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C.M.P.No.1172 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

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THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.P.No.1172 of 2023

in

Rev.Appl SR.No.4665 of 2023

The High Court of Judicature at Madras,
rep. By its Registrar General,
High Court, Madras – 600104.

... Appellant

Vs.

1.Thirumalai

2.Thamizharasi

3.Philips

4.Divisional Manager,
The New India Assurance Company Ltd.,
CSI Building, 2nd Floor No.1,
Officers Lane,
Near Ooris College, Vellore.

... Respondents



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PRAYER: Review Application is filed under Order 47 Rule 1 R/W Section 114 of CPC to grant leave to the petitioner/appellant herein to file the present review application.

For Petitioner : Mr.M.Santhanaraman
: Mr.Sharath Chandran, Amicus Curiae
: Mr.Edwin Prabhakar, Special Government
Pleader.

ORDER

I am faced with a rather strange conundrum of the High Court on its Administrative side seeking leave to review an order passed by it on its judicial side, particularly when the High Court is not even a party to the proceedings leave alone an aggrieved party. Is this Court therefore confronting a two faced JANUS?

2. To appreciate the petition now before this Court, namely, a petition seeking leave to review the order dated 05.05.2022, it is necessary to set out the facts in the various petitions filed seeking exemption from the payment of Court fees which form the backdrop for the review.



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3. This Court by the order which is the subject matter of review had answered the following issues:-

"(1) Whether the provisions of Rule 24 would apply to Appeals under Section 173 of the Motor Vehicles Act without giving proof of the indigent circumstances.

(2) Whether the petitioners/claimants who have obtained exemption can withdraw the amounts deposited without paying the Court Fees."

4. This Court on considering the provisions of the Motor Vehicles Act and its rules had passed an order stating that in order to avail the exemption from paying Court fees in an appeal under Section 173 of the Motor Vehicles Act, the provisions contemplated under Order XXXIII and XLIV had to be followed and the exemption in so far the claim petitions before the Tribunal is concerned, it would be at the discretion of the Presiding Officer. However, taking note of the varying methods of such discretion being exercised this Court had framed certain guidelines after hearing the amicus curiae, the learned counsel for the claimant/appellant



and the Special Government Pleader. It is these guidelines that are now sought to be reviewed, rather strangely by the High Court on a resolution adopted by the Administrative Committee operating on the Administrative side. The incongruous situation that has now been placed before this Court is that this Court without being aggrieved over its own order is now being directed by an Administrative Resolution to review its order. The review application has been filed under Order 47 Rule 1 read with Section 114 of the CPC.

5. The four grounds that have been put forward for seeking the review briefly are as follows:-

i. The filing of the affidavit as contemplated in paragraph no.53(a) of the order under review is beyond the scope of the Rule 24(3) of the Tamil Nadu Motor Vehicle Accidents Claims Tribunals Rules, 1989 which are *in pari materia* with Order 33 of the CPC.

ii. The attestation of the affidavit by a notary public would cause prejudice to the claimants.

iii. Paragraph No.53 (d) and (f) have been stipulated in the rule and adding of procedure would result in prejudice to the interest of the claimant



and caused practical difficulties for the Motor Accidents Claims Tribunal.

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iv. The Civil Miscellaneous Petition which was before the Court was only filed to seek exemption from the payment of Court fee under Section 173 of the Motor Vehicles Act and the guidelines in para 53 (a) to (f) are beyond the scope of the proceedings.

Each and every one of the above grounds are grounds, if any, which are available to an aggrieved party. The High Court is neither a party to the proceeding nor are they aggrieved by these guidelines.

6. Before advertng to the lis before me viz; the petition seeking leave, it is necessary to extract certain provisions:-

Section 114 of the CPC - *Subject as aforesaid, any person considering himself aggrieved -*

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

(b) by a decree or Order from which no appeal is allowed by this Court, or

(c) by a decision on a reference from a Court of



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Small Causes, may apply for a review of judgment to the Court which passed the decree or made the Order, and the Court may make such Order thereon as it thinks fit.

Order 47 Rule 1 CPC - 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 of for any other sufficient reason, desires to obtain a review of the decree



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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.

