BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 19.10.2023

ORDER PRONOUNCED ON : 09.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

Rev.Aplc(MD)Nos.81 & 82 of 2023
in
C.M.A(MD)Nos.422 of 2017 & 133 of 2023
and
C.M.P(MD)Nos.14400 & 14402 of 2023

(In Rev.Aplc(MD)No.81 of 2023)

N.Vanjimuthu ... Applicant / Appellant

Vs

1.Ravi & Company Bankers,
Door No.62,
Kulandaivelan Street,
Dindigul.

Muthaiyar (Died)

2.M.Ravichandran

3.Ganesh Babu

4.Ramesh Babu

5.M.Vasudevan

6.The Competent Authority,
Commissioner of Land Administration,
The District Revenue Officer,
Dindigul.

7.M/s.Soundararaja Mills (P) Limited,
Represented by its Registered Power of Attorney Agent,
Vimalkannan,
Door No.15/16,
Manthaiamman Kovil Street,
Cumbum. ... Respondents / Respondents

Prayer: Review Application is filed under Order 47, Rule 1 of C.P.C r/w Section 114 C.P.C to review the order, dated 01.06.2023 passed in C.M.A(MD)No.422 of 2017 on the file of this Court and allow the review application.

(In Rev.Aplc(MD)No.82 of 2023)

N.Vanjimuthu ... Applicant / Appellant

Vs

1.The Competent Authority,
The District Revenue Officer,
Dindigul.

Ravi & Company Bankers,
No.62,
Kulandaivelan Street,
Dindigul, Represented by Muthaiyar (Died).

2.M.Ravichandran

3.Ganesh Babu

4.Ramesh Babu

5.M.Vasudevan

6.M/s.Soundararaja Mills (P) Limited,
Represented by its Registered Power of Attorney Agent,
Vimalkannan,
Door No.15/16,
Manthaiamman Kovil Street,
Cumbum. ... Respondents / Respondents

Prayer: Review Application is filed under Order 47, Rule 1 of C.P.C r/w Section 114 C.P.C to review the order, dated 01.06.2023 passed in C.M.A(MD)No.133 of 2023 on the file of this Court.

(In Both Cases)

For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Mr.V.Janakiramulu

For R-1, R-3 to R-6 : Mr.NL.Rajah
Senior Counsel
for M/s.Benazir Begum

COMMON ORDER

These review applications have been filed seeking to review a common order passed by this Court on 01.06.2023 in C.M.A(MD)Nos.422 of 2017 and 133 of 2023.

2.The facts leading to the filing of these review applications are as follows:

(i) One Ravi and Company Bankers were a defaulting financial institution and proceedings against them were initiated under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997 (hereinafter referred to as 'TNPID Act'). The Government of Tamil Nadu in exercise of powers under Section 3 of the TNPID Act had issued G.O(Ms)No. 1362 (Home [Courts. IIA] Department), dated 18.12.2000 provisionally attached the properties of the said financial institution. One among the property is a Hotel by name Swagat located at Dindigul. The said order of attachment was made absolute by the TNPID Court on 19.05.2003. The review applicant herein has purchased the said property on 11.08.2003 under a registered sale deed in document No.1546 of 2003.

(ii) According to the review applicant, he entered into possession of the Hotel by way of lease in early 2000 and he had developed the said property. He had also cleared the loan amount of the financial institution by repaying the deposit to the complainants. It is the further case of the review applicant that the partners of the said financial institution were acquitted from the criminal case on 29.12.2016. Thereafter, the defaulting financial institution had filed I.A.No.10 of 2017 to cancel the order of attachment and to hand over possession of the property to them. The review applicant herein, as purchaser of the property had filed I.A.No.59 of 2016 to raise the order of attachment. The TNPID Court had independently heard both the applications and passed orders on the same day. I.A.No.10 of 2017 filed by the financial institution was allowed and I.A.No.59 of 2016 filed by the purchaser was rejected on the ground that he had purchased the property after the order of attachment and hence, the sale deed is null and void. Challenging these two orders, the review applicant had filed C.M.A(MD)Nos.422 of 2017 and 133 of 2023.

(iii) By way of a common order, this Court had dismissed both the appeals on the ground that the possession of the review applicant is traceable only to the Court orders and therefore, on termination of TNPID proceedings, the possession should be re-handed over only to the original owner. This Court has further rendered a finding that the review applicant has to work out his remedies in O.S.No.276 of 2019 pending on the file of the Principal District Court, Dindigul, which was filed for declaration of title and permanent injunction. Challenging the said orders, the review applicant had filed S.L.P(C)Nos.17332 and 17333 of 2023 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its order, dated 28.08.2023 had dismissed the S.L.Ps with an observation that there is no infirmity in the impugned judgment. However, proceeded to observe that the orders passed in the C.M.A(MD)Nos.422 of 2017 and 133 of 2023 arising out of attachment proceedings, should be treated to be only for these proceedings and have no bearing on the pending suit. The Hon'ble Supreme Court was pleased to further observe that the said suit should be decided on its own merits on the basis of evidence / material adduced by the parties. After the dismissal of the S.L.Ps, the present review applicant has been filed on the ground that there is error apparent on the face of the record while passing common orders in C.M.A(MD)Nos.422 of 2017 and 133 of 2023.

