

(1994) 10 MAD CK 0088
In the Madras High Court

Kishinchand Chellarams (India) (P) Limited and Another	APPELLANT
Vs	
G. Varadappa	RESPONDENT

Date of Decision : 19-10-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1995) 1 LW 215 : (1995) 1 MLJ 135

Hon'ble Judges : Thangamani, J

Bench : Division Bench

Judgement

Thangamani, J.—The review petitioners are tenants in R.C.O.P. No. 1208 of 1993 on the file of the Rent Controller-cum-XI Judge, Court of Small Causes, Madras. The landlord came forward with that petition for fixation of fair rent of the demised premises. By his order dated 3.9.1990 learned Rent Controller fixed the fair rent at Rs. 8,350 per month with effect from 9.3.1983. Both the landlord and tenants preferred appeal against the said order. In R.C. A. No. 113 7 of 1990 the appellate authority by his order dated 14.12.1992 fixed the fair rent payable by the tenants at Rs. 13,080 per month. The tenants assailed the said order in C.R.P. No. 1125 of 1993 in this Court. Along with the revision petition the tenants came forward with C.M.P. No. 5500 of 1993 seeking stay of the operation of the order of appellate authority fixing the fair rent at Rs. 13,080 per month pending disposal of the civil revision petition. The landlord filed counter in the said application and it came up for hearing before Bellie, J. on 30.4.1993. The learned Judge passed an order on that day granting stay on condition that the tenants pay the entire amounts due as per the rate fixed by the Rent Controller within one month from that date and thereafter every month at that rate, and on failing such payment the said application shall stand dismissed. In other words, the direction was to pay the arrears till then calculating the rent of Rs. 8,350 per month and to pay the subsequent rent at the same rate. It appears that on 8.5.1993 the tenants sent a cheque for Rs. 6,95,268 calculating the arrears as per the direction in the said order.

2. Nearly one year later, on 23.3.1994 the landlord filed C.M.P. No. 5833 of 1994 in C.M.P. No. 5500 of 1993 u/s 151, C.P.C., seeking a direction to the tenants to pay the landlord the sum of Rs. 32,64,732 based on the fair rent claimed at Rs. 30,000 per month or in the alternative the sum of Rs. 14,86,296 based on the orders passed on R.C.A. No. 1137 of 1990 pending disposal of the above C.R.P. No. 1125 of 1993. The tenants filed their counter on 7.4.1994 repudiating the claim of the landlord. On the same day (7.4.1994) Swamidurai, J. has passed an order directing the tenants to pay the rent as fixed by the lower appellate court pending disposal of the civil revision petition within a period of three weeks. The said rent is Rs. 13,080 per month.

3. The tenants in this application seek review of the order passed by Swamidurai, J. On 7.4.1994 in C.M.P. No. 5833 of 1994.

4. Learned Counsel for the review petitioners first submits that the order passed by Bellie, J. on 30.4.1993, in C.M.P. No. 5500 of 1993 is a final order on merits of the case after hearing the advocates on both the sides. Since this has become final, the impugned order passed by Swamidurai, J. on 7.4.1994 is one without jurisdiction. The order of the learned Judge which modifies the final order passed by Bellie, J., is not maintainable. Learned counsel for the review petitioners further argues that they have complied with the said order by issuance of the cheque for the arrears of rent. The effect of the order of Swamidurai, J. is that that the stay granted by Bellie, J., on 30.4.1993 stands vacated and the tenants are directed to pay as per the rate fixed by the appellate authority. In other words, while Bellie, J. has granted stay on condition that the tenants pay the rent at Rs. 8,350 per month, Swamidurai, J has modified the same to Rs. 13,080 per month.

5. Whereas learned Counsel for the respondent landlord contends that under Article 226 of the Constitution of India, the court has got discretion to modify any interim order passed pending final disposal of the civil revision petition. The landlord is entitled to come forward with any number of petitions regarding the rate of rent. The interim order passed by one learned Judge of this Court can be interfered with by another learned Judge. Bellie, J., at the time of admission of C.R.P. has directed the tenants to deposit the rent as fixed by the Rent Controller. Now Swamidurai, J. has modified the said order directing the tenants to deposit rent at the rate arrived at by the appellate authority. In substantiation of his claim learned Counsel for the respondent landlord has cited Sow Chandra Kante and Another Vs. Sheikh Habib, . There Krishna Iyer, J., has held 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 grave error has crept in earlier by judicial fallibility. However, I am unable to find how this citation can help the present respondent landlord. Though C.M.P. No. 5500 of 1993 was filed during the pendency of C.R.P. No. 1125 of 1993 the order passed by Bellie, J. therein directing the tenants to pay rent calculated at Rs. 8,350 per month is a final order so far as grant of stay is concerned. I am at a loss to understanding how

this order could be modified by another single Judge of this Court in subsequent C.M.P. No. 5833 of 1994. I have no doubt in my mind that virtually Swamidurai.J. has sit in judgment over the order of Bellie, J., set aside the same and substituted his own order which is against judicial propriety. The contention of learned Counsel for the landlord that the order passed by Bellie, J. is not a final order and it can be modified by another single Judge of this Court in a subsequent order is patently untenable.

6. Learned Counsel for the review petitioners points out that the practice prevalent in such matters is to direct the tenant to pay half of the impugned rent. Since the tenants herein choose to dispute the rent fixed by the appellate authority which was Rs. 13,080 per month, the order of Bellie.J. granting stay with a direction to pay the rent of Rs. 8,350 per month which is the rent fixed by the Rent Controller cannot be stated to be unreasonable. Whereas the mandate in the impugned order is that they should deposit the entire rent mentioned therein.

