



Rev.Application No.165 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Rev.Application No.165 of 2021
in W.P.No.2050 of 2015

The Deputy Registrar of Co-operative Societies,
Cheyyar circle, Cheyyar,
Tiruvannamalai District.

... Petitioner

-VS-

1. D.Nagarajan

2. The Secretary to Government Labour and
Employment Department,
Fort St.George, Chennai-600 009.

3. The Labour Officer,
No.55/1, Gandhi Nagar,
10th Street, Tiruvannamalai.

... Respondents

Prayer: Review Petition filed under Order 47 Rule 1 Read with Section 114 of CPC against order dated 29.06.2021 made in W.P.No.2050 of 2015 passed by this Court.

For Petitioner : Mrs.E.Ranganayaki
Addl.Govt. Pleader
For R1 : Mr.C.Prakasam

ORDER

The present review petition has been filed to review the order of this

Court dated 29.06.2021 in W.P.No.2050 of 2015.



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2. The Writ Petitioner / Review Applicant herein filed a writ petition in W.P.No.2050 of 2015 for a direction to the Respondents 2 and 3 to take necessary steps to implement the Award dated 24.01.2012 made in I.D.No.90 of 2011. After hearing the parties, this Court, while allowing the Writ Petition, filed by the petitioner, had passed a detailed order, which is extracted hereunder:

“3. A reading of the representation dated 16.06.2014 made by the Petitioner is very clear that the petitioner wanted the Award to be implemented, as the Management had not complied with the Award. It is to be noted that in case of non-implementation of the Award, it is open to the petitioner to initiate criminal prosecution against persons falling under Section 32 of the I.D.Act, 1947 the officers concerned, who are liable to implement the Award. If any complaint under Section 29 is made by the petitioner, criminal action should be taken against the officers, who are responsible for implementing the order, and the Government will have to sanction prosecution against those persons to bring the issue into logical end. The Government shall also take into account the principles laid down in the decision of the Apex Court in the case of Rajkumar Gupta vs. Lt. Governor, Delhi reported in 1997 (1) LLJ 994. This Court wants to point out that when the petitioner seeks for implementation of the Award, it is open to him to seek the claim under Section 33C(1) read with Section 11 B of the Industrial Disputes Act, 1947 and the admitted amount can be determined in the light of the decision of the Apex Court in the case of Fabril Gasosa vs. Labour Commissioner, reported in (1997) 3 SCC 150 and in case of disputed amount, the disputed portion can be adjudicated and computed by the appropriate Labour Court, when an application under Section 33C(2) of the Industrial Disputes Act, 1947 is filed.



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4. It is pertinent to mention here that the Hon-ble Supreme Court in the case of The Life Insurance Corporation of India vs. D.J.Bahadur and Others, reported in 1980 AIR 2181 held that the Award or the Settlement would continue to be in force till such time the same is substituted by another Award or Settlement.

5. If there is no stay of the Award, the Award needs to be implemented and pendency of the writ petition is not a bar for the aforesaid proceedings, under various provision mentioned supra. This Court is empowered to direct the Management to implement the Award and in case the order, in so far as the admitted amount is concerned, is not complied with, for non implementation of this order, parties are entitled to file contempt and the Court will decide whether there is wilful or deliberate disobedience. Prosecution under Section 29 of the Industrial Disputes Act is different from contempt proceedings and both can go simultaneously."

3. The learned counsel for the Applicant, in support of this Review Application, submitted that the Society has now become dormant and that the 1st Respondent herein has committed serious irregularities and misappropriated the amount, which had resulted in registration of a criminal case in C.C.Nos.44 to 47 of 2014, pending on the file of the learned Judicial Magistrate, Tiruvannamalai.

4. It is pertinent to mention here that the aforesaid facts have not been brought to the attention of this Court, when the matter was heard in length. Even otherwise the prayer in the writ petition was very limited to implement the Award dated 24.01.2012 in I.D.No.90 of 2011 passed by



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the Labour Court, Vellore. As long as there is no stay of the Award, the order of this Court in Paragraph Nos.3 to 5 (supra) needs to be implemented in letter and spirit. The pendency of the criminal case is nothing to do with the implementation of the Award of the Labour Court and the criminal case that is pending in C.C.Nos.44 to 47 of 2014 can also simultaneously go along with the prosecution that may be sanctioned by the Government against the Officials of the respondents for non-implementation of the Award. It is saddening that the award was passed as early as on 24.01.2012 and more than 10 years have elapsed from the date of award. Despite the subsequent order of this Court in 2021, there was no steps taken to comply with the order till now.

5. At this juncture, learned counsel for the 1st Respondent has stated that for non compliance of the order of this Court, a Contempt Petition in Cont.P.No.1670 of 2021 has been filed and the same is pending. In order to escape from the contempt proceedings and to further delay the implementation of the order, the Review Applicant has come up with this Review Application, by adopting the dilatory tactics.

