

(2012) 11 MAD CK 0073

In the Madras High Court

Case No : Review Application No's. 164 and 165 of 2012

Mettur Textiles Mill Quarters Residents Welfare Society

APPELLANT

Vs

Official Liquidator, High Court, Madras, (as the Liquidator of
Mettur Textiles Industries Ltd., in liquidation) and Others

RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (2013) 1 MLJ 1

Hon'ble Judges : R. Banumathi, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : G. Rajagopalan, for Thanjai P.N. Chezhiyan, for the Appellant; B. Dhanaraj, Official Liquidator, J. Nithyanandam and M.R. Jothimanian, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—In these review applications, the applicant - Mettur Textile Mill Quarters Residents Welfare Society seeks review of the

judgment dated 6.9.2012 in O.S.A. Nos. 222 and 223 of 2012 on the ground of error apparent on the face of record and under the premise that

certain important aspects were overlooked by the Court while deciding the Original Side appeals. The brief facts are that the Mettur Textile

Industries Limited was wound up by an order dated 2.7.1993. The Company was taken over by the Official Liquidator. Adjudication in respect of

claims of secured creditors, workmen and other creditors is being done by the Official Liquidator. As per the direction of the Company Court, by

advertisement dated 13.2.2012, published in news papers on 19.2.2012, items No. 1 to 7 were brought for sale. With respect to an extent of

33.03 acres in Mettur shown as item No. 7 with which we are concerned, the

upset price was fixed at Rs. 6,11,64,000/-. On 8.3.2012, all the properties were sold in public auction. V.S. Enterprises -the 2nd respondent is the auction purchaser in respect of item No. 7 for Rs. 12.50 Crores.

2. The case of appellant/review petitioner is that the erstwhile Management have put up construction in item No. 7 of the properties to an extent of

about 10 acres and that there are totally 919 built up houses in Salem camp, which are used as residential quarters by the employees of the Mettur

Textile Industries Limited -the Company in liquidation. The workers are residing there and all the houses are being maintained by the occupants

and that they are paying water and electricity charges. It is the further case of applicant that item No. 7 was brought for sale and that the official

liquidator failed to bring to the notice of the Court that the workers of the Company in liquidation are residing in quarters and that the workers have

submitted petitions to the Official Liquidator to allot houses in lieu of pending payments to them and failure to bring it to the notice of the Court

vitiates the auction. Since the person, who was at the helm of affairs of the review petitioner Society, passed away, the members were not aware

of the status of the claim and were not in a position to bring it to the notice of the Court. In March 2012, the appellant/review petitioner filed two

applications in C.A. Nos. 242 and 243 of 2012 in C.P. No. 125 of 1988 to (i) stay auction notice dated 19.2.2009 and (ii) restrain the official

liquidator from bringing item No. 7 for sale in future which is 33 acres of land situated in Mettur in Salem District. While referring to the auction

notice dated 19.2.2012, the review petitioner has mistakenly stated the date as 19.2.2009.

3. The learned single Judge held that the Official Liquidator has made publication in the daily news papers on 19.2.2009 for auction of item No. 7

to an extent of Rs. 33.03 acres and that the review petitioner has come forward with the applications to stay the sale belatedly and dismissed the

applications solely on the ground of delay.

4. Feeling aggrieved by the dismissal of the applications, the review petitioner filed the appeals in O.S.A. Nos. 222 and 223 of 2012. By order

dated 6.9.2012, the Division Bench dismissed the appeals. It was held that the advertisement for sale was published in the news papers on

19.2.2012 and the mistake in the order of the learned judge cannot be taken advantage of by the review petitioner and the said mistake will not

vitiating the auction. The Division Bench observed that the appellant has not made out any illegality or irregularity in the procedure followed by the

Company Court and after pointing out that the sale was confirmed in favour of the second respondent for a sale consideration of Rs. 12.50

Crores, dismissed both the appeals.

5. The Review Petitioner has filed these applications seeking review of the said judgment in O.S.A. Nos. 222 and 223 of 2012.

6. The learned senior counsel for the review petitioner contended that the Court ought to have seen that the advertisement of auction for item No.

7 - 33.03 acres of land consisting of houses of members of petitioner Society was made for the first time only on 19.2.2012 and was not

advertised in the previous auctions in 2009 and the review petitioner immediately approached the Court in March 2012. The learned senior

counsel further submitted that as the cause of action for item No. 7 arose only in February, 2012, the question of delay does not arise. The

contention of review petitioner is that only because in the prayer in Company Application No. 242 of 2012, the date of publication of auction

notice was mistakenly stated as 19.2.2009, the learned single Judge proceeded under a footing that the applications - C.A. Nos. 242 and 243 of

2012 were filed belatedly and the said mistake crept in the order of the learned single judge was not considered by the Division Bench. It was

further contended that the Division Bench proceeded as if there was a typographical error in the order of the single judge in referring to the date of

publication as 19.2.2009 warranting review of the judgement dated 6.9.2012.