3.Contentions of the learned Senior Counsel appearing for the review applicant:

(i) Any sale deed entered into by a party to a litigation after an order of attachment is null and void only as against the creditors / depositors. The order of attachment is being passed only to protect the interest of the complainant / plaintiff. In the present case, the claim of all the depositors having been settled by the review applicant, the sale deed can never be considered to be null and void. The said plea can be raised only by the complainant / depositors and not by the vendor.

(ii) The revenue officials have no power either to take possession or hand over possession of the property which is brought under an order of attachment. An order of attachment will never disturb the possession of a party. Therefore, the revenue officials can never be directed to take possession from the purchaser and hand it over to the vendor.

(iii) There are no provisions under the TNPID Act to decide about the title or possession of the property. The TNPID Court was not right in allowing the application to hand over possession of the property to the vendor. The order passed by the TNPID Court is without jurisdiction and the same ought not to have been confirmed by this Court.

(iv) When the review applicant purchased the property, the order of attachment was not entered into in the encumbrance certificate and hence, he is a *bona fide* purchaser. After purchase, he had developed the property.

(v) The observations of this Court that no lease deed has been filed is not factually correct and in fact a copy of the lease deed has been annexed to the additional typed set of papers filed by the review applicant at the time of hearing of both the appeals.

(vi) When the original proceedings get terminated, automatically an order of interim attachment will lose all its colour and the *status quo ante* of the parties would get restored.

(vii) In the affidavit filed in support of W.P(MD)No.11191 of 2013, the financial institution has specifically admitted that they have leased out the property to the review applicant and the same has not been properly appreciated.

(viii) By an order of the District Revenue Officer, dated 16.12.2006, the possession was handed over only to the review applicant and the observation of the Court that the possession was handed over to the vendor is not factually correct. The vendor, who had filed W.P(MD)Nos.10537 and 11762 of 2006, challenging the possession granted to the review applicant was dismissed as withdrawn.

(ix) The TNPID Court as well as this Court have ignored the payments made by the review applicant towards the repayment made to the depositors and in fact the same has been admitted by the respondents in their affidavit filed before this Court.

(x) Once an order of attachment is raised, it validates all other prior transactions that have taken place during the subsistence of the order of attachment and therefore, this Court was not right in holding that the sale deed in favour of the review applicant is null and void.

(xi) The review applicant has always been in possession of the property by virtue of the District Revenue Officer order, dated 16.12.2006 and the same has been confirmed by this Court in W.P(MD)No.4124 of 2016, dated

22.07.2016.

(xii) Even assuming if the sale deed is null and void by virtue of Rule 7 of the TNPID Rules, in view of lifting of order of attachment, the possession of the premises reverts back to the review applicant by virtue of the lease deed and the sale deed. Therefore, this Court was not right in confirming the order of the TNPID Court, wherein possession was handed over to the vendor of the review applicant.

(xiii) The learned Senior Counsel had relied upon the judgments of the Hon'ble Supreme Court reported in ***1985 (2) SCC 167, 1987 (4) SCC 78, 2005 (6) SCC 344, 1939 (2) MLJ 822, AIR 1915 Calcutta 478, AIR 1919 Oudh 4, 2006 (3) SCC 49, 2006 (2) L.W 572, 2021 SCC Online Mad 1792, 2022 Live Law (SC) 1034*** and ***2016 (3) L.W 513*** to impress upon the Court that the order of attachment would be void only as against the depositors and the said defence cannot be raised by the vendor.

4. Contentions of the learned Senior Counsel appearing for the respondents are as follows:

(i) The grounds raised in the review application are nothing but re-arguing the entire appeal and therefore, they are not in consonance with order 47, Rule 1 of CPC.

(ii) The analogy of comparing Rule 7 of the TNPID Rules with Section 64 of CPC has been raised for the first time and such a plea cannot be raised in the review application.

(iii) Most of the grounds raised in the review are touching upon the merits of the case and therefore, the review application is not maintainable.

(iv) The Hon'ble Supreme Court has passed orders on merits. The review applicant has sought clarification from the Hon'ble Supreme Court with regard to the observations made by this Court in the attachment proceedings. Therefore, it is clear that the petitioner had agreed to approach the Civil Court to declare his title and decide the dispute about the possession of the property. Therefore, after the dismissal of the S.L.P by the Hon'ble Supreme Court on merits, the present review application is not maintainable.