6. It is now fairly well settled by a series of decision's of this



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Hon'ble Court as also the Hon'ble Supreme Court that the scope of review is very minimal and it is circumscribed by the provisions of the statute. It would be relevant to refer to few Judgments of this Hon'ble Court as also the Hon'ble Supreme Court to understand and appreciate the scope of review jurisdiction to find out if the petitioner has made out a case for reviewing the order dated 01.09.2021 in W.A.No.2133 of 2021. A Hon'ble Division Bench of this Court in the case of ***The Special Officer, Kallal Co-operative Primary Agricultural and Rural Development Bank Ltd., Karaikudi, Sivagangai District Vs. R.M.Rajarathinam and Others [Review Application (MD). No.82 of 2013]*** decided on 04.02.2015, held as follows:

“10... It is well settled that the scope of review is very limited. The review applicant cannot re-argue and he is not entitled for re-hearing on merits.”

7. In another decision of the Division Bench of this Court in the case of ***Dhanalakshmi Vs. M.Shajahan and others*** reported in ***AIR 2004 Madras 512***, it was opined that the power of review is not an appeal in disguise. The relevant paragraphs of the said order are extracted below:

"11. From the above judgments, it is seen that the law is well settled inasmuch as the power of review is available only when there is an error apparent on the face of the record and not on erroneous decision. If the parties aggrieved by the judgment on the ground that it



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is erroneous, remedy is only questioning the said order in appeal. The power of review under Order 47 Rule 1 C.P.C. may be opened inter alia only if there is a mistake or an error apparent on the face of the record. The said power cannot be exercised as is not permissible for an erroneous decision to be "reheard and corrected". A review application also cannot be allowed to be "an appeal in disguise". Similarly, the error apparent on the face of the record must be such an error, which must strikes one on mere looking at record and would not require any long drawn process of reasoning on points, where there may conceivably be two opinions."

8. Furthermore, in ***R.Mohala Vs. M.Siva and others*** in ***Review Petition No.61 of 2018 and WMP.No.10818 and 10819 of 2018*** decided on ***25.04.2018***, one of us (SVNJ) elaborately discussed the scope of review and in Paragraph Nos.7 and 8, held as follows:

"7.The basic principle to entertain the review under Order 47 Rule 1 C.P.C. is to correct the errors but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes functus officio and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the review petitioner without altering or substituting its view in the judgment under review; the review court cannot entertain the arguments touching the merits and demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is ultimately to see that there should not be miscarriage of justice and shall do justice for



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the sake of justice only and review on the ground that the judgment is erroneous cannot be sustained.

8. It is settled law that 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 under 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.”

9. The Hon'ble Supreme Court in the case of *Meera Bhanja Vs. Nirmala Kumari Choudhury* reported in (1995) 1 SCC 170, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as follows:

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226."

10. In the case in *Parsion Devi Vs. Sumitri Devi*, reported in 1997 (8) SCC 715, the Hon'ble Apex Court held as follows:

"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



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power of 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 a limited purpose and cannot be allowed to be "an appeal in disguise."

11. From a reading of the above referred Judgments, it can be fairly discerned that:

1.Review is not an appeal in disguise.

2.The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C.

3.A wrong exposition of the law or a wrong application of the law and failure to apply the correct law cannot be a ground for review.

4.The power to review is a restricted power given through a Court to go through the Judgment only to correct it or improve it, on the basis of some material which ought to have been considered, escaped consideration or failed to be placed before it for any other reason, but not to substitute a fresh or a second Judgment.

5.The power of review cannot be invoked to correct the erroneous Judgment and the finality attached to a Judgment cannot be disturbed.

6.Only errors which are apparent on the face of the record in the sense that errors which strike on mere looking at record can only be corrected and not those that require long drawn process of reasoning on point.

12. The above are some of the basic principles on which the power



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to review rests. The said principles are not exhaustive but only illustrative.

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13. To review a Judgment / Order, the Applicants need to satisfy

three basic requirements of Order 47 Rule 1 of C.P.C., which are as under:

(i) From discovery of new and important matter or evidence which after 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;

(ii) There is some mistake (or) error apparent on the face of the record in the judgment under review; and

(iii) or any other sufficient reasons.”

14. The ground raised by the applicant in our considered opinion is beyond the scope of the provisions of Order 47 Rule 1 CPC and the law laid down by the Hon'ble Supreme Court and the Hon'ble High Court. The Review Applicants in the guise of the Review Petition want this Bench to re-write it's Judgment, which is not possible under review jurisdiction. As already stated above review is not an appeal in disguise and there is no error apparent on the fact of the record. Therefore, the Division Bench rightly confirmed the order of the learned Single Judge, which does not warrant any review. For all the above reasons, we find no merits in the review application and the same deserves to be dismissed.



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15. Accordingly, this Review Application stands dismissed. No costs.

06.02.2023

Index: Yes / No

Internet: Yes / No

Speaking Order / Non Speaking Order

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To:

1. The Secretary to Government Labour and
Employment Department,
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2. The Labour Officer,
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S.VAIDYANATHAN, J.,

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in Writ Petition No.2050 of 2015

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