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Review Application Nos.175 & 177 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Review Application Nos.175 & 177 of 2021
and
C.M.P.Nos.18991 & 18999 of 2021

Pushpalatha

..Petitioner
(in both Review Applications)

Vs.

Anandakrishnan

..Respondent
(in both Review Applications)

Prayer in Review Application No.175 of 2021: Review Application filed under Order 47 Rule 1 read with Section 114 of C.P.C., praying to review the order passed by this Court in C.M.S.A.No.19 of 2013 on 22.02.2021.

Prayer in Review Application No.177 of 2021: Review Application filed under Order 47 Rule 1 read with Section 114 of C.P.C., praying to review the order passed by this Court in C.M.S.A.No.18 of 2013 on 22.02.2021.



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Review Application Nos.175 & 177 of 2021

For Petitioner : Mr.P.Thiagarajan
(in both cases)

For Respondent : Mr.A.Ganesan
(in both cases)

COMMON ORDER

The Review Applications have been filed to review the orders passed by this Court in C.M.S.A.Nos.19 & 18 of 2013 dated 22.02.2021.

2. The learned counsel for the petitioner mainly contended that the petitioner/wife was always ready and willing for matrimonial reunion and an order of Restitution was also passed in her favour. Despite the order, it is the respondent/husband, who refused for reunion and therefore, the orders passed by this Court are to be reviewed.

3. Further, the learned counsel for the petitioner made a submission that the petitioner has to take care of her grown up daughter, who is yet to be married and thus, the order of divorce confirmed by this Court is to be reviewed.



4. The learned counsel for the respondent objected the said contention by stating that the respondent/husband extended all co-operation for the marriage of his daughter and he is ready to contribute the entire marriage expenses within his capacity. When the respondent/husband is ready and willing to co-operate for the welfare and future of their daughter, the orders passed by this Court need not be reviewed and the grounds raised in this regard by the petitioner are untenable.

5. 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.

6. In the present case, the merits of the case were elaborately considered including the order of Restitution passed by the competent Court. Thus, the grounds raised on merits in this regard cannot be construed as an error apparent for the purpose of reviewing the orders.

7. In the case of **Subramanian Swamy vs. State of Tamil Nadu [2014 (5) SCC 75]**, the Apex 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.”

8. In respect of the present Review Applications, the petitioner has changed the Advocate and filed Review Applications. The change of lawyer in the Review Applications was viewed seriously by the Hon'ble Supreme Court of India. The lawyer, who appeared in the main case has to appear in the Review Application for the purpose of establishing the error apparent on record. By changing the counsel, litigants cannot be permitted to seek review of the order by raising certain merits. In this regard, 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]** 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.”



Review Application Nos.175 & 177 of 2021

9. In view of the fact that the learned counsel for the petitioner urged this Court to adjudicate the merits regarding the order of Restitution and the facts involved, this Court is of an opinion that such process cannot be undertaken for reviewing the orders passed by this Court in the Civil Miscellaneous Second Appeals.

10. In view of the facts and circumstances, the petitioner has not established any error apparent on record for the purpose of reviewing the orders and consequently, both the Review Applications stand dismissed. No costs. Connected miscellaneous petitions are closed.

14.02.2023

Index : Yes
Speaking order:
Neutral Citation: Yes
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S.M.SUBRAMANIAM, J.

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