Rule 24(3) Tamil Nadu Motor Claim Rules - (3)

The Claims Tribunal may, in its discretion exempt any party from the payment of fees prescribed under sub-rule (1): - Provided that where a claim of a party has been exempted by the Claims Tribunal the party shall have to pay the prescribed fees, exemption in respect of which has been granted initially before a copy of the judgment is



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obtained: Provided further that where the amount of award is less than the amount of claim, the party shall be entitled to refund of the proportionate fee, namely the difference between the fee actually paid and the fee due if the claim had been made for the amount of award.

7. Section 114 of the CPC opens with the words “*any person considering himself aggrieved*”, the petitioner before this Court viz; the High Court has not stated how it is aggrieved by the guidelines that have been issued. These guidelines have been issued only to standardize the manner in which a Tribunal which is exercising judicial authority, exercises its discretion judiciously and to make it public that this exercise has not been done capriciously.

8. This Court is unable to understand as to how these guidelines would cause hindrance to any claimant. The claimant who has to appear in person before the Tribunal for filing a claim petition, in addition to the claim petition, has only to file an affidavit alongwith this petition that too, only if they are seeking an exemption despite drawing a monthly salary. In



this regard it would be useful to refer to the judgement of the Hon'ble Supreme Court reported in **2020 14 SCC 150 – Rakesh Malhotra Vs.**

Krishna Malhotra where the Court was considering whether the grant of permanent alimony under Section 25 of the Act can be made before the Magistrate under Section 125 of the CrPC over and above what has been granted by the Court when exercising power under Section 25 of the Hindu Marriage Act. While concluding, the learned Judges at paragraph no.13 of the said judgment had directed the husband to file an affidavit giving details about the amounts that he has made over to the respondent/wife by way of maintenance as awarded by the Court. The filing of an affidavit became a guideline by virtue of the later judgment of the Supreme Court reported in **(2021) 2 SCC 324 – Rajnesh Vs. Neha and Another** where the learned Judges were considering the varying orders being passed in petitions under Section 125 CrPC vis-à-vis the proof of income. Taking into account the divergent demographic profile of our country and the different yardsticks being applied by different Courts, the learned Judges observed that there was a need for a uniform format of affidavit of disclosure of assets and liabilities to be filed in maintenance proceedings.



9. Such an affidavit is not contemplated anywhere in the provisions of

Section 125 of the CrPC which is evident from a reading of the same which

is extracted hereinbelow:-

*125. Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain— (a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate I * * * as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order*



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the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means: 2 [Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct: Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]



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10. Therefore, the guidelines passed by this Court asking a claimant to file an affidavit is only to state that despite he being an earning member he does not have the wherewithal to pay a Court fee. This is in the interest of the claimant who will not be forced to prove his indigent circumstances. This by no stretch of imagination can be called prejudicial to the interest of the claimant. Further, the direction asking for the affidavit to be sworn before a notary public is only to ensure its authenticity. Therefore, the need to review these guidelines that too by the Court which is not the aggrieved party does not arise. The stipulations in para.no.53 (d) and (f) is only a explication of the procedure as to how Court fees have to be recovered post the deposit by the respondent and also to ensure that the State is not deprived of the Court fee by claimants withdrawing the money without paying Court fees. Once again, this Court fails to understand as to why this clause is termed to be prejudicial to a claimant. The ground that the Court has exceeded the scope of the proceedings is to say the least an attempt by an administrative order to circumscribe the judicial authority of this Court exercising its jurisdiction under Clause 36 of the Letters Patent, 1865 which reads as follows:-



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36. Single Judges and Division Courts:- And we do

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hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Madras, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose[in pursuance of Section 108 of the Government of India Act, 1915] and in such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided,[They shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it].



11. Having dealt with the factual aspects, this Court would like to advert to the judicial decisions which would show that the review now filed is without any basis. The High Court of Kerala had an occasion to consider the scope of review in the judgment reported in **1997 SCC Online Ker 422 – Mohankumar Vs. K.Natarajan and Anr.** where the learned Single Judge has observed as follows:-

“Review under Order 47 Rule 1 C.P.C. contemplates an application for an aggrieved party against a decree or order. The Court cannot review its own order or decree suo-motu unless an application for review is filed by an aggrieved party as contemplated under Section 114 C.P.C. and the court must be satisfied that the conditions mentioned in Order 47 Rule 1 C.P.C. exists to entertain the review”

12. Thereafter, the Hon’ble Supreme Court in the judgement reported as **Kewal Chand Mimani (D) by Lrs Vs. S.K.Sem and others in 2001 (6) SCC 512** was deciding the correctness of an order being reviewed and modified where the case was brought up under the head of *"liberty to*



mention". The learned Judges observed that liberty to mention cannot be used as a means to achieve an advantage which is otherwise not available under law.

