



REV.APLC(OS)No.3 of 2023

in

O.A.No.825 of 2021

in

E.L.P.No.3 of 2021

and

O.A.No.301 of 2023

in

E.L.P.No.3 of 2021

RESERVED ON : 02.06.2023

DELIVERED ON : 09.06.2023

C.V.KARTHIKEYAN, J.

This application had been filed by the first respondent in O.A.No.825 of 2021, which Original Application had been filed by the petitioner therein under Order XI Rule 16 of CPC to strike out certain portions mentioned in the plaint in E.L.P.No.3 of 2021.

2.E.L.P.No.3 of 2021 had been filed by Thiru.M.Palaniappan, the candidate for the Dravida Munnetra Kazhagam Political Party (DMK) for No.179, Viralimalai Assembly Constituency, Pudukottai District for the General Elections to the 16th Tamil Nadu Legislative Assembly-2021, which were notified on 26.02.2021 with the date of poll on 06.04.2021 and the date of counting and declaration of result on 02.05.2021.



3.The petitioner lost the election. He filed E.L.P.No.3 of 2021 by invoking the provisions of Representation of the People Act, 1951 r/w the Conduct of Election Rules, 1961, primarily against the first respondent/elected candidate, Thiru.C.Vijayabaskar, who belonged to the All India Anna Dravida Munnetra Kazhagam Party (AIADMK).

4.In the said E.L.P.No.3 of 2021, the first respondent therein, Thiru.C.Vijayabaskar, had filed O.A.No.825 of 2021 under Order VI Rule 16 CPC to strike out certain portions of the pleadings. He also filed O.A.No.827 of 2021 under Order VII Rule 11 CPC to reject the Election Petition.

5.This Court had heard elaborate arguments in O.A.No.825 of 2021 and finally pronounced orders on 29.11.2022 and certain portions of the pleadings were struck off and certain portions were retained.

6.Seeking review of the above order, the Election Petitioner has filed the present application, Rev.Aplc.No.3 of 2023. In the said Review Application, he had also filed O.A.No.301 of 2023 to keep in abeyance the



order dated 29.11.2022 in O.A.No.825 of 2021.

WEB COPY

7. In the grounds seeking review of the order, it had been stated that when there are allegations of corrupt practices, it must be averred that such corrupt practices were done with the knowledge and consent of the returned candidate or his agent. It had been complained that in the order in O.A.No.825 of 2021, this Court had struck down the words “with his consent, knowledge, instructions and authorisation”. It must be stated that the word noun “his” referred to the returned candidate, Thiru.C.Vijayabaskar.

8. It had been complained in the Review Application that these words are required and have to be retained in the pleadings. It had been held in the order that these averments, “with his consent, knowledge, instructions and authorisation” will have to be established during the trial. It had been held that the Election Petitioner will have to lead evidence not only with respect to allegations of corrupt practices, but also establish the fact that such corrupt practices were done with the knowledge, consent, instruction and authorisation of the returned candidate or his election agent.



WEB COPY

9. Thus, there are two stages of proof, the first on the corrupt practices and the second that such corrupt practices were done under the direct authorisation or consent or knowledge of the returned candidate. The allegations relating to various corrupt practices, which have been retained in the order in O.A.No.825 of 2021 will have to be first established by the Election Petitioner. Thereafter, he will have to extend such proof that they were done to the knowledge, consent, authorisation of the returned candidate.

10. That aspect of proof is to a large extent a matter of inference, which has to be drawn from the evidence presented. The primary fact which will have to be established is the allegation of corrupt practice and then evidence will have to be adduced relating to inference that a reasonable presumption has to be drawn that such corrupt practice was done with the knowledge, consent, authorisation of the returned candidate. The words cannot be pleaded as a fact. If pleaded, they would be a statement made by presumption. That is an aspect, which has to be established during the course of evidence. Merely because, it is stated that there must be a statement of those words in the Election Petition, that would not mean that



such inference can be automatically drawn by the Court. That inference can be drawn only on the basis of the evidence presented. Such evidence can be independently examined after adducing evidence on the corrupt practices alleged.

