



REV.APLC(MD)No.57 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 30.09.2022

PRONOUNCED ON:23.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

REV.APLC(MD)No.57 of 2022

in

C.R.P.(PD)(MD)No.145 of 2021

1.The Deputy Registrar of Co-operative
Societies(Housing),
A-15, 1st Street, K.K.Nagar,
Madurai, Madurai District.

2.G.Gopalakrishnan,
Then President,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul. : Petitioners/Respondents 1 and 2

Vs.

1.Murugan : 1st Respondent / Petitioner

2.B.Sheik Fareed,
Then Vice President,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.



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3.A.Chinnappar,
Then E.C., Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

4.R.Krishna Moorthy,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

5.A.Mohammed Ghouse,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

6.M.Pappayee,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

7.T.Daniel Markmillan Markmillan Markobola,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

8.M.Sikkandar Beevi,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,



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13, S.K.D. Complex, Mengles Road,
Dindigul.

9.Nagammal,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

10.S.Vijayarani,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

11.L.M.R.Sudhakar,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

12.M.Pavul Arockia Doss,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

13.S.Vanitha,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.



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14.T.Ramachandran,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

15.N.Kannan,
Then E.C.Member,
DD 382, Nagal Nagar Co-operative Housing
Society,
13, S.K.D. Complex, Mengles Road,
Dindigul.

: Respondents 2 to 15/
Respondents 3 to 16

PRAYER:- Review Application filed under Order 47 Rule 1 and 2 and
Section 114 of the Code of Civil Procedure against the order passed by
this Court in C.R.P.(PD)(MD)No.145 of 2021, dated 27.09.2021.

For Petitioners : Mr.T.Ravichandran

For Respondents :Mr.S.Kumar
for R.1

ORDER

The Review Application is directed against the order passed in
C.R.P.(PD)(MD)No.145 of 2021, dated 27.09.2021, by me.



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2. The Civil Revision Petition was directed against the order passed in C.M.A.(CS)No.2 of 2016, dated 05.09.2019, on the file of the Principal District Court, Dindigul, dismissing the appeal filed against the order of the first appellant herein dated 03.08.2015 under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

3. The Deputy Registrar, Madurai has passed the order dated 03.08.2015 to conduct an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act with respect to the irregularities committed by the respondents and others in revising the wages without approval and for non-recovery of the loans. The Enquiry Officer, after conducting enquiry, has concluded that the charges stood proved and that the respondents were responsible for the loss by revising the scale of wages to the tune of Rs.7,48,698/- and caused loss to the tune of Rs.11,55,000/-, while sanctioning and granting new loans to the staff members and submitted her report, recommending for surcharge proceedings. Aggrieved by the order directing the respondents to make good loss of the Society, the first respondent has preferred an appeal under Section 152 of the Tamil Nadu Co-operative Societies Act in C.M.A.(CS)No.2 of 2016, on the file of the Principal District Court, Dindigul and the Special



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Tribunal for Co-operative Cases / Principal District Court, Dindigul, has passed the judgment dated 05.09.2019 dismissing the appeal.

4. Aggrieved by the dismissal of the appeal, the first respondent has preferred the Civil Revision Petition in C.R.P.(PD)(MD)No.145 of 2021 before this Court and this Court, on considering the materials on record and on hearing the arguments of both sides, has passed the impugned order setting aside the order dated 05.09.2019, passed in C.M.A.(CS)No.2 of 2016, by the Principal District Judge, Dindigul and consequently setting aside the order of the first appellant dated 03.08.2015 passed under Section 87 of the Co-operative Societies Act. The present Review application has been filed seeking re-visitation of the above said order.

5. Heard Mr.T.Ravichandran, learned Counsel for the review petitioner and Mr.S.Kumar, learned Counsel for the first respondent and perused the materials available on record.

6. The learned Counsel for the review petitioner would submit that this Court ought to have noted the resolution and the settlement effecting



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wage revision are against the Rules, norms fixed and without permission of the Department, that this Court ought to have noted Section 87 of the Tamil Nadu Co-operative Societies Act, not only contemplates wilful negligence, but also causing loss by payment in violation of Rules, that this Court has failed to note that all other employees had repaid the amount received by them, except the first respondent, that this Court ought to have noted that the settlement is non-est in the eye of law and that since the Rules and By-laws mandates prior permission, the signatories to settlement have no power to sign the settlement without permission.

7. A combined reading of Section 114 and Order 47 of the Code of Civil Procedure makes it clear that a Review Petition would be maintainable on (1) discovery of new and important matters or evidence which after exercise of due diligence was not within the knowledge of the applicant or could not be produced by him, when the decree was passed or the order made; (2) on account of some mistake or error apparent on the face of the record; or (3) for any other sufficient reason.



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8. It is settled law that in exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. The Hon'ble Supreme Court in ***Kerala State Electricity Board Vs Hitech Electrothermics & Hydropower Ltd.and others*** (Review Petition (civil) 238 of 2003 dated 10/08/2005), has specifically observed as follows:

“10 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. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. 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. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise.”



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9. It is well settled that the review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 C.P.C. In ***Col. Avtar Singh Sekhon vs Union Of India*** reported in ***1981 SCC (1) 168***, the Hon'ble Supreme Court has held that a review of an earlier order cannot be done unless the Court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermines its soundness.

10. The Hon'ble Apex Court in ***Sow Chandra Kanta And Another vs Sheik Habib*** reported in ***1975 SCC (4) 457*** has observed that a review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like any grave error has crept in earlier by judicial fallibility and- that the present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.

11. Recently, the Hon'ble Supreme Court in ***S. Madhusudhan Reddy vs V. Narayana Reddy*** in Civil Appeal Nos.5503-04 of 2022, dated 18.08.2022 has held as follows:



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“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 this 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’”.

12. It is pertinent to note that power of review is not to be confused with the appellate power. The Hon'ble Supreme Court in ***M/S Jain Studios Limited Through its President vs Shin Satellite Public Co. Ltd*** in Review Petition (Civil) No.5970 of 2006, dated 11.07.2006, has observed as follows:

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief



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which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

13. It is pertinent to note that an order can be reviewed by the Court only on the grounds prescribed in Order 47 Rule 1 of the Code of Civil Procedure and the said power cannot be exercised as an inherent power and nor can an appellate power to be exercised in the guise of exercising power of review. The points or the arguments now advanced by the learned counsel for the review petitioner are nothing but the same arguments already advanced and rejected by this Court. In the earlier order, this Court has specifically observed that neither the first appellant nor the Tribunal has referred any provision of the Act or Rule or By-law which were violated and that payments were not made in accordance



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with those provisions or Rules or By-laws and that the first appellant has nowhere whispered that the revision petitioner was guilty of wilful negligence and there is absolutely no finding of *mens rea* in the order passed by the first appellant.

14. As already pointed out, this Court while exercising review jurisdiction cannot re-appreciate the evidence and even if two views are possible in a matter, the Court cannot arrive at different conclusion by re-appreciating the evidence. As rightly contended by the learned Counsel for the respondent, the appellants under the garb of filing review petition is attempting to canvass the old and over ruled contentions and arguments, which cannot be entertained. It is not the case of the review petitioner that there was a mistake or an error apparent on the face of the record. Even assuming for arguments sake, that this Court has rendered an erroneous finding, that by itself is not a ground to re-visit the order. Considering the above, the Review Application is absolutely devoid of merits and the same is liable to be dismissed.



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15. In the result, the Review Application is dismissed. No costs.

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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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