5. I have carefully considered the submissions made on either side and perused the materials available on record.

Discussion:

6. It is not in dispute that the TNPID Court had raised the order of attachment after acquittal of the partners of the financial institution by an order, dated 29.12.2016. After the attachment order is raised, a dispute has arisen between the accused persons (vendor) and the purchaser of the property with regard to the possession of the property.

7. Admittedly, the property in dispute was subjected to an order of interim attachment by the Government on 18.12.2000. At the time of arguments in the appeal, the then learned Senior Counsel had contended that the review applicant had entered into possession of the property in early 2000. This submission was made probably in order to antedate the lease to get over the order of interim attachment. This Court after perusing the records found that no lease deed was produced either before the Tribunal or before this Court indicating the lease in the early 2000. Therefore, the contention of the learned Senior Counsel appearing for the review applicant that this Court has ignored the lease deed produced along with the additional typed set of papers in C.M.A(MD)No.422 of 2017 may not be factually correct.

8. In the typed set of papers, an undated lease deed was annexed and the date could be deciphered only from the date mentioned by an attesting witness which reflects as 02.12.2002. Therefore, at the most, the possession of the review applicant could be traced only to 02.12.2002 (i.e.,) after the order of attachment made by the Government.

9. The review applicant was impleaded as seventh respondent in the attachment proceedings before the TNPID Court. Only after hearing the review applicant, the order of attachment was made absolute by the TNPID

Court. There is a reference about the pendency of proceedings before the TNPID Court in the sale deed, dated 11.08.2003. Therefore, it is difficult to believe that the review applicant was not aware of the attachment proceedings just because the order of attachment was not entered into in the encumbrance certificate.

10. The primary contention of the learned Senior Counsel appearing for the review applicant is that the vendor had sought permission from the Commissioner of Land Administration to lease out the property and only thereafter, the property was leased out to him and therefore, the possession is not traceable to the Court orders. It is true that by proceeding, dated 26.02.2001, the Commissioner of land Administration have issued directions to the District Collector to give suitable instructions to the Revenue Divisional Officer to permit the owner of the Hotel to run it after taking possession of the property. However, there is no reference about the review applicant in the said order.

11. In W.P(MD)No.5342 of 2001 by an order, dated 22.07.2001, this Court has directed the revenue officials to hand over possession to the original owner on condition that he should remit a sum of Rs.50,000/- per month until further orders. No doubt by an order, dated 16.12.2006, the

revenue officials have handed over possession of the property to the review applicant herein, with a specific rider that the said order is subject to the orders passed by the TNPID Court. This Court by an order, dated 22.07.2016 in W.P(MD)No.4124 of 2016 has specifically observed that the possession of the purchaser pending criminal proceedings is only in the nature of custodian or a receiver and hence, he will not be entitled to claim any right or interest pursuant to the said possession. Therefore, any possession said to have been derived through an order, dated 16.12.2006 has been characterised by this Court as the possession of a custodian.

12. The learned Senior Counsel appearing for the review applicant has made elaborate submissions with regard to the manner of settlement of amount to the depositors and he claimed as a *bona fide* purchaser for valuable consideration. He had further contended that the entire amount was settled only by the review applicant and not by the vendor. As rightly pointed out by the learned Senior Counsel appearing for the respondent these submissions have to be addressed only before the Civil Court, where a suit for declaration of title and permanent injunction are pending.

13. The other arguments relating to the voidness of the sale deed, dated 11.08.2003 are concerned, the Hon'ble Supreme Court has specifically

pointed out that dehors of these observations, the Civil Court has to consider the said issue independently. Therefore, this Court has not considered the judgments cited by the review applicant on the said issue so that the Civil Court can independently consider the said legal issue.

14. When the review applicant has admittedly entered into possession of the property after the interim order of attachment, his possession is always subject to the orders of the TNPID Court and the orders passed by this Court in W.P(MD)No.4124 of 2016, dated 22.07.2016.

15. The contentions raised by the review applicant have already been raised before the TNPID Court and before this Court in appeal. Therefore, the same issues cannot be raised for the second time in the review application especially after the S.L.P has been dismissed with certain observations. The Hon'ble Supreme Court in a decision reported in ***2023 INSC 963 Review Petition (Civil) No.1621 of 2023 in Civil Appeal No.1661 of 2020 Sanjay Kumar Agarwal Vs. State Tax Officer (1) and another***, dated 31.10.2023 in paragraph No.16 has summarised the grounds on which a review could be maintained which is extracted as follows:

> "*16. The gist of the afore-stated decisions is that:-*
> *(i) A judgment is open to review inter alia if there is a*

mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) 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 record justifying the Court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47, Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."

(v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision / judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review."

13. In the light of the judgment of the Hon'ble Supreme Court, it is clear that the petitioner having failed to point out any error apparent on the

face of the record, has attempted to re-argue the appeal.

Conclusion:

14. In view of the above said deliberations, there are no merits in the review applications and the same stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

09.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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The District Revenue Officer,
Dindigul.

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