BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.04.2023

Delivered on : 05.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Rev.Appl.(MD)No.1 of 2023
in
C.M.A(MD)No.950 of 2021

R.Esther Jeyarani .. Petitioner/Appellant

Vs.

1.M/s.Nishigandha Polymers Pvt., Ltd.,
rep.by it's Whole Time Director,
Rohit Kanthilal Ravani
Rustom Building, 3rd Floor,
29- Veernariman Road,
Mumbai – 400 058,
Maharastra State.

2.K.Rohit Kanthilal Ravani

3.Sunil More

4.Ganga Devi More

5.Kiran More

6.Anil More

7.M/s.Dharti Dredging and Infrastructure Ltd.,
Rep. by Managing Director A.Rajendra,
No.6-3-1113/2, DDIL Bhavan,
B.S.Maktha, Begumpet,
Hydrabad – 500 016.

8.A.Rajendra

9.The District Collector,
Tuticorin District,
Koramballam, Tuticorin. .. Respondents/ Respondents

PRAYER : Review Application filed under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code, against the order, dated 31.10.2022 in C.M.A(MD)No.950 of 2021, confirming the order passed in P.O.P.No.180 of 2016, dated 06.09.2021, on the file of the Principal District Court, Thoothukudi.

For Petitioner : Mr.E.Om Prakash, Senior Counsel,
for Mr.V.Veerapandian, Adocate.

For Respondents : Mr.T.S.R.Venkatramana, Senior Counsel,
for Mr.N.Sylappakalyan, Advocate.
for R1 to R3 and R6.

: Mr.S.Deenadhayalan, for R7 and R8.

: Mr.M.Sarvagan,
Additional Government Pleader, for R9.

: No Appearance, for R4.

ORDER

The Review application is directed against the judgment passed in C.M.A(MD)No.950 of 2021, dated 31.10.2022, confirming the order passed in P.O.P.No.180 of 2016, dated 06.09.2021, on the file of the Principal District Court, Thoothukudi, in dismissing the petition filed under Order XXXIII Rule 1 of the Code of Civil Procedure.

2. The petitioner is the proposed plaintiff and she filed a suit under Order XXXIII Rule 1 and Order VII Rule 1 of C.P.C., to declare her as indigent person and permit her to institute the suit without paying Court fee for recovery of Rupees six crores from the respondents jointly or severally along with interest and also for recovery of Rs.3,11,10,000/- jointly or severally along with interest. The respondents 1 to 6 and the respondents 7 and 8 have filed counter statements raising serious objections to declare her as indigent person. During enquiry, the petitioner has examined herself as P.W.1 and examined her husband as P.W.2 and exhibited seven documents as Ex.P.1 to Ex.P.7. The respondents have not chosen to adduce any oral evidence, but exhibited three documents as

Ex.P.1 to Ex.P.3. The learned Principal District Judge, Thoothukudi, upon considering the evidence available on record and on hearing the arguments of both the sides, has passed an order dated 06.01.2021, dismissing the petition. Aggrieved by the said order of dismissal, the plaintiff has preferred a Civil Miscellaneous Appeal in C.M.A(MD)No.950 of 2021, before this Court. This Court, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment, dated 31.10.2022, dismissing the appeal and thereby confirming the order of the trial Court dismissing the petition filed under Order XXXIII Rule 1 of C.P.C. Aggrieved by the dismissal of the appeal, the appellant/plaintiff has filed the present application seeking review of the above said judgment.

3. Heard Mr.E.Om Prakash, learned Senior Counsel appearing for the petitioner; Mr.T.S.R.Venkatramana, learned Senior Counsel appearing for the respondents 1 to 3 and 6; Mr.S.Deenadhayalan, learned counsel appearing for the respondents 7 and 8 and Mr.M.Sarvagan, learned Additional Government Pleader appearing for the 9th respondent.

4. At the out set, it is pertinent to note that the petitioner has filed a lengthy review petition under Section 114 of C.P.C, running to 45 pages, raising the pleadings elaborately.

5. Before entering into further discussion, let us consider the scope of review application under Order XLVII Rule 1 r/w 114 of the Code of Civil Procedure.

6. A combined reading of Order XLVII and Section 114 of C.P.C makes it clear that a review petition would be maintainable on (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant (or) could not be produced by him at the time when the decree was passed or order was made; (ii) on account of some mistake or error apparent on the face of the record ; or (iii) for any other sufficient reason.

7. It is necessary to refer the following passages in the order passed in ***Rev.Appl.(MD)No.57 of 2022 [The Deputy Registrar of Co-operative Societies (Housing) and others vs. Murugan and others]***

reported in ***MANU/TN/8657/2022***, wherein, this Court has held as follows:

> *" 8. It is settled law that in exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. The Hon'ble Supreme Court in Kerala State Electricity Board Vs Hitech Electrothermics & Hydropower Ltd.and others (Review Petition (civil) 238 of 2003 dated 10/08/2005), has specifically observed as follows:*
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> > *"10 .... In a review petition it is not open to this Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the Court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of*

the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

9. It is well settled that the review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 C.P.C. In Col. Avtar Singh Sekhon vs Union Of India reported in 1981 SCC (1) 168, the Hon'ble Supreme Court has held that a review of an earlier order cannot be done unless the Court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermines its soundness.

