

(2015) 04 KAR CK 0172
In the Karnataka High Court

Case No : Review Petition No. 1139/2014 in R.F.A. No. 269 of 2011

Maistry Thimmaiachar Choultry Trust and Others	APPELLANT
Vs	
C. Channa Krishna and Others	RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2015) 04 KAR CK 0172

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : M. Arun Ponappa, for the Appellant

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—There is a delay of 52 days in filing the review petition. In the normal course this court would have issued notice to respondents and by taking a liberal view delay would have been condoned. However, such an exercise is not undertaken. In order to ascertain as to whether there is any cogent grounds to review the judgment passed by this Court on 13.06.2014 in RFA 269/2011, I have heard Sri. Arun Ponappa, learned counsel appearing for review petitioners who were appellants in RFA 269/2011 and defendants 1, 2, 4, 5, 6, 7 and 8 in O.S. 4/2009 on merits of the case.

2. Grievance of Sri. Arun Ponappa, learned counsel appearing for petitioners is, this Court while adjudicating appeal RFA 269/2011 has not taken note of the fact that appellants who were the trustees had already handed over possession of suit property or property belonging to trust in favour of one Sri. T.N. Venkatesh and he being in possession of the property it was incumbent upon the trial Court as well as this Court to implead him as a necessary party particularly in the background of appeal being continuation of original proceedings and as such this vital aspect having been lost sight of by this court while disposing of the appeal has perforced the appellants/petitioners to seek review of the judgment passed on 30.06.2014. Hence, he prays for delay being condoned and Judgment and

decree passed in RFA 269/2011 on 13.06.2014 being reviewed. As to whether any fruitful purpose would be served to issue notice to respondents on I.A. 1/2015, this court has examined the contention raised by Sri. Arun Ponappa and has perused the records of RFA 269/2011 since secured. Review cannot be an appeal in disguise. Under Order 47 Rule 1 of C.P. C petitioner cannot urge a fresh ground which was not urged at the time of arguing the appeal. Hon''ble Apex Court in the case of Kamlesh Verma Vs. Mayawati and Others, (2013) 5 ABR 1267 : AIR 2013 SC 3301 : (2013) 4 CTC 882 : (2013) 4 RCR(Civil) 75 : (2013) 10 SCALE 113 : (2013) 8 SCC 320 : (2014) 1 SCC(L&S) 96 has laid down the contours for considering a plea for review. It has been held by Hon''ble Apex Court in said judgment as to when review would be maintainable and when it is not. It has been held as under:

"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" have been interpreted in Chhajju 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 and 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 reheard 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".

3. Though the contours laid down are not exhaustive and are only illustrative, keeping in mind the same when facts on hand are examined it would clearly indicate that the claim of review petitioners undisputedly would not fall under the contingencies prescribed under Rule 1 of Order 47 of C.P. C to seek review and certainly it does not fall within the four corners of error apparent on the face of record. A review would be permissible where the petitioner is able to establish discovery of a new or important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at the time when decree was passed or mistake or error being apparent on the face of record or "for any other sufficient reason". At the cost of repetition at the most the claim of petitioner in the instant case may would fall in the last category of contingency indicated in Rule 1 namely "for any other sufficient reason". In this background when the facts on hand are examined it would indicate that ground urged in the review petition as already noticed hereinabove is for seeking review of Judgment and decree passed in RFA 269/2011 wherein defendants namely appellants had raised a plea in the written statement filed before the trial Court that suit schedule property has been handed over to Sri. T.N. Venkatesh and as such he being a necessary and proper party, he ought to have been impleaded by the plaintiffs to suit and said suit was bad for non joinder of necessary parties and as such petitioners would not be able to hand over possession of suit schedule property to Trust as directed by this Court.

4. At the outset this contention requires to be rejected for the simple reason that said plea had not been raised in the appeal memorandum and perusal of the grounds urged in the appeal memorandum does not even remotely suggest about such a plea having been raised. Hence, petitioner cannot be permitted to urge a new ground while seeking review of the judgment. That apart, petitioners are attempting to espouse the cause of a third party who is not a party before this court and same is also impermissible and it was for the said alleged lessee to take steps as he may be advised. In that view of the matter, I do not find any merit in this review petition so as to issue notice to respondents on I.A. 1/2015 and it would only be an exercise in futility and no fruitful purpose would be served. Hence, I.A. 1/2015 is hereby dismissed. Consequently review petition also stands dismissed.

In view of review petition having been dismissed, I.A. 2/2015 for stay does not survive for consideration and it is hereby rejected.