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Review Application No.30 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2023

CORAM:

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

Review Application No.30 of 2023

in

C.R.P.No.2037 of 2022

R.Sivasubramaniyam

...Petitioner

VS.

1. Arulmigu Akkaraipatti Ponkalamman
Arulmigu Akkaraipatti Muthusamy and
Arulmigu Molipili Annamar Swami Deities
Represented by the Executive Officer,
Arulmigu Varadharaja Perumal Vagaiyara Thirukkoil
Devasthanam, Vengumbur, Unajlour Via,
Erode T.K.

2. R.Periasamy

3. G.Guhan

... Respondents

PRAYER : Review Petition filed under Order 47 Rule 1 read with Section 114 of C.P.C. praying to review the Final Judgement/Order dated 02.01.2023 passed by this Court in C.R.P.(PD)No.2037 of 2022.

For Petitioner : Mr.K.M.Vijayan, Senior Counsel for
N.Thiagarajan



Review Application No.30 of 2023

WEB COPY

ORDER

The review petition on hand has been filed to review the order/judgment passed by this Court on 02.01.2023 in C.R.P. No.2037 of 2022.

2. The learned senior counsel appearing on behalf of the review petitioner mainly contended that the review petition is filed to strike off/delete the observation of this Court made in the order dated 02.01.2023 that “.... *the amendment of the plaint as sought for by the first respondent/plaintiff stands confirmed....*” as the validity of the order for an Amendment of the Plaint passed in I.A.No.2 of 2021 in O.S.No.156 of 2014 was not under consideration in the above C.R.P.

3.It is contended that the issues in this regard were neither raised nor argued by any of the parties to the revision petition filed in C.R.P. No.2037 of 2022. It is further contended that the said observation would affect the C.R.P.(PD) No.202 of 2023 filed by the review petitioner herein.



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4.The learned Senior Counsel appearing on behalf of the petitioner made a submission that the review petitioner, after disposal of the C.R.P. No.2037 of 2022 dated 02.01.2023, filed the C.R.P.(PD)No.202 of 2023, in which notice was issued to the respondents returnable in two weeks. Therefore, the review petition is also to be tagged along with the subsequent C.R.P. filed for the purpose of hearing the matter elaborately.

5.This Court considered the issues raised by the parties on merits in respect of the order passed in I.A.No.2 of 2021 in O.S.No.156 of 2014 dated 11.11.2021 elaborately. Both the parties in the revision petition argued elaborately and this Court passed an order. Its relevant paragraphs are extracted as follows :

“ 25.In view of the facts and circumstances, the following finding in the order impugned passed in I.A.No.2 of 2021 in O.S.No.156 of 2014 dated 11.11.2021 on the file of the I-Additional District Court, Erode, stands set aside:

“The learned firth respondent's counsel through his written arguments also argued that, a



portion of the suit property already has been dedicated to the fifth respondent Deity by the first respondent and so the petitioner also has filed this suit for partition of Government Properties, but notice under Section 80 of Civil Procedure Code was not at all issued by the petitioner before filing of the suit and so this suit itself is not maintainable. This Court considering the above contention of the learned fifth respondent's counsel determines that, no Government Department is impleaded as a party in this suit and also in this petition and so notice under Section 80 of Civil Procedure Code was not at all necessary before filing of this suit and so the above said contention of the learned fifth respondent's counsel is not at all acceptable, sustainable and tenable and so as a consequence this Court rejects the above contention of the learned fifth respondent's counsel”

26.The amendment of the plaint as sought for by the first respondent/plaintiff stands confirmed. Consequently, the Civil Revision Petition in C.R.P. No.2037 of 2022 stands allowed in part. No costs. Connected miscellaneous petition is closed.”

6.The Interlocutory Application in I.A.No.2 of 2021 was filed under Order VI Rule 17 to amend the plaint. While considering the revision petition, this Court passed an order that the amendment of the plaint as sought for by the first respondent/ plaintiff stands confirmed. In this regard,



Review Application No.30 of 2023

the review petition filed, raising certain grounds on merits, which cannot be considered by this Court, as such grounds cannot be construed as error apparent for the purpose of invoking the power of review.

7.The scope of review cannot be extended for the purpose of adjudication of issues on merits. Grounds for appeal on merits now raised would not provide any scope for reviewing the order which was passed after adjudication. The learned Senior Counsel raised other grounds with reference to C.R.P.(PD) No.202 of 2023 stating that the order passed in C.R.P. No.2037 of 2022 will have effect in respect of the subsequent revision petition filed by the review petitioner.