10. The Hon'ble Apex Court in Sow Chandra Kanta And Another vs Sheik Habib reported in 1975 SCC (4) 457 has observed that a review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like any grave error has crept in earlier by judicial fallibility and- that the present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.

11. Recently, the Hon'ble Supreme Court in S. Madhusudhan Reddy vs V. Narayana Reddy in Civil Appeal Nos.5503-04 of 2022, dated 18.08.2022 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 of review under Order 47 Rule 1 CPC. In exercise of this 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".*

12. It is pertinent to note that power of review is not to be confused with the appellate power. The Hon'ble Supreme Court in M/S Jain Studios Limited Through its President vs Shin Satellite Public Co. Ltd in Review Petition (Civil) No.5970 of 2006, dated 11.07.2006, has observed as follows:

> *"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded*

adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases."

8. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***Board of Control for Cricket in India and another Vs. Netaji Cricket Club and others*** reported in ***(2005) 4 SCC 741*** and argued that some mistakes on the part of the Court is a ground to review the impugned order or judgment and the relevant passages of the said decision are extracted hereunder :

89. *Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.*

90.Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case.

The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

9. In order to counter the said arguments, the learned Senior Counsel appearing for the respondents 1 to 3 and 6, has relied on the following decisions of the Hon'ble Supreme Court.

(i) ***Harinagar Sugar Mills Ltd and another Vs. State of Bihar and others*** reported in ***(2006) 1 SCC 509***.

"12.*With the help of learned counsel for the parties, we have gone through the grounds on which the review had been sought by the appellants of the order dated 30-8-2001. In our opinion, the High Court has rightly rejected the same by observing that the appellants wanted to reargue the points which had been rejected by the High Court by its order dated 30-8-2001 against which the special leave petition, preferred by the appellants, had already been dismissed. Though the review may have been maintainable but the appellants could not be allowed to reagitate the points which had already been decided by the Court. The review could be granted only if there was a mistake apparent on the face of the record. We do not* *find any such apparent mistake on the face of the record. The High Court in its order dated 30-8-2001 had taken the view that the amount deposited in the Court by the appellants was in lieu of the market fee for the benefit of the Market Committee, and therefore the Market Committee was entitled to receive the same. Two views are possible on this point but the same cannot be a ground for reviewing the said order as it does not fall within the scope of review jurisdiction.*"

(ii) ***Shanti Conductors Private Limited Vs. Assam State Electricity Board and others*** reported in ***(2020) 2 SCC 677***.

25. Insofar as other submissions of Dr. Singhvi that Act, 1993 is retroactive in nature and further amount due at the time of the commencement of the Act ought to attract interest of the Act, 1993, all these submissions have been elaborately considered in the judgment dated 23.01.2019, which have been considered on merits. The scope of review is limited and under the guise of review, petitioner cannot be permitted to reagitate and reargue the questions, which have already ben addressed and decided. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer the judgment of this Court in Parsion Devi and Others Vs. Sumitri Devi and Others, (1997) 8 SCC 715, wherein in paragraph 9 following has been laid down:-

"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 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 27 cannot be allowed to be "an appeal in disguise."

10. Bearing the above legal position in mind, let us consider the case on hand.

11. The learned counsel for the petitioner would submit that the petitioner had two accounts with the State Bank of India bearing Nos.30352741025 and 32816011500; that the said two accounts are neither saving accounts nor current accounts, but are loan accounts; that the first account is Transport Operator Loan account and as on 20.06.2016, the outstanding due amount was Rs.11,11,461/- and as on

31.10.2022, the outstanding due amount got increased by four times and the amount due is Rs.41,37,559/-; that the second account is a home loan account and as on 01.01.2018 total loan outstanding amount was Rs. 27,59,478/- and the same got increased by two times and as on 31.10.2022, the due amount was Rs.57,74,038/-; that this Court has misconstrued that the said accounts as saving accounts and on that basis has come to a decision that though the amounts were available in the Bank account of the petitioner, the same were suppressed.

12. No doubt, this Court on perusing Ex.P.6 has come to a decision that the above said two accounts are the personal accounts of the petitioner and that some amounts were available in those accounts and that the petitioner has not furnished the above accounts particulars and the amount available in the account. As rightly pointed out by the learned counsel for the petitioner, the above said two accounts are the loan accounts and the outstanding amounts shown are the amounts due by the petitioner to the concerned Banks.

