



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2024

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CORAM:

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

Rev.Appl (MD) No.24 of 2024
in C.M.P.(MD)No.17614 of 2023
in S.A.(MD)No.769 of 2022

1.The Correspondence,
Kammavar Hindu School,
Kakkivadan Patti Main Road,
Mamsapuram,
Thuraisamiyarpuram Village,
Sivakasi Taluk,
Virudhunagar District.

2.K.Manimegalai

...Petitioners

vs.

The Secretary,
Q.427, Mamsapuram Village Horticulture,
Co-Operative Society,
Kakkivadan Patti Main Road,
Thuraisamiyarpuram Village,
Sivakasi Taluk,
Virudhunagar District.

...Respondent

Prayer in : Review Application filed under Section 114 and Order 47
Rules 1 & 2 of CPC, to review the order dated 28.12.2023 made in
C.M.P.(MP)No.17614 of 2023 in S.A.(MD)No.769 of 2022 with costs.

For Petitioners : Mr.A.Sivaji

ORDER



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The Review application is filed challenging the order passed in C.M.P.(MD)No.17614 of 2023 dated 28.12.2023 during the vacation Court. This Court was pleased to pass an order:

“This Court is unable to understand when similar application in C.M.P(MD).No.11630 of 2022 was filed along with the second appeal and notice was ordered in the above petition, how the learned counsel for the petitioners has move the present petition in the vacation court for the same relief, by suppressing the same.”

2. In C.M.P.(MD)No.17614 of 2023 affidavit filed at the time of moving an application before the vacation Court, it has been as stated paragraph No.3, but wrongly mentioned as paragraph No.1, the same is extracted hereunder:

“I submit that after condoning the delay in filing the SA. This Hon'ble court was pleased to order notice in the SA and in the stay CMP(MD).No. 11630 of 2022. I am compelled to file this C.M.P to stay the operation of the judgement and decree since E.P.No.14 of 2019 was pending. This SA and CMP was listed on 18.12.2023 after notice, since the executing court insisted for stay orders. My counsel appeared through Video Conference on that day. It was listed as item 36 before Video Conference court No.10. When the case was called our counsel through Video Conference, prayed for interim stay order since the EP was listed on the same day. The SA and the



CMP were adjourned to 10.1.2024 since it was about 1.30 PM. In the mean while I discussed the issue with my well wishers and elders. Hence I pray for mediation and conciliation through the centre at Sivakasi. This is without prejudice to my right in the SA. Hence the case may be referred to the said centre. Till the outcome of the mediation, interim order is to be passed since the said EP is posted to 2.1.2024. Further nearly 62 students are studying. 3 teachers are working. The school is functioning from 1953 onwards as per Ex.B2, issued by the then DEO, Inspector of Schools, Madurai. The teachers are regularly paid their salary by the govt. Till July 2023 I was the correspondent. Steps are being taken for getting extension. In the meanwhile, the EP court will pass orders on 2.1.2024. In view of the above facts and circumstance interim stay is to be granted till the outcome of the said mediation. Otherwise order will be passed in the EP. The pupils have to complete their 3 months classes. In the meanwhile, if the E.P is allowed to proceed further then the SA itself will become infructuous and the pupil now attending the 1st petitioner will be put to great hardship and injury. Balance of convenience is also in favour of granting stay. I am advised to submit that I have got a fair chance of success in the Second appeal on merits. In the interest of justice the stay may be granted."

3. In the Review Application, the petitioner has raised a ground that since the execution Court posted the execution petition on 02.01.2024, if the execution petition was allowed to proceed further and



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if the final order is passed in the execution petition then the present Second Appeal itself will become infructuous and the students were studying in Kammavar Hindu School, Kakkivadan Patti Main Road, Mamsapuram, Thuraisamiyarpuram Village, Sivakasi Taluk, Virudhunagar District will be put to great hardship and injury.

4. In catena of judgments of the Hon'ble Supreme Court has dealt with the limited scope of exercise of power under review:

(a) In the case of ***Shri Ram Sahu (Dead) through Legal Representatives and Others vs. Vinod Kumar Rawat and Others*** reported in **(2021) 13 SCC 1**, the Hon'ble Supreme Court referring to an earlier Full Bench decision in ***Shivdev Singh vs. State of Punjab*** reported in **AIR 1963 SC 1909** has noted that

“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 exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits.”

(b) In the case of ***S.Madhusudhan Reddy vs. V.Narayana Reddy***



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and Others reported in **2022 SCC OnLine SC 1034**, the Hon'ble Supreme Court has referred to the judgment in ***Kamlesh Verma v. Mayawati*** which is extracted hereunder:

... “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;

(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 Poulose 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.



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(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.”*

(c) The recent judgment of the Hon'ble Supreme Court in the case of ***S.Murali Sundaram vs. Jothibai Kannan and Others*** reported in ***2023 SCC OnLine SC 185***, the Hon'ble Supreme Court has referred to the following observations:

“15. While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to. In the case of Perry Kansagra (supra) this Court has 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. It is observed that a rehearing of the matter is



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impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon as under:

“(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.

(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.”

16. It is further observed in the said decision that an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record.”



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5. In its entirety, the scope of review is very limited. Unless there is an error apparent or manifest ground which was available at the time of filing the application and which was not considered by the Court which passed the order, then the Court can review the same. It was also categorically held by the Hon'ble Supreme Court in the judgments referred to supra.

6. The judicial discipline warrants not only to the litigants or the Advocates but also to the Judges. When an application is C.M.P.(MD) No.11630/2022 is already filed along with the second appeal praying for stay of all further proceedings in E.P.No.14 of 2019 in O.S.No.214 of 2012 on the file of District Court, Sivakasi, wherein a notice was ordered, moving another application during the vacation Court where the very same relief is prayed expressing some urgency or difficulty not only amounts to forum shopping but also amounts to judicial indiscipline on the part of the litigants as well as the counsel.

7. The Court cannot get carried away on false sympathy to the cases projected. It would be fair for the counsel to represent an application before the vacation Court by mentioning urgency involved



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and making a request to withdraw the application moved prior to the vacation Court and explaining the reason to move another application in the vacation Court.

8. As an Officer of Court, the counsel on record and the advocates practising should maintain decorum and discipline of the Court. In the absence of any convincing material, the application moved during the vacation Court in C.M.P.(MD)No.17614 of 2023 dated 28.12.2023 is highly unjustified and unreasonable and is nothing but violating discipline.

9. It is seen from the records that pending original stay application praying for stay of all further proceedings in E.P.No.14 of 2019 in O.S.No.214 of 2012 on the file of District Court, Sivakasi pending disposal of the above second appeal, the stay application which was moved during the vacation Court only refers to the factual aspect and once again prays for stay of further proceedings in E.P. 14/2019.

10. The Review Petitioner had made an attempt to circumvent the proceedings in execution petition initiated before the execution Court by framing the prayer to get a stay till the disposal of the proceedings before



the Mediation and Conciliation centre. This kind of prayers cannot be entertained and the same cannot be reviewed.

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11. In catena of cases stated supra, the Review Court has to look only upon whether there was any new ground which was not available at that point of time and that ground was discovered after the case was argued and after the judgment was pronounced. Only on these two circumstances, the order could be reviewed and for any other reasons, the Court is enjoined from reviewing the order passed by the Court. In view of the same, the above Review Application is dismissed. Considering the facts and circumstances of the case, there is no order as to costs.

17.04.2024

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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N.SENTHILKUMAR, J.

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