8.In order to find out whether the order in CRP.No.2037 of 2022 has been brought to the notice of this Court while granting admission in C.R.P.(PD) No.202 of 2023, the original case papers were called for by this Court, and on verification of the case papers relating to the C.R.P.(PD) No.202 of 2023, it is found that the review petitioner herein is the petitioner in the said C.R.P.(PD) No.2037 of 2022. Pertinently the review petitioner



Review Application No.30 of 2023

has not enclosed the order passed by this Court in C.R.P. No.2037 of 2022, wherein he has been arrayed as second respondent. More so, the review petitioner has not stated anything about the order passed by this Court in C.R.P. No.2037 of 2022 dated 02.01.2023. It is found that by suppressing the fact, regarding the earlier order passed by this Court in C.R.P. No.2037 of 2022, the subsequent C.R.P. was filed by the review petitioner in C.R.P.(PD) No.202 of 2023, challenging the very same order dated 11.11.2021 passed in I.A.No.2 of 2021 in O.S. No. 156 of 2014, which was already challenged in earlier C.R.P. No.2037 of 2022, wherein the petitioner is the second respondent.

9.That apart, the order in I.A.No.2 of 2021 was passed by the Trial Court on 11.11.2021 and the review petitioner filed the fresh C.R.P.(PD) No.202 of 2023 on 07.03.2023, more so, after passing an order by this Court in C.R.P. No.2037 of 2022 dated 02.01.2023. Therefore, the petitioner has not approached this Court with clean hands, and even in the subsequent C.R.P. filed by the petitioner, he has suppressed the fact regarding the earlier order passed by this Court on 02.01.2023 in CRP No.2037 of 2022.



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10.The present Review Petition has been filed by the petitioner by engaging a different counsel, who had not appeared in the Civil Revision Petition.

11.The Courts have held that the Review Petition is to be filed only through the counsel, who argued the case against which the Review Petition is filed.

12.The Hon'ble Supreme Court of India in the case of **Tamil Nadu Electricity Board and another vs. N.Raju Reddiar and another [(1997) 9 SCC 736]** wherein it has been observed as follows:

“1.It is a sad spectacle that a new practice unbecoming and not worthy of or conducive to the profession is cropping up. Mr.Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr.V.Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court



on 24-04-1996. Yet another advocate, Mr.S.U.K.Sagar, has now been engaged to file the present application styled as “application for clarification”, on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No.2670 of 1996 in CA No.1867 of 1992, a Bench of three Judges to which one of us, K.Ramaswamy, J., was a member, had held as under:

“The record of the appeal indicates that Shri



Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would not be in the interest of the profession to permit such practice. That apart, he has not obtained 'No Objection Certificate' from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the 'No Objection Certificate' would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the 'No Objection Certificate' from the erstwhile counsel has disentitled him to file the review petition. Even otherwise, the review petition has no merits. It is an attempt to reargue the matter on merits."

13.In the case of **Kamlesh Verma vs. Mayawati [2013 (8) SCC 320]**, the Hon'ble Apex Court held that a repetition of old and over-ruled argument is not enough to reopen the concluded adjudications and that mere possibility of two view on the subject, cannot be a ground for Review. It is also observed therein that the appreciation of evidence on record is fully within the domain of the Appellate Court and it cannot be permitted to be advanced in the Review Application.



WEB COPY 14. In the case of **Subramanian Swamy vs. State of Tamil Nadu [2014**

(5) SCC 75], the Hon'ble Supreme Court reiterated that “Thus, even an erroneous decision cannot be a ground for the Court to undertake review, as 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 in absence of any such error, finality attached to the judgment/order cannot be disturbed.”

15. In the case of **Tamil Nadu Electricity Board and another vs. N.Raju Reddiar and another [(1997) 9 SCC 736]**, the Hon'ble Supreme Court has again to the extent of dismissing the Review Application with an exemplary costs of Rs.20,000 as it is an abuse of the process of Court in derogation of healthy practice. In the case on hand, also the learned counsel now appearing in the Review Application had not appeared in the Civil Revision Petition, the review petitioner filed the present Review Application only by changing the counsel on record.



Review Application No.30 of 2023

WEB COPY

16. Accordingly, the petitioner has not established any error apparent on record for the purpose of entertaining the present review petition and consequently the review petition stands **dismissed**. No costs.

10.02.2023

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Index : Yes

Speaking order : Yes

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WEB COPY



Review Application No.30 of 2023

S.M.SUBRAMANIAM, J.

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Review Application No.30 of 2023
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