
(2007) 08 MAD CK 0108

In the Madras High Court

Case No : Review Application No. 18 of 2007 in C.R.P. (NPD) No. 1836 of 2003

Rajeswari and Parameswari

APPELLANT

Vs

Sri Bhuvaneswari Cycle Mart

RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

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

Citation : (2007) 5 CTC 588 : (2007) 6 MLJ 47 : (2009) 5 RCR(Civil) 864 :
(2008) 1 RCR(Rent) 145

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : A. Sivaji, for the Appellant; P. Valliappan, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman, J.—The present review application has been filed praying for review of the order passed by His Lordship Mr Justice N.

Dinaharan [as he then was] dated 23.01.2004 made in C.R.P.(NPD) No. 1836 of 2003.

2. The short facts of the case which are necessary for disposal of the review application is as follows:

The petitioners/applicants are the landlords and they filed eviction petition against the respondent in RCOP No. 44 of 1992 on the file of the Rent

Controller (I Additional District Munsif), Erode, on the ground of wilful default and for demolition and reconstruction. The learned Rent Controller

allowed the above eviction petition. On an appeal by the respondent herein in R.C.A. No. 13 of 2001, the learned Rent Control Appellate

Authority (Principal Subordinate Judge), Erode, by his order dated 25.06.2003 set aside the same, thereby dismissing the petition for eviction filed

by the petitioners/applicants. The petitioners/applicants aggrieved against the said order have preferred a Civil Revision Petition before this Court in

C.R.P. (NPD) No. 1836 of 2003. This Court has dismissed the said revision petition by an Order dated 23.01.2004. The said order is sought to

be reviewed in this review application.

3. Mr. A. Sivaji, the learned Counsel appearing for the petitioners/applicants contended that the order passed by this Court in the said revision

requires reconsideration in view of the non-consideration of the materials available on record, Further, he has submitted that the documents filed on

the side of the petitioners/applicants will clearly establish the conduct of the respondent in not depositing the monthly rents regularly either before

the disputed period or after filing the rent control original petition. Further the respondent has paid lump sum payments on several occasions

towards arrears of rent which will indicate the conduct of the respondent in not paying the rents regularly which has lost sight of by this Court while

dismissing the revision. Further the learned Counsel for the petitioners/applicants submits that the respondent has admitted in the course of the

evidence that adjacent building owned by the petitioners has been demolished and re-constructed, which will establish not only the income

therefrom can be used for the source of the proposed demolition and reconstruction but also condition of the present building. Thus, the

submissions of the learned Counsel for the petitioners/applicants is that the reading of the order made in the revision will indicate that there are

errors apparent on the face of the record and hence the said order has to be reviewed.

4. Per contra, Mr. P. Valliappan, learned Counsel appearing for the respondent contended that the learned Judge considered all the material

evidence on record both oral and documentary and came to the conclusion that the petitioners/applicants are not entitled for an order of eviction

both on the ground of wilful default and demolition and reconstruction and hence it needs no review. More particularly, learned Counsel appearing

for the respondent contended that the review is not permissible on the ground that the documents before the Court has not been properly

considered or interpreted in proper perspective. It is contended that there should be an error apparent on the face of the record in order to review

the earlier decision. Thus it is contended that the petitioners/applicants, if at all, aggrieved by the orders made in the revision, they ought to have

filed SLP before the Honourable Apex Court. Without doing so, the petitioners/applicants are not entitled for review of the order passed in

revision.

5. I have heard Mr. A. Sivaji, learned Counsel appearing for the petitioners/applicants and Mr. P. Valliappan learned Counsel appearing for the

respondent.

6. It is an admitted case that the petitioners/applicants being the landlords have filed eviction petition on two grounds viz., wilful default and for

demolition and reconstruction. The rent controller has ordered eviction which has been reversed by the appellate authority and the

petitioners/applicants have preferred a revision before this Court which was dismissed on 21.3.2004. This Court while dismissing the revision filed

by the petitioners/applicants has held that when the petitioners/applicants have returned the Money Orders sent by the respondent/tenant, thereby

refusing to receive the rent, they were not justified in coming out with a version that there was a default in payment of rent and that the rent control

appellate authority was justified in coming to the conclusion that there is no wilful default on the part of the tenant. Thus, this Court, in the said

revision has considered the evidence of the petitioners as well as the respondent and came to the conclusion that the respondent has not committed

any wilful default in payment of rent. This finding, even assuming as an erroneous one, the same cannot be reviewed and the remedy of the

petitioners/applicants would be only to file SLP before the Honourable Apex Court.

