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CMP.No.3774 of 2024
in Rev.Appln.SR.No.8439 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE G. ARUL MURUGAN

C.M.P.No.3774 of 2024
in Rev.Appln.SR.No.8439 of 2024

S.Ganeshraja, (Died)

... Appellant

T.L.Dhanalakshmi.

... Applicant

/versus/

1. The Deputy Salt Commissioner,
Office of the Deputy Salt Commissioner,
No.26, Haddaws Road, Satri Bhavan,
Chennai – 600 006.
2. The Superintendent of Salt, Madras Circle,
Office of the Deputy Salt Commissioner,
No.26, Haddaws Road, Satri Bhavan,
Chennai – 600 006.
3. Deputy Superintendent of Salt,
Kovalam Salt Factory,
Kelambakkam Road,
Kovalam - 603 112.



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4. Deputy Superintendent of Salt,
Kelambakkam Road,
Kovalam – 603 112.
Chengalpattu Taluk and District.

... Respondents

Prayer: Civil Miscellaneous Petition has been filed under Section 5 of the Limitation Act, to condone the delay of 2680 days in filing the above Review Application to review the judgment and decree dated 31.08.2016 made in S.A.No.1214 of 2016 before this Hon'ble Court.

For Petitioner : Mr.T.Dhanasekaran

ORDER

The petitioner has filed this Review Application SR.No.8439 of 2024 seeking to review the judgment and decree dated 31.08.2016 made in S.A.No.1214 of 2010 and also filed C.M.P.No.3774 of 2024, seeking to condone the delay of 2680 days in filing the Review Application.



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2. The petitioner herein claims to be the legal heir of S.Ganeshraja who is the plaintiff in the suit. S.Ganeshraja had filed the suit in O.S.No.12 of 1996, on the file of District Munsif Court, Chengalpet and the suit was dismissed by judgment and decree dated 19.11.2002. Aggrieved, the plaintiff had filed appeal in A.S.No.6 of 2003 on the file of Additional Subordinate Judge, Chengalpet and by judgment and decree dated 29.07.2004 and the said appeal was also dismissed.

3. Challenging the concurrent finding of fact, the plaintiff had filed S.A.No.1214 of 2010 before this Court.

4. This Court, by judgment and decree dated 31.08.2016 dealt with the appeal elaborately on merits and dismissed the Second appeal. The plaintiff had thereafter also taken it on appeal before the Hon'ble Supreme Court in S.L.P.(C).No.7192 of 2017 and the Hon'ble Supreme Court by order dated 14.08.2017 was pleased to dismiss the



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S.L.P and passed the following order:

*“Application for bringing legal heirs
of the deceased petitioner is allowed.*

*Having heard Mr.A.T.M.Ranga
Ramanujam, learned senior counsel for the
petitioner, we do not perceive any merit in
this special leave petition and it is
accordingly dismissed.”*

5. As such the claim made by the plaintiff was dismissed before
all the Courts and attained finality as early as 14.08.2017.



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6. The petitioner herein claiming to be the legal heir the plaintiff S.Ganeshraja based on a *Will*, has come up with present Review Application SR.No.8439 of 2024, seeking to review the judgment passed by this Court dated 31.08.2016 in S.A.No.1214 of 2010. Along with the Review Application, the petitioner has also filed application to condone the delay of 2680 days in filing the Review Application.

7. The Learned Counsel for the petitioner submits that when the Second Appeal was decided by the Court, this Court has not dealt with the questions of law framed in the Second Appeal and the Court did not arrive at an independent findings and therefore, the petitioner is entitled to seek for review of the judgment on this ground alone. Further, the Learned Counsel for the petitioner submitted that even though the SLP filed by the plaintiff was dismissed, the Hon'ble Supreme Court did not dismiss the appeal on merits and therefore, it



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will not be a bar for the petitioner to file a review before this Court.

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8. The Learned Counsel for the petitioner further contended that
since the Covid-19 period intervened, the petitioner was not able to



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immediate approach this Court and file a review and therefore, there had been some delay in filing the review application.