7. Section 114, CP.C. provides that 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. Learned counsel for the respondent argues that the tenants should have agitated the matter before the proper forum and u/s 114, C.P.C. as well as Order 47, Rule 1, C.P.C. no review lies. But admittedly no appeal is allowed under Order 41, C.P.C. against the impugned order. The provision for SLP before the Supreme Court alone is available SLP cannot be construed as an appeal. In *Secretary and Commissioner, Department of Public Health v. Dr. Chowdappa* (1991) 1 M.L.J. 24, Bellie, J. has held that an application for special leave under Article 136 of Constitution is not an appeal, allowed against a decree and filing of SLP does not bar filing of review application. In such circumstances, it is evident that there is no legal impediment for the maintainability of this review application.

8. In *Devaraju Pillai Vs. Sellayya Pillai*, , the Supreme Court has laid down that if the party is aggrieved by the judgment of the single Judge sitting in second appeal the appropriate remedy for the party is to file an appeal against that judgment. A remedy by way of an application for review is entirely misconceived and if a single Judge entertains the application for review then he totally exceeds his jurisdiction in allowing the review, merely because he takes a different view on construction of the document. The ratio in this case is of no avail to the respondent landlord herein since the impugned order has been passed in a C.M.P. in civil revision petition against which admittedly no appeal lies.

9. The next decision cited by learned Counsel for the respondent in *Gyan Chandra Dwivedi Vs. 2nd Additional District Judge, Kanpur and Others*, . This case is only an authority for the position that review of order passed in writ petition under Article 226 on the ground that decision on a question of law on which the same was founded had been reversed or modified by subsequent decision of Supreme Court would be liable to be dismissed upon plain terms of Order 47, Rule 1 of the C.P.C. Explanation. On the face of it this citation cannot help the respondent. Another judgment of no consequence cited by learned Counsel for the respondent in *Chandrakant Jagannath Manjrekar and Another Vs. Shripad Vaikunth Naik*, . In that case, where, the judgment was sought to be reviewed on ground that certain observation made by the court was erroneous as it was against some earlier decisions, but the judgment was on an interlocutory application and did not finally determine the rights of the parties and all the more the order was not solely based on the observation, the review, application was not maintainable.

10. Yet another argument of learned Counsel for the respondent- landlord is that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be Characterised as vitiated by "error apparent". And in this case there is no error apparent which calls for review under Order 47, Rule 1, C.P.C. In support of his contention he relies on *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, . There it was held that where without any elaborate argument one could point to the error and say here is a substantial point of law which shares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out. In *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, , cited by the respondent's counsel it is pointed out that an error apparent on the face of the record exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the court in the official original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record. Evidently, these cases also cannot help the respondent. The learned Judge who has passed the impugned order has no jurisdiction to do so and this order is nonest. The present one is not an application merely for the purpose of a rehearing and fresh decision of the controversy. The normal principles is that a judgment pronounced by a court is final and in this case *Swamidurai, J.* has deviated from this principle, sat in judgment over the order of *Bellie, J.* and pronounced a different order. And this circumstance of substantial and compelling character makes it necessary to review the said order passed without jurisdiction and set right the things. Where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility, the provisions of Section 114 and Order 47, Rule 1, C.P.C. could be invoked.

11. In the grounds of review petition it is stated that Swamidurai, J. "While dictating the order in court granted 4 weeks time for payment. However, this has been changed and reduced to three weeks as found in the copy of the order issued to the petitioners. While fixing the date for final disposal of the civil revision petition on 13.6.1994, the said learned Judge, in all fairness should not have changed or modified the earlier final order of Bellie, J. granting conditional stay. Swamidurai, J. heard C.M.P. No. 5833 of 1994 in the court at 1.45 p.m., during the lunch interval on 7.4.1994 on the date of his retirement. In spite of the request of the petitioners' advocate that the matter could not be heard and decided in a hurry, the learned Judge heard the petitioners' counsel only for 5 minutes in a hurry as he was about to rise before retirement. The learned Judge rejected the request of the advocate for the petitioners not to hear the case for two reasons: (a) the petition could not be heard by the learned Judge as the impugned order of (Honourable Mr. Justice Bellie) was the final order and (b) as the lunch break for the court had already on, there was no sufficient time for the Judge to hear the petitioners, advocate. On the fact which was brought to the notice of the learned Judge that the respondent had presented the C.M.P. without notice to the petitioners' counsel with a false endorsement as to service and also moved the lunch motion on 4.4.1994 without notice to the petitioners' counsel, the learned Judge should have refused to hear the petition. However, the learned Judge passed the order which is sought to be reviewed in a hurry without fully hearing the arguments of the learned Counsel of the petitioners. Consequently, there is a violation of the fundamental principles of natural justice. These particulars are also found in the affidavit sworn by the tenants in C.M.P. No. 6712 of 1994 filed along with this review petition. Learned counsel for the respondent took objection to these averments and submitted that they may even enter the realm of contempt. However, we find that in the original order the period of time typed as four weeks has been scored out and the word three" is substituted for the word four; and initialed by the Judge who delivered the order. And it does not appear any counter has been filed in C.M.P. No. 6712 of 1994 repudiating the allegations in the affidavit. So, no action is called for on the lines indicated by learned Counsel for the respondent.

12. In the result, the review application is allowed and the order dated 7.4.1994 passed in C.M.P. No. 5833 of 1994 in C.M.P. No. 5500 of 1993 in C.R.P. No. 1125 of 1993 is set aside. No costs.