7. Further more, on the other ground on which eviction was sought by the petitioners namely, demolition and reconstruction, it has been held by

this Court in the said revision that the petitioners/applicants have not established that they have got sufficient means to demolish and reconstruct the

building. Further this Court relying on the Advocate Commissioner's report that the building is in a good condition and there were no cracks in the

building as alleged by the petitioners/applicants, held that petitioners/applicants did not establish that the building is in a dilapidated condition and

requires demolition. This finding even assuming it is erroneous, could be canvassed only before the Honourable Apex Court by filing S.LP. No

doubt the latest authorities are on the footing that if the landlords require the building for demolition and reconstruction, the same need not be old

and in a dilapidated condition. Further more, the authorities are on the footing that the landlords need not obtain a plan for demolition or

reconstruction before an application of eviction could be filed and that the landlord or landlady need not possess cash on hand to prove means. It

is not known whether these factors were brought to the notice of the learned Judge while the matter came up for admission before the learned

Judge. As stated already, the erroneous finding cannot be a ground for review of the said order. Order 47 Rule 1 of CPC contemplates the

circumstances under which a Court can review its earlier decision. Order 47 Rule 1 of C.P.C. reads as follows:

(1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after

the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order

made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of

the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

8. The said provision will make it very clear that review of the order is possible under three circumstances namely,

(i) on discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of a party who

could not produce the same in time; or

(ii) when there is an error apparent on the face of the record; or

(iii) for some other sufficient reason.

9. It is not the case of the petitioners/applicants that they discovered new and important matter or evidence which came to their knowledge after

the disposal of the said revision. But it is the case of the petitioners/applicants that the evidence on record has not been properly considered by the

learned Judge while deciding the matter and that the learned Judge has overlooked certain important evidence. Thus, the contention on the side of the petitioners/applicants is that the decision has been arrived at wrongly, without considering the evidence on record. Thus the first ground on which review of the order could be asked for viz., that certain important matter or evidence has not been brought to the notice of the Court at the time of passing the order is not available to the petitioners/applicants. Then the next ambit of the provision viz., "there is an error apparent on the face of the record", can be raised by the petitioners/Applicants has to be seen. To reiterate again, it is the case of the petitioners/applicants that the evidence on record has been overlooked by the learned Judge and this will not come under the purview of "error apparent on the face of the record". Then the next ground on which the petitioners/applicants can seek review of the order is "for any other sufficient reason". As stated already, the entire grounds of review, if taken, it could be seen that the case of the petitioners/applicants is that the decision has been wrongly arrived at by the learned Judge while pronouncing orders in the Civil Revision Petition. Thus the present review application does not come within the ambit of the provision under Order 47 Rule 1 of C.P.C. Different view taken on the materials on record will not be a sufficient ground to review an earlier decision arrived at. In this connection the learned Counsel appearing for the respondent drawn my attention to several judgments of the Hon"ble Apex Court and this Court.

10. In Devaraju Pillai Vs. Sellayya Pillai, the Honourable Apex Court has held as follows:

...If the party was aggrieved by the judgment of the learned single Judge sitting in Second Appeal the appropriate remedy for the party was to file an appeal against the Judgment of the learned Single Judge. A remedy by way of an application for review was entirely misconceived and we are sorry to say that the learned single Judge who entertained the application totally exceeded his jurisdiction in allowing the review and upsetting the judgment of the learned single Judge, merely because he took a different view on a construction of the document.

11. In L. Jegannath and J. Thulasidaran Vs. The Land Acquisition Officer and Revenue Divisional Officer and Others, the Division Bench of this

Court has held as follows:

14. An error which is not self-evident and has to be detected by process of reasoning can hardly be said to be an error apparent on the face of the

record, justifying the Court to exercise the power of review under Order 47 Rule 1 CPC. In our considered view, in exercise of jurisdiction under

Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be reheard and corrected. Unfortunately, all the factual and legal

submissions have admittedly not been made before the Division Bench, whose order is sought to be reviewed. The abovesaid decisions relied

upon by the learned Senior counsel were also not referred to, relied upon and arguments advanced on that basis before the Division Bench. The

relevant part of the order sought to be reviewed, which has been extracted above, does not indicate or show that the above said submissions were

made before the Division Bench. In this context, it is pertinent to point out that it is neither stated in the review applications nor submitted by Mr.

T.R. Rajagopalan learned Senior Counsel during the course of his elaborate arguments that the above said submissions were made out the same

have been omitted to be considered by the Division Bench. But having failed to make the abovesaid factual submissions and legal arguments before

the Division Bench, it is not open to the review applicants to raise all those factual and legal submissions in the Review Applications. A review

application has a limited purpose and cannot be allowed to be an appeal in disguise.