13. As rightly contended by the learned counsel for the petitioner, it is the mistake on the part of this Court, but that by itself is not

sufficient enough to revisit the impugned judgment. This Court while considering the above bank accounts, has also considered the petition filed under Section 9 of the Arbitration and Conciliation Act against the seventh respondent and Visakapattinam Port Trust before the City Civil Court, Hyderbad in O.P.No.832 of 2014 and referred the second passage found in the said O.P, wherein it has been specifically stated that she has to mobilize all the required drilling machines including accessories, all equipment as per the contract. Even in the plaint, the petitioner has specifically stated that having received a sum of Rs.6,00,000/-, the first respondent has failed to mobilize the materials and equipment to the petitioner and hence, the petitioner was forced to mobilize the materials and equipment from her own resources. Considering the averments, this Court in the impugned judgment has specifically observed that the petitioner has neither averred nor produced any documents to show as to from what resources, she had mobilized the materials and equipment.

14. The learned counsel for the petitioner would submit that they have already filed the house valuation report issued by M.Olaganatha Sankar, Approved Valuer for Banks and panel valuer of the State Bank of India and also the private engineer valuation report given by

S.Senthil Arumugam, Registered Civil Engineer, Tuticorin and that without considering the same, this Court has come to a wrong conclusion with respect to the value of the house property.

15. It is pertinent to note that this Court has specifically pointed out that in the counter statement, the respondents have sought for appointment of a valuer to value the house in dispute. But in the reply counter, the revision petitioner has taken a stand that since she has not under valued her house, there is no need to appoint any valuer.

16. The revision petitioner in her chief examination has specifically stated that a sum of Rs.71,81,551/- is allegedly due by her to the State Bank of India, SME Branch with regard to the house mortgage loan and her husband/P.W.2 in his cross examination would admit that he is owning house property and also several vehicles and that the valuse of the mortgaged property is from Rs.1,25,00,000/- to Rs.1,45,00,000/-.

17. The main contention of the revision petitioner is that the trial Court as well as this Court have failed to consider the petitioner's current economic status and the findings came to be given only on the basis of the

economic status of the revision petitioner for the period prior to 2016.

18. Admittedly, the revision petitioner being the Proprietress of M/s.RBJ Blue Star Enterprises, was doing business of underwater rock drilling, blasting, mining and transport operations from 2000 onwards and admittedly, she had undertaken work orders for very huge amounts, which includes the work orders for Rs.32.53 Crores at Visahapattinam port.

19. The revision petitioner in her chief examination affidavit has stated that she had obtained loan of Rs.42,52,000/- from one Jose Aul Celia and in cross examination, she would admit that she had taken loan of Rs.42,52,000/- from her friend Jose Arul Celia without any security. Though the revision petitioner has alleged that she had purchased and sold the vehicles, including the Taurus tipper lorry, she has not furnished any particulars with regard to the same. Though the revision petitioner has specifically alleged that she had sold the engine and other parts of the Taurus lorry and she had obtained loan of Rs.7,00,000/- for purchasing the said lorry, she has not furnished any particulars as to who has paid Rs.7,00,000/- for purchasing the lorry and the particulars as to when and to whom and for what price, she sold the engine and other parts of the lorry.

20. It is pertinent to note that the revision petitioner in her reply statement has specifically stated that in order to avoid her property is being auctioned, she has sold her car and mobilized loan amount from private parties, but during enquiry, she has neither produced materials to substantiate the same nor even particulars were furnished. As rightly contended by the learned senior counsel for the respondents, all other aspects that are canvassed in the present review application were already considered and decided by this Court.

21. It is settled law that under the garb of filing a review petition, any party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. It is pertinent to note that the power of review is not to be confused with the power of the appellate Court, which enables the Superior Court to correct errors committed by a subordinate Court. The Hon'ble Apex Court in ***M/s.Jain Studios Limited through its President Vs. Shin Satellite Public Co, Ltd.***, in Review Petition (Civil) No.5970/2006, dated 11.07.2006, has held as follows:

> *"11.So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases."*

22. The Hon'ble Supreme Court in ***Inderchand Jain (dead) through LRs vs Motilal (dead) through LRs*** reported in ***(2009) 5 CTC 365***, has specifically observed that the power of review may not be exercised on the ground that the decision was erroneous on merits. Except the mistake committed with regard to the bank accounts of the petitioner, the petitioner has canvassed the very same points that were already raised and decided by this Court. As already pointed out, the petitioner cannot re-argue the matter on merits. Except the mistake above referred, the petitioner has not shown any other mistake or error apparent on the fact of

the record or any other ground sufficient enough to revisit the impugned judgment. Hence, this Court concludes that the review application is absolutely devoid of merits and the same is liable to be dismissed.

23. In the result, the review application is dismissed. No costs.

05.06.2023

NCC : Yes/No
Index : Yes / No
Internet: Yes / No
das

To

The Principal District,
Thoothukudi.

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
Rev.Appl.(MD)No.1 of 2023
in
C.M.A(MD)No.950 of 2021

05.06.2023