9. Heard Mr.T.Dhanasekaran, Learned Counsel for the petitioner and perused the materials available on record.

10. It is seen that the plaintiff had filed the suit in O.S.No.12 of 1996 dated 19.11.2002 as against the respondents herein claiming title over the suit properties. After contest, the suit was dismissed and the appeal filed thereon in A.S.No.6 of 2003 was also dismissed. The plaintiff had further filed the Second Appeal No.1214 of 2010 and after elaborate hearing, this Court, by order dated 31.08.2016 has dismissed the appeal, confirming the judgment and decree of the Lower Appellate Court and the trial Court.

11. On perusal of the judgment shows that this Court has dealt



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with each and every aspect of the claim made by the plaintiff and have ultimately dismissed the appeal. The plaintiff had also filed SLP before the Hon'ble Supreme Court, challenging the judgment passed by this Court in Second Appeal and the Hon'ble Supreme Court, after hearing the learned Counsels was pleased to dismiss the appeal observing that they did not perceive any merit in the special leave petition.

12. When the judgment of this Court in the Second Appeal has already been challenged and the Hon'ble Supreme Court after considering the SLP was pleased to dismiss the same holding that they do not perceive any merits in the appeal and the order was also passed as early as 14.08.2017, the entire dispute in the *lis* has attained finality as on 14.08.2017 itself.

13. The petitioner has now come up with the Review Petition,



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seeking to review of the Judgment of this Court in S.A. No. 1214 of 2016, under O 47 R 1 of CPC read with Section 114 of CPC. The main grounds urged in the review petition and the arguments advanced by the learned counsel is that this Court has not answered the substantial question of law and have rendered independent finding in respect of the title claimed by the plaintiff in respect of particular survey number. By no stretch of imagination, this grounds and arguments advanced by the petitioner can be termed as error apparent on the face of the record for this court to entertain the review petition.



Review is not an appeal in disguise and in the name of review, the petitioner cannot be allowed to reargue the appeal.

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14. Section 114 of CPC and Order 41 Rule 1 of CPC are extracted here under for easy reference,

“Sec. 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 preferred;

(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.”

“Order 41 Rule 1: 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



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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.

(2) A party who is not appealing from a decree or Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

15. Therefore the above provisions makes it clear that a review application would be maintainable only on the grounds enumerated therein and cannot be filed on the ground that the issues



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has not been correctly decided on merits.

16. At this juncture, it will be use full to refer the decision of the Honourable Supreme Court in the case of ***Perry Kansagra v. Smriti Madan Kansagra***, reported in **(2019) 20 SCC 753**, wherein the Hon'ble Court observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order and a rehearing of the matter is impermissible in law. The Hon'ble Court was pleased to lay down the following principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC,:

“(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.



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(iii) *Power of review may not be exercised on the ground that the decision was erroneous on merits.*

(iv) *Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.*

(v) *An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit."*

17. It will also be use full to refer the decision of the Honourable Supreme Court in the case of ***Shanti Conductors (P) Ltd. v. Assam SEB***, reported in (2020) 2 SCC 677, wherein the Hon'ble Court observed and held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It is further observed that 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 under Order 47 Rule 1 CPC.



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18. It will also be useful to refer the decision of the Hon'ble Supreme Court in the case of **S. Madhusudhan Reddy v. V. Narayana Reddy and Others**, reported in **2022 SCC OnLine SC**

1034. The relevant portions are extracted hereunder,

"22. It is also settled law that in exercise of review jurisdiction, the Court cannot reappreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. In Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd, this Court observed as follows:

10.In a review petition it is not open to this Court to reappreciate 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.

23. Under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. This point has been elucidated in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. where it was held thus:

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.

12. When a prayer to appoint an arbitrator by the



applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted.

24. After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;



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(iii) *Any other sufficient reason.*

The words “any other sufficient reason” has been interpreted in **Chajju Ram v. Neki**, and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in **Union of India v. Sandur Manganese & Iron Ores Ltd.,**.