7. Mr. Dhanaraj, learned counsel appearing for the Official Liquidator submitted that the review petitioner filed applications - C.A. Nos. 242 and

243 of 2012 belatedly after the sale was over and therefore the learned single judge rightly held that the applications were belatedly filed. The

contention of 1st respondent/Official Liquidator is that the mistaken reference to the date of publication of auction notice as 19.2.2009 instead of

19.2.2012 does not in any way cause prejudice to the review petitioner and as such, the order does not warrant review.

8. Mr. G. Nityanandan, learned counsel appearing for the 2nd respondent - V.S.

Enterprises/auction purchaser submitted that the auction

purchaser has invested Rs. 12.50 Crores to purchase item No. 7 and that the review petitioner has come forward with the applications only after

the confirmation of sale to defeat the lawful right of the 2nd respondent and prayed for dismissal of the applications.

9. Mr. M.R. Jothimanian, learned counsel appearing for Respondent No. 3 - Mettur Textiles Mills Employees Union and Salem Mavatta AITUC

Mill Tholilargal Sangam submitted that there are about 2000 workers, who are the members of the 3rd respondent Association and that the

workmen have been fighting out for nearly three decades to settle their claims. He would further submit that the applications have been filed by a

group of workmen only to delay the settlement of the claim to the other workmen.

10. We have bestowed our consideration upon the submissions and also the judgment dated 6.9.2012 and other materials on record.

11. The review petitioner in applications - C.A. Nos. 242 and 243 of 2012 prayed for stay of the sale in pursuance to the auction notice published

on 19.2.2012 and to restrain the Official Liquidator from bringing item No. 7 for sale in which the quarters of the workmen are situated. In the

prayer portion, the auction notice was mistakenly stated as 19.2.2009. However, the petition contains a reference to the auction notice dated

19.2.2012 as it refers to the upset price fixed at Rs. 6,11,64,000/- for item No. 7. While considering the applications, the learned single Judge

appears to have proceeded under the mistaken impression that the paper publication in the news papers was made on 19.2.2009 and that the

applications were filed with considerable delay. The Order of the learned single Judge reads as under:

3.....Whereas, the respondent has made a publication in the daily newspapers on 19.2.2009 for auction of the said quarters which is at item 7 for

an extent of 33 acres, for which the upset price has been fixed as Rs. 6,11,64,000/-.....

4. The applicant has come forward with these applications in a highly belated time.....

Observing that the applications were filed in a highly belated manner, learned single Judge dismissed both the applications and did not go into the

other contentions raised by the review petitioner.

12. While considering the matter, the Division Bench proceeded under the footing as if the reference of date of publication of auction notice as

19.2.2009 was a mistake crept in the order passed by the learned single Judge. We may usefully refer to the relevant observations in the Order

dated 6.9.2012, which reads as under:

7.....the learned Judge in the impugned order has erroneously referred to a newspaper advertisement dated 19.2.2009 and therefore the impugned

order is liable to be set aside, is unsustainable for the simple reason that it is only a typo. What is stated as 19.2.2009 in the impugned order of the

learned Judge relates to the advertisement dated 13.2.2012, which was published in the newspaper on 19.2.20-12, and this cannot be taken

advantage of by the appellant for the purpose of questioning the validity of the order.

9.....Simply because there has been a typo in the order of the learned Judge that will not vitiate, in our considered opinion, the steps taken by the

Company Court for the purpose of confirmation of sale.

13. As rightly contended by the learned senior counsel for the review petitioner, it was not a typographical mistake crept in the order of the learned

single judge. The mistake was committed only by the petitioner. However, it is a matter of record that the advertisement dated 13.2.2012 which

was published on 19.2.2012 was very much before the Court. The learned single Judge proceeded on the basis that the publication was issued on

19.2.2009 and the company applications were filed only on 19.2.2012.

14. The order passed by the learned Judge gives a clear indication that it was only the mistake committed by the petitioner in indicating the date of

publication of notification as 19.2.2009 instead of 19.2.2012, which made the learned Judge to reject the applications on the ground of delay. The

Division Bench was of the view that the petitioner was taking advantage of a typing mistake, which in fact, was not correct. The said statement

appears to be against the true facts, in view of the order passed by the learned single Judge.

