



Rev.Aplc.(MD).Nos.17 & 18/2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

Rev.Aplc.(MD).Nos.17 & 18/2024

Simpson

... Petitioner
in both Petitions

Vs.

K.Gopinatham Nair

... Respondent in
both Petitions

Common Prayer : Review applications filed under Order 47 Rule 1 of CPC read with Section 114 of CPC against the judgment in AS.(MD).Nos. 45 and 46 of 2018 dated 24.07.2018.

For Petitioner in
both Review Petitions : T.Ramasamy
For Respondent in both
Review Petitions : Mr.M.P.Senthil

COMMON ORDER

(1)The above review applications are against the common judgment and decree made in AS.(MD).Nos.45 and 46/2018 dated 24.07.2018.



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(2)The petitioner in the review applications is the appellant in AS.(MD).No. 45/2018 who is also the plaintiff in the suit for specific performance in OS.No.5/2012.

(3)This Court, disposed of the Appeal Suits holding that the factual findings of the Trial Court cannot be interfered with. This Court has applied its mind independently and considered all issues in a proper manner to hold that there is no merit in the Appeal Suits.

(4)Now, the learned counsel for the review petitioner has filed the above applications mainly on the ground that the respondent herein has suppressed a fact which would amount to fraud upon Court and therefore, the review applications should be allowed.

(5)This Court is unable to find any factual background for such assertion. There was no suppression of fact by the respondent who is the defendant in the suit for specific performance. Having regard to the findings of Court in the suit filed by the petitioner herein for specific performance, this Court is unable to connect the ground raised by the petitioner to the facts and decision of the Lower Court refusing to grant a decree for specific performance. Similarly, the suit filed by the respondent for



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eviction against the tenant had been decreed based on admitted facts and evidence. The review petitioner has no right to resist eviction.

(6) Be that as it may, the Hon'ble Supreme Court and this Court, has repeatedly held that review is not an appeal in disguise and unless there is an error apparent on the face of the record, review application is not maintainable. Even if an error has to be detected by a process of reasoning, review cannot be entertained. This Court is also of the view that this review applications do not fall within the scope of Order 47 Rule 1 of CPC.

(7) It will be worthwhile and useful to refer to the following judgments of the Hon'ble Supreme Court to understand better the scope and ambit of review. In *S.Madhusudhan Reddy v. V. Narayana Reddy and others* reported in **2022 SCC Online SC 1034**, the grounds available for filing a review application have been considered in the light of several precedents of the Hon'ble Supreme Court. Recently, again, the Hon'ble Supreme Court in the case of *Sanjay Kumar Agarwal v. State Tax Officer and another* reported in **2023 SCC Online SC 1406** has reiterated the position that an error on the face of the record must be such an error which, mere



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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. Again, in the case of ***S.Murali Sundaram v. Jothibai Kannan and others*** reported in ***2023 SCC Online SC 185***, the Hon'ble Supreme Court summed up the scope of review under Order 47 Rule 1 of CPC as under :

“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 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



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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.”*

(8) From the principles laid down by Hon'ble Supreme Court in various decisions, we noticed the following aspects :



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- (a) It has been consistently held by Courts that a review has to be strictly confined to the grounds available under Order 47 Rule 1 of CPC.
- (b) The scope of Order 47 Rule 1 of CPC has been considered in a plethora of judgments and it has been consistently held that the power of review cannot be compared with the appellate power which enables only the superior Court to correct even if the judgment of the subordinate Court is erroneous. A review cannot be entertained to rehear the proceedings. In other words, review cannot be treated as an appeal in disguise.
- (c) Under Order 47 Rule 1 of CPC, a judgment can be reviewed if there is mistake or error apparent on the face of the record. It is also reiterated by Courts that it is essential that the error must be one which is manifest on the face of record. Even if a statement in the judgment is wrong, it would not follow that there is an error apparent on the face of the record, as Courts have drawn distinction between an erroneous decision and a decision which could be characterised as vitiated by error apparent. In other words, the error contemplated under the Rule must be as apparent from the face of the record and



not an error which has to be detected by a process of reasoning.

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(d) It is true that, what is an error apparent on the face of the record cannot be defined precisely or exhaustively and it must be left to be determined consciously on the facts of each case.

(e) A mere possibility of two views of subject is not a ground for review.

(f) In a review application it is not open to the Court to re-appreciate the evidence and reach a different conclusion even if that conclusion is possible. There cannot be an argument on appreciation of evidence which amount to converting the review petition into an appeal. Repetition of old or overruled argument cannot be entertained to reopen the decision on merits. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

(g) Mere discovery of new or important matter of evidence is not sufficient ground for review and the party seeking review has to establish that the new matter or evidence was not within his knowledge even after the exercise of due diligence. Unless it is shown that the evidence which is discovered could not be produced



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before the Court earlier even after the exercise of due diligence, the Court will not entertain a review.

(h) Though the power of review can be exercised where there is some mistake or error apparent on the face or any analogous ground, it cannot be exercised on the ground that the decision was erroneous on merits.

(i) While applying the principles in writ jurisdiction, when 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.

(9) From the principles reiterated by the Hon'ble Supreme Court and this Court repeatedly on the interpretation of Order 47 Rule 1 of CPC as stated above and its applicability in writ jurisdiction, this Court is unable to find any ground for review in the present case. Therefore, the review application is not maintainable.



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(10)In the result, the Review Applications are **dismissed**.

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