20.2. *When the review will not be maintainable:—*

(i) *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*

(ii) *Minor mistakes of inconsequential import.*

(iii) *Review proceedings cannot be equated with the original hearing of the case.*

(iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

(v) *A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.*

(vi) *The mere possibility of two views on the subject cannot be a ground for review.*

(vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*

(viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*



(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

25. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, this Court was examining an order passed by the Judicial Commissioner who was reviewing an earlier judgment that went in favour of the appellant, while deciding a review application filed by the respondents therein who took a ground that the predecessor Court had overlooked two important documents that showed that the respondents were in possession of the sites through which the appellant had sought easementary rights to access his home-stead. The said appeal was allowed by this Court with the following observations:

“3 ...It is true as observed by this Court in **Shivdeo Singh v. State of Punjab** there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be



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exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

26. In *State of West Bengal v. Kamal Sengupta*, this Court emphasized the requirement of the review petitioner who approaches a Court on the ground of discovery of a new matter or evidence, to demonstrate that the same was not within his knowledge and held thus:

“21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.”

27. In the captioned judgment, the term ‘mistake or error apparent’ has been discussed in the following words:



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“22. The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision”.

28. In *S.Nagaraj v. State of Karnataka*, this Court explained as to when a review jurisdiction could be treated as statutory or inherent and held thus:

“18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ



jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court”.

29. In *Patel Narshi Thakershi v. Shri Pradyuman Singhji Arjunsinghji*, this Court held as follows:

“4..... It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.....”

30. In *Ram Sahu (Dead) Through LRs v. Vinod Kumar Rawa*, citing previous decisions and expounding on the scope and ambit of Section 114



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read with Order XLVII Rule 1, this Court has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the Section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order XLVII Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can appellate power be exercised in the guise of exercising the power of review.

31. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction



between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, at least analogous to those specified in the rule”.

19. As such from the above referred decisions, it is clear that the grounds raised by the petitioner in the review petition does not fall with the contours of Order 47 Rule 1 CPC read with Section 114 CPC and the review petition filed by the petitioner is not sustainable.

20. Further, when the petitioner has approached this Court by filing the Review Application SR along with the condone delay petition that too with huge delay of 2680 days, it is for the petitioner to sufficiently explain the delay caused in filing this petition.



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21. It will be useful to refer the decision of the Hon'ble Supreme Court in **Basawaraj vs Land Acquisition Officer**, reported in **2013 (14) SCC 81**, where it has categorically held that the applicant must satisfy the court that he was prevented by any sufficient cause from prosecuting his case and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. Relevant portion of the Judgment is usefully extracted hereunder,

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that



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the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose..

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay



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without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature".

22. The perusal of the affidavit filed in support of the condone delay shows that due to intervening Covid-19 period, the petitioner was not able to file the review. When the orders of the Hon'ble Supreme Court was passed as early as 14.08.2017 and in fact, the Covid-19 period arose only in the year 2020-2021. As such there is absolutely no reason given by the petitioner for the delay for the period of 6 years from 2017 to 2019 and 2021 to 2023, excluding the entire 2 years towards covid period in 2020 and 2021. When the petitioner has not furnished any satisfactory reasons or sufficient cause for the huge delay in filing the petition, this Court is unable to entertain this petition.

23. In such circumstances, the petition to condone delay of



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2680 days in filing the review application is dismissed and the Review

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Application is dismissed at SR stage itself. However there shall be no
order as to costs.

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Index :Yes/No.

Internet :Yes/No.

Speaking Order/Non-Speaking order
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Office of the Deputy Salt Commissioner,
No.26, Haddaws Road, Satri Bhavan,
Chennai – 600 006.
2. The Superintendent of Salt, Madras Circle,
Office of the Deputy Salt Commissioner,
No.26, Haddaws Road, Satri Bhavan,
Chennai – 600 006.
3. The Deputy Superintendent of Salt,
Kovalam Salt Factory,
Kelambakkam Road,
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4. The Deputy Superintendent of Salt,
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