The Bench had observed as follows:-

“ The Circumstances under which review can be had are provided under Order 47 of the Code of Civil Procedure. In any event, law is well settled on this score that the power to review is not any inherent power and it must be conferred by law either specifically or by necessary implication.

13. However, the authors of the Constitution has given a small window to the Courts to correct its errors by framing Article 215 of the Constitution of India which reads as follows:-

215. High Courts to be courts of record Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.



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The reasons for making this provision is only to ensure that the High Court being a Court of Record has its records intact and correct. In paragraph no.14 of the judgement reported in **(2000) 1 SCC 666 – M.M.Thomas Vs. State of Kerala** the learned Judges of the Hon'ble Supreme Court had observed as follows;-

“ The High Court as a court of record, as envisaged in Article 215 of the Constitutions, must have inherent powers to correct the records. A Court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A Court of record is undoubtedly a superior Court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it.”



The right to correct its judgment is therefore restricted only within the parameters of the above Article that too if any apparent error is noted by the High Court in respect of orders passed by it. This right is conferred on the High Court only when functioning in its judicial side.

14. In a judgement reported in **2021 (5) CTC 668 - Karthick Theodore Vs. Registrar General, Madras High Court, Chennai** a Single Judge of this Court had occasion to consider the powers that were exercised by the High Court as a Court of record under Article 215 of the Constitution of India. The learned Judge had discussed the jurisdiction and power of the High Court of Madras which flows from the Letters Patent of 1865. The learned Judge had observed as follows:-

" 27. Thus, any judicial order, irrespective of the nature of jurisdiction and the strength of the Bench, is, in effect, the order of the High Court as one institution. The position is made clear by Clause 36 of the Letters Patent which runs as follows:



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“36. Single Judges and Division Courts: - And we do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Madras, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose[in pursuance of Section 108 of the Government of India Act, 1915] and in such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided,[They shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it]”

It is for this precise reason that any order, judgment



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summons, precepts etc., run in the name of the High Court as one institution. Clause 7 of the Letters Patent of 1865 states thus:

“7. Writs, etc., to issue in the name of the Crown, and under seal: - And we do hereby further grant, ordain, and appoint that all writs, summons, precepts, rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature at Madras, shall run and be in the name and style of Us, or of Our Heirs, and Successors and shall be sealed with the seal of the said High Court.”

The point here is that since the High Court is one indivisible institution, a writ cannot lie against a judgment or order passed by it for that would tantamount to the High Court issuing writs against itself.”

15. The attention of this Court was drawn to a similar case where the order passed by a learned Single Judge to circulate a copy of the order was placed for the consideration of a Division Bench. The Division Bench of this Court in the judgement in ***Writ Appeal No.1161 of 2020 – The High***



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Court of Judicature at Madras, rep. by its Registrar General High Court,

Madras Vs. A.Venkatesan and Anr. had made the following observation in

para no.11 as follows :-

“ The object with which the learned single Judge issued the direction to the Registry to circulate the copy of the order to all the Motor Accident Claims Tribunal in the State of Tamil Nadu and Puducherry is to make aware of the dictum, which will be useful to the Tribunals in dealing with such type of cases. At the same time, if the Court feels that it is a matter of importance where a direction is required to be issued to the subordinate judiciary or executive, then the matter has to be placed before the Hon'ble Chief Justice of this Court for being placed before the appropriate Division Bench dealing with Public Interest Litigations.”

16. The aforesaid observations, in my humble opinion are *per in curium*. The procedure of placing orders of the benches of this Court, Single or Division, had emanated from an order passed by a Division Bench



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of this Court in ***HCP.No.1306 of 2007 dated 21.09.2007*** where the learned Judges after passing a slew of directions had added a footnote that the Section Officer had to circulate these directions to all the Subordinate Courts immediately after obtaining the orders of the Hon'ble Chief Justice which nod has also been given by then Hon'ble Chief Justice on 23.10.2007. Neither this Division Bench's order nor Clause 36 of the Letters Patent was brought to the attention of the Division Bench or to the Administrative Committee which is evident from a perusal of the order. The Division Bench in the Writ Appeal (***WA.No.1161 of 2020***) supra has gone to the extent of stating that in order to give effect to directions made by a learned Single Judge, the matter has to be placed before a Division Bench dealing with Public Interest Litigation, thereby opening a second line of litigation.