12. Yet another decision cited by the learned Counsel appearing for the respondent is by a Division Bench of this Court reported in The

Government of Tamil Nadu Vs. Registration Department SC/ST and M.B.C. Employees General Welfare Sangam and The Registrar, Tamil Nadu

Administrative Tribunal, , in which it is held as follows:

8. It is not in dispute that once an order has been made, a review thereof must be subject to rules and practice of the Court and cannot be lightly

entertained. Courts have held that a review of a judgment is a serious step and reluctant to resort to it is proper only where a glaring omission or

patent mistake or like grave error has crept in earlier judicial fallibility. As rightly pointed out, a mere repetition of the old and overruled arguments,

a second trip over ineffectually covered grounds or minor mistakes of

inconsequential important are obviously insufficient for exercising jurisdiction under Review. The power of review may be exercised on the discovery of new and important matter and 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 record is found. It is not in dispute that the power of review may not be exercised on the ground that the decision is erroneous on merits. That would be the province of Court of appeal. A party is not entitled to seek a review of judgment delivered by a Court for the purpose of rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of substantial and compelling character make it necessary to do so. It is also settled law that power of review can be exercised for correction of a mistake, but not substitute a view. The review cannot be treated like an appeal in disguise. The error contemplated in the rule is an error apparent on the face of record and not an error, which has to be fished out and searched. It must be an error of inadvertence. The words ""any other sufficient reason appearing in Order 47, Rule 1, C.P.C."" must mean a reason sufficient on grounds at least analogous to those specified in the rule.

13. Learned Counsel appearing for the petitioners/applicants relied upon the judgment reported in 2001 (1) ILW 153 [L. Puttalingam v. L.

Sivalingam] to show that steps having been taken for getting the plan and fees have been remitted, presumption of bona fide can be drawn.

Learned Counsel appearing for the petitioners/applicants submitted that the learned Judge while dismissing the revision has held that no plan has

been obtained by the petitioners/applicants and rejected their case for eviction on the ground of the demolition or construction which is totally

erroneous. As stated already erroneous decision can be a ground for an appeal but not a ground for review.

14. Further more, the learned Counsel appearing for the petitioners/applicants relied on the decision of the Division Bench of this Court reported in

1995 (II) CTC 513 [Baskaran v. The Commissioner of College Education and 2 Ors.] wherein an order was passed in the writ appeal without

impleading the petitioner in the review application and the Division Bench of this Court taking note of the said fact has allowed the review. The said

Judgment will not be applicable to the facts on hand in the present case. The other decision cited by the learned Counsel for the

petitioners/applicants in *Rajender Singh Vs. Lt. Governor, Andaman and Nicobar Islands and Others*, relates to the matter where some of the

documents which were not in possession of writ petitioner at the time of hearing were placed before High Court in review proceedings and the

Honourable Apex Court held that the High Court cannot ignore such materials when explanation has been offered as to why such documents could

not be placed at the time of hearing of writ petition. But in the present case, it is not the case of the petitioners/applicants they rely on certain

documents which were not in their possession at the time of hearing of the revision and that they have not been heard while passing orders in the

said revision.

15. On the facts and circumstances of the case, I can come to &re conclusion that, where without any elaborate argument or long-drawn process

of reasoning, one could point out the error and say that there is a substantial point of law which stares one in the face and there could reasonably

be no two opinions entertained about it, a clear case of an error apparent on the face of record is made out. There cannot be reappraisal of the

entire matter or evidence on record for finding the error. If there is reappraisal, it would amount to exercise of appellate jurisdiction, which is not

permissible in the application for review.

16. As stated already, the entire basis of the review application is that the learned Judge while dealing with the revision came to an erroneous

decision and the same cannot be the basis for review of the said order. The earlier order passed by this Court even assuming erroneous, it would

not follow that it was an ""error apparent on the face of the record."" The review is by no means an appeal in disguise whereby an erroneous

decision is reheard and corrected but lies only for patent error. Thus there is a clear difference between an erroneous decision and error apparent

on the face of the record. The first has to be corrected by the highest forum and the latter can be corrected by exercising the review jurisdiction.

As discussed earlier, the entire contentions put forth by the petitioners/applicants

that the evidence has not been properly appreciated by the learned Judge while dealing with the revision, could be the basis for an appeal and not a revision.

17. In the result, the review application stands dismissed. No costs.