11.I would also hold that even if those words had been retained in the Election Petition, it would not automatically mean that every corrupt practice which had been established through evidence was done or were done with the knowledge, consent and authorisation of the returned candidate. That presumption is a nebulous factor and the statement of the same in the Election Petition would not automatically mean that they have to be taken on their face value. The non statement of the such words in the Election Petition would also not mean that such proof is not required to be led by the Election Petitioner or if led, should not be considered by the Court.

12.It must be kept in mind that the focus of any Election Petition is to ensure that no candidate wins an election by corrupt practices. Therefore, the chain between the corrupt practice and the knowledge of such corrupt practice by the returned candidate will have both to be necessarily



established, whether pleaded or not or whether words, such as “consent, knowledge and authorisation” are used or not. This necessitates the Election Petitioner to prove even the knowledge, consent and authorisation, which are basically an examination of the machineries of the mind rather than an act. Necessary chain will have to be established.

13.I do not find any infirmity in deleting those words from the Election Petition.

14.It must also be kept in mind that the scope of Review is very narrow.

15.Section 114 of Code of Civil Procedure is as follows:

“114.Review. 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 referred. (b) by a decree or order from which no appeal is allowed by this Code, or (c) by a decision on a reference from a Court of 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.



WEB COPY

16. Order XLVII Rule I CPC reads as follows:

“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 or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

17. In (1997) 8 SCC 715 [*Parsion Devi and Others Vs. Sumitri*

Devi and Others], the Hon'ble Supreme Court has held as follows:-

“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 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 limited purpose and cannot be allowed to be "an appeal in disguise.

10. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected



WEB COPY

by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."

18.In (2008) 11 SCC 107 [T.Thimmaiah (dead) by Lrs. Vs.

Venkatachala Raju (dead) Lrs.], the Hon'ble Supreme Court has held as follows:-

"2. During the course of hearing, the learned counsel for the appellant has pointed out that a bare perusal of the order in review would reveal that it is based on a complete reappreciation of the matter on facts and the provisions of Order 47 Rule 1 of the Code of Civil Procedure which would govern an application for review, have been completely ignored. It has been submitted by the counsel that the Single Judge had, in the first Judgment, examined the facts and dismissed the appeal and on a reconsideration of the same facts, had allowed the same, which was not justified. We find merit in this plea. From a bare perusal of the Judgment in review, it is clear that the principles laid down under Order 47 Rule 1 CPC have been completely ignored. We accordingly allow the appeal, set aside the order in review dated 26.2.2001 and dismiss the appeal in the suit. We, however, give liberty to the respondent herein to challenge the Judgment dated 16.2.1999, if so advised."



WEB COPY

19. In **(2018) 4 SCC 587 [Sivakami and Others Vs. State of Tamil**

Nadu and Others], the Hon'ble Supreme Court has held as follows:-

“18. The scope of the appellate powers and the review powers are well defined. The power of review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is very limited and it may be exercised only if there is a mistake or an error apparent on the face of the record. The power of review is not to be confused with the appellate power. The review petition/application cannot be decided like a regular intra court appeal. On the other hand, the scope of appeal is much wider wherein all the issues raised by the parties are open for examination by the Appellate Court.

19. A fortiori, what was not decided in appeal by the Division Bench could not be decided by the Division Bench while deciding the review application. It is for this reason, we are also constrained to set aside the review order.”

20. Even though the learned Counsel for the Review Petitioner stated that there are evident errors on the face of records in the order, still the grounds of review indicate that a re-examination of the reasons given in the order in O.A.No.825 of 2021 is sought. That re-examination is not permissible in an review application.

21. In view of all these reasons, I hold that grounds to review the order have not been made out. Accordingly, the Review Application stands dismissed. Consequently O.A.No.301 of 2023 is also rejected.



WEB COPY

cmr



09.06.2023

(1/3)



WEB COPY



C.V.KARTHIKEYAN, J.

cmr

Pre-Delivery order made in
REV.APL(OS)No.3 of 2023
in
O.A.No.825 of 2021
in
E.L.P.No.3 of 2021
and
O.A.No.301 of 2023
in
E.L.P.No.3 of 2021

09.06.2023
(1/3)