Sub Judge),
Coimbatore.



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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
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