17. In the judgement reported in ***1993 Supp (3) Supreme Court Cases 727 - Supreme Court Employees Welfare Association Vs. Union of India and Another***, the Hon'ble Supreme Court was considering the recommendation of the committee of Judges appointed by the Chief Justice of India regarding the pay scale of Supreme Court Staff. The



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recommendation of the committee had been accepted by the Chief Justice of India and forwarded to the President of India for approval. The recommendation was challenged by the Supreme Court Employees Welfare Association and Supreme Court Class IV Employees Welfare Association stating that they should be placed above a higher scale of pay than the pay admissible for the corresponding staff working in the Delhi High Court. The committee before it had made the recommendation had made reference to the different interim orders passed in the Writ Petitions and stated that **these orders having been passed on the Judicial side of the Court are binding and the Administrative side of the Court cannot ignore these orders.** Ultimately, the Bench agreed to this view of the committee that judicial orders are binding on the administrative side and modified the interim orders granted therein.

18. The aforesaid observation of the various judgments referred above clearly delineates the power that the High Court exercises on its Administrative side and on the Judicial side and make a clear distinction between the two.



19. An administrative order passed by the High Court is subject to Judicial scrutiny and not vice-versa. In the instant case this Court had directed the guidelines to be circulated to all the Tribunals and therefore in keeping with the orders passed in HCP.No.1306/2001 the Office Note has been placed before the Chief Justice for orders for circulating the same as the Chief Justice is the Administrative Head of the Judiciary in the State and guidelines relating to procedure is issued under his name. In a judgment of this Court reported in **1996 SCC Online Mad 1132 - T.S.Sankaranarayanan VS. High Court of Judicature at Madras** a learned Single Judge was called upon to consider whether the orders of a Division Bench exercising jurisdiction in the Judicial side should pave way for the decision made in the Administrative side. The learned Judge has observed as follows:-

" Moreover, once a rule of procedure has been envisaged by the High Court in its Judicial side on a matter, the High Court in its administrative side has to follow the same setting a good example."



20. The Hon'ble Supreme Court in the judgement reported in (1995)

1 SCC 203 – High Court of M.P. Vs. Mahesh Prakash and Others was considering an appeal filed by the High Court challenging an order passed by the Division Bench of the High Court wherein the Division Bench had set aside an Administrative Order of the High Court. The learned Judges observed as follows:-

“ The order that the first respondent challenged in the writ petition filed by him before the High Court was an order passed by the High Court on its administrative side. By reason of Article 226 of the Constitution it was permissible for the appellant to move the High Court on its Judicial side to consider the validity of the order passed by the High Court on the administrative side and issue a writ in that behalf. In the writ petition the first respondent was obliged to implead the High Court for it was the order of the High Court that was under challenge. It was, therefore, permissible for the High Court to prefer a petition for special leave to appeal to this Court against the order on the writ petition passed on its judicial side.”



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The learned Judges had observed that where the Administrative Order of the High Court was set aside the High Court would then be an aggrieved party such is not the case in the instant review.

21. Therefore, the present petition seeking leave to review which does not come within the parameters supra, cannot be entertained as it would amount to undermining the Judicial fibre whose touchstone is its fierce independence and to discharge its duty without any kind of fear or favour. By an administrative resolution an order passed by the High Court on its Judicial Side is sought to be reviewed. Before closing, this Court would like to refer of the judgment reported in (1995) 5 SCC 457 – ***C.Ravichandran Iyer Vs. Justice A.M.Bhattacharjee and Others***, wherein the learned Judges have while answering the question "*Judicial individualism - Whether needs protection*" answered as follows:-

11. Independent judiciary is, therefore, most essential when liberty of citizen is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived)



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undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. Judicial individualism, in the language of Justice.

The learned Judges have extracted from the dissenting judgement of Justice Douglas of the Supreme Court of United States in ***Stephen. S. Chandler Vs. Judicial Council of the Tenth Circuit of the United States*** [398 US 74] as follows:-

"No matter how strong an individual judge's spine, the threat of punishment - the greatest peril to judicial independence - would project as dark a shadow whether cast by political strangers or by judicial colleagues. A federal judge must be independent of every other judge... Neither one alone nor any number banded together can act as censor and place sanctions on him. It is vital to preserve the opportunities for judicial individualism."



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22. In the result the leave is dismissed. No costs.

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