15. It is pertinent to note that while dismissing the applications on the ground that they are highly belated, the learned single judge has not gone into

the merits of the contentious points raised by the review petitioner. The points

raised by the review petitioner were not at all heard and considered

on merits. In the applications as well as in the grounds of appeals, the review petitioner has inter alia raised the following substantial contentions:

i. Totally 919 built up house in Salem Camp are used as residential quarters by the employees of Mettur Textiles Industries Limited - the Company

in liquidation and that all the houses are being maintained by the occupants. The workers, who are in occupation of those houses are paying water

tax and electricity charges. They have also produced the E.B. cards and electricity consumption bills paid by them.

ii. Before the Official Liquidator, the workers have submitted applications SCHEDULE-"H" FORM 67 to allot the houses and the site thereon to

the workers and adjust the value of the house and site from out of the amount payable to the workmen. On behalf of the review petitioner, our

attention was drawn to one such application filed by one B. Thamisudeen. Earlier, when the assets of the Company in liquidation were brought for

sale and auction notice (dated 24.12.2008) was published, only items 1 to 6 were advertised for sale.

iii. Item No. 7 was not earlier advertised for sale, but included only in the sale notice published on 19.2.2012. Since item No. 7 was not earlier

included in the sale notice, the review petitioner could not take steps earlier and that only after the publication of auction notice on 19.2.2012, the

review petitioner came forward with the applications.

iv. In the auction notice dated 24.12.2008, value of items 1 to 6 was shown as Rs. 88,27,49,660/-, whereas in the subsequent sale notice,

advertised on 19.2.2012, for items 1 to 7 (Item No. 7 - vast extent of 33.03 acres), the value of the property shown only as Rs. 48,78,97,000/-.

16. Since the applications were dismissed by the learned single judge on the ground that those applications are belatedly filed, the above larger

questions raised by the review petitioner were not considered on merits. While considering the appeals, the Division Bench proceeded under the

footing that there was a typographical mistake in the order of the learned single Judge and as such, the Division Bench did not advert to the above

aspects, which in our considered view, caused serious prejudice to the review petitioner, warranting review of the judgment dated 6.9.2012.

17. It is trite that the order of the Court should not cause prejudice to the

interest of parties. The merits or otherwise of the contention raised by the petitioner was not looked into on account of the alleged delay. When it is made out that there was no such delay at all and the petitioner has come up with an application for stay of sale immediately after the newspaper advertisement on 19.2.2012, necessarily the applications should have been heard on merits. An application for review will lie inter alia when the order suffers from error apparent on the face of record and permitting the same to continue would result in failure of justice. Since the error is apparent on the face of record, the judgment is liable to be reviewed.

18. The Court may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made; (ii) mistake or error apparent on the face of the record; or (iii) for any other sufficient reason. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

19. The Supreme Court in *S. Nagaraj v. State of Karnataka*, 1993 Supp (4) SCC 595 indicated the concept of review jurisdiction 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.

20. The Supreme Court in *Board of Control for Cricket in India v. Board of Control for*

Cricket, India and Another Vs. Netaji Cricket Club and Others, ,

considered the scope and ambit of review jurisdiction under Order 47 Rule 1 of CPC and observed thus:

88.... Section 114 of the Code empowers a Court to review its order if the conditions precedent laid down therein are satisfied. The substantive

provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in Section 114 of the

Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon

discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is

necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order.

An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would

depend on the facts and circumstances of the case. The words ""sufficient reason"" in Order 47 Rule 1 of the Code are wide enough to include a

misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine

actus curiae neminem gravabit"".

21. In Lily Thomas, Vs. Union of India and Others, , the Supreme Court observed that in case the Court finds that the error pointed out in the

review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist

and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.

22. As discussed earlier, the mistake in the Judgment of the Division Bench is an error apparent on the face of the record warranting review. Since

the applications were dismissed on the ground that they are belated, the important issues on which the right of the review petitioner depends were

not effectively dealt with and determined. Since the order of the learned single Judge proceeded on the ground that the applications were belated

and the order of the Division Bench dated 6.9.2012 equally proceeded under the

footing that the petitioners are trying to take advantage of the typographical mistake, which in fact is not correct, the judgment is liable to be reviewed.

23. For the foregoing reasons, by exercising the review jurisdiction, we review and recall the Judgment dated 6.9.2012 made by the Division

Bench in O.S.A. Nos. 222 and 223 of 2012 confirming the order passed by the learned single Judge dated 8.3.2012 made in Company

Application Nos. 242 and 243 of 2012 in C.P. No. 125 of 1988. In view of our decision to review the judgment of the Division Bench dated

6.9.2012, the Company Application Nos. 242 and 243 of 2012 in C.P. No. 125 of 1988 are remitted to the learned single Judge for fresh

consideration of the matter on merits and as per law by affording opportunity to both the review petitioner and the respondents. In view of the

confirmation of sale, we further direct that the order of status quo granted on 18.10.2012 and extended subsequently on 6.11.2012 shall continue

till the disposal of the Company Applications. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

R. Banumathi and K.K. Sasidharan, JJ.

24. After we have pronounced the judgment, learned counsel for the Review Applicant requested that time frame may be fixed for fresh

consideration of the Company Applications in C.A. Nos. 242 and 243 of 2012. Since the claims of the workers are still pending, we request the

learned single Judge to take up Company Application Nos. 242 and 243 of 2012 at an early date and dispose of them as expeditiously as

possible, preferably within a period of three months from today.