



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **25.02.2021**

CORAM :

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

WEB COPY

C.M.P. (MD) No. 4462 of 2019
in REV.APLC(MD) No.SR14285 of 2019

Sivasubramanian

... Petitioner/Petitioner

vs.

Kandasamy Gounder (dead)

Selvammal (dead)

Gurusamy (dead)

1.S.Angammal

2.A.Ramasamy

3.S.Suresh Kumar

4.P.K.Subramanian

5.K.Mariammal

6.K.Rajachandrasekar

7.K.Muruganandam

8.K.Sivaparvathy

....Respondents/Respondents

PRAYER in C.M.P(MD).No.4462 of 2019: Petition filed under Section 5 of Limitation Act, to condone the delay of 138 days in filing the above Review Application.

PRAYER in Rev.Apl.(MD).No.SR14285 of 2019: This Review Application is filed under Order 47 Rule 1 of C.P.C, to review the order dated 11.06.2018 made in C.R.P(MD).No.2221 of 2015 and allow the same.

Prayer in CRP(MD). 2221 of 2015 :

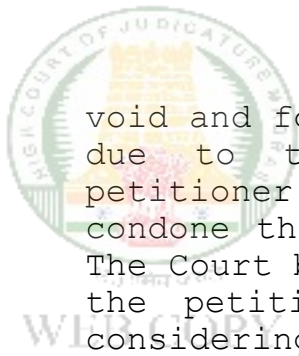
Civil Revision Petition filed under Article 227 of constitution of India praying to prefer this memorandum of Grounds of Civil Revision Petition, invoking the extraordinary jurisdiction of this Hon'ble Court under Article 115 of the Constitution of India, aggrieved by the Order and Decreetal Order dated 05.09.2014 made in IA.No.165/2014 in OS.No.392/2007 on the file of District Munsif Court at Oddanchatiram.

For Petitioner	: Mr.R.Devaraj
For R1	: Mr.D.Venkatesh
For R2 to R7	: No appearance

O R D E R

This Civil Miscellaneous Petition has been filed to condone the delay of 138 days in filing the above Review Application.

2.The petitioner / plaintiff has filed O.S.No.392 of 2007 for declaration to declare the sale deed dated 17.06.1974 as null and
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void and for other reliefs. The above suit was dismissed for default due to the non appearance of the petitioner/plaintiff. The petitioner filed restoration petition along with a petition to condone the delay of 1383 days in filing the restoration petition. The Court below dismissed the condone delay petition, against which, the petitioner filed CRP(MD).No.2221 of 2015. This Court after considering various decisions on the aspect of delay, dismissed the above revision petition as devoid of merits holding that no sufficient cause has been shown by the petitioner for the above huge delay of 1385 days except making vague averments accusing his Advocate for the delay. Seeking to review the said order, the petitioner has filed the present review application with the delay of 138 days.

3.The learned counsel for the petitioner/plaintiff has reiterated the grounds raised in the revision petition.

4.The power of this Court in matters of review is very limited. Such power can be exercised only when there is error apparent on the face of the record or in the event an order is not reviewed, it would amount to miscarriage of justice. For the said proposition, we may usefully refer to the Judgment of a Division Bench of this Court, in **Union of India, rep by the Senior Divisional Commercial Manager, Chennai, Vs. The Registrar, Central Administrative Tribunal, Madras Bench**, reported in **CDJ 2014 MHC 241**, wherein the Division Bench has made a complete survey of several Judgments of the Supreme Court, on this question, and has ultimately, in Paragraph No.10, held as follows:-

"10. In yet another Judgment reported in **2013 (8) SCC 320, [Kamlesh Verma Vs. Mayawati and others]**, the Hon'ble Apex Court, after examining various Judgments passed earlier has held as follows"

"12. This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

In the above Judgment, the Hon'ble Apex Court has laid down the principles as under:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review



jurisdiction.

Summary of the principles:

20. Thus, in view of the above, the following grounds of review are maintainable, as stipulated by the statute:

20.1 When the review will be maintainable:-

(i). Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii). Mistake or error apparent on the face of record;

(iii). Any other sufficient reason.

The words 'any other sufficient reason' has been interpreted in **Chhajju Ram Vs. Neki, AIR 1922 PC 112** and approved by this Court in **Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poullose Athanasius & others [1955] 1 SCR 520**, to mean, "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in **Union of India Vs. Sandur Manganese & Iron Ores Ltd., ors., JT (2013) 8 SC 275**.

20.2. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii). Minor mistakes of inconsequential import.

(iii). Review proceedings cannot be equated with the original hearing of the case.

(iv). Review is not maintainable, unless the material error, manifest on the face of the order, undermine its soundness or results in miscarriage of justice.

(v). A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

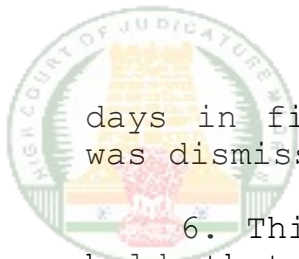
(vi). The mere possibility of two views on the subject cannot be a ground for review.

(vii). The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii). The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.

(ix). Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

5. Applying the said legal principles to the facts of the present case, if the grounds of review are analysed, this Court finds no error apparent on the face of the order sought to be reviewed. The revision petition itself was filed against the dismissal of the condone delay petition to condone the delay of 1385



days in filing the restoration petition to restore the suit which was dismissed for default.

6. This Court in the above revision petition has categorically held that the petitioner has made vague averments accusing his Advocate for the delay and the same does not inspire the confidence of this Court as it is the contention of the first respondent that the office of the Advocate of the petitioner is situated just 3 kilometers away from his residence and further stating that his communication cannot be cited as a reason for the delay. This Court had dismissed the revision petition as devoid of merits. In the present review application, the petitioner has once again raised the same grounds which were raised in the revision petition. The petitioner cannot be permitted to raise the same grounds under the garb of review. The reason stated for the delay of 138 days in filing the review application is that the clerk of the counsel on record misplaced the order copy and it was mingled with other bundles. In my opinion such a reason has been stated in a very routine manner. Therefore, I am not inclined to condone the delay.

7. Accordingly, C.M.P(MD) No.4462 of 2019 is dismissed. Consequently, Rev.APLC(MD) No.SR14285 of 2019 is rejected at SR stage itself. If the petitioner is still aggrieved, it is always open to him to file an appeal against the order passed in the revision petition, if he so desires.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

msa

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The District Munsif, Ottanchathiram.

+1 CC to Mr.D.Venkatesh, Advocate SR.No.7781

C.M.P. (MD) No. 4462 of 2019
in REV.APLC(MD) No.SR14285 of 2019
25.02.2021

na (CO)

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