
(2015) 02 MAD CK 0441

In the Madras High Court

Case No : Review Application No. 154 of 2014 and M.P. No. 1 of 2014

Senathi Na.Venkitasalapathi Ayer and Sons Private Trust

APPELLANT

Vs

Indhumathi and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

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

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10

Citation : (2015) 02 MAD CK 0441

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; G. Prabhu Rajadurai, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Velumani, J.—This Review Application has been filed by the applicant seeking to review the order dated 14.08.2014, made in C.R.P.(MD) No. 1162 of 2014, as according to the applicant, the entire facts and questions involved in the Civil Revision Petition were not brought to the notice of this Court, when the order dated 14.08.2014, had been passed.

2. The applicant has raised the following the grounds:

(a) The Civil Revision Petition is not maintainable, without invoking the other provisions contained under the Code of Civil Procedure and Section 10 of the Tamil Nadu Buildings (Lease and Rent) Control Act [hereinafter called as "the Act"].

(b) The respondents herein did not contest the suit filed by the appellant in O.S. No. 30 of 2002 on the file of learned District Munsif, Paramakudi and E.P. No. 21 of 2013 in O.S. No. 30 of 2002. Having suffered ex-parte orders, the respondents are not entitled to maintain the Civil Revision Petition.

(c) The respondents ought to have raised all their contentions in the Execution

Proceedings or ought to have availed the remedy under Section 47 of C.P.C.

(d) Even though the applicant is termed as private Trust, in fact, it is only Public Charitable Trust. Its objects are to feed poor Sourashtra Brahmins on daily basis and to perform festival of Varadharaja Perumal Temple at Emaneswaram. Therefore, provisions of the Act are not applicable.

(e) The respondents failed to pay the rent from 01.02.1996 to 13.03.2014, amounting to Rs. 97,875/- for more than 18 years 1A1/2 months and delivery being taken by the respondents, they have no right to insist upon setting aside the order of decree. In equity, the respondents must pay this amount. The respondents are invoking Section 10 the Act. In that case, they must pay rent regularly as per provisions of the Act.

(f) The respondents have already let out the property to one M/s. Ayyappan Medicals with effect from 20.06.2014.

(g) All the grounds raised arise out of new and important matters and evidence, which were not within the knowledge of the applicant at the time of hearing of the Civil Revision Petition and hence, could not be placed before this Court on earlier occasion.

3. Heard the learned counsel for the applicant and the learned counsel for the respondents.

4. I have considered the contentions raised in the grounds and the arguments of the learned counsel for the petitioner and the respondents.

5. It is well settled that the scope of review is very limited. The applicant cannot re-argue and he is not entitled for re-hearing on merits or it is not in the nature of appeal. An error which had crept in the earlier order can be remedied by way of review.

6. The scope of review was considered by the Hon''ble Apex Court in a judgment reported in Lily Thomas, Vs. Union of India and Others, AIR 2000 SC 1650 : (2000) CriLJ 2433 : (2000) 2 DMC 1 : (2000) 5 JT 617 : (2000) 4 SCALE 176 : (2000) 6 SCC 224 : (2000) 2 UJ 1113 : (2000) AIRSCW 1760 : (2000) 3 Supreme 601 , it was held as under:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 : (1971) 3 SCC 844 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If 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...."

(emphasis supplied)

7. A Division Bench of this Court in a judgment reported in 2014 (3) TLNJ 245 (Civil) [M.Jai Kavitha Vs The Authorised Officer, Syndicate Bank, Regional Office, Chennai - 1 and others], has considered the scope of judicial review, wherein the decision of the Honourable Apex Court was noted with approval. Paragraph No. 9 of the said Judgment reads as under:

"9.The power of review under Order 47 Rule 1 of CPC can be exercised by a court of law, if the order in question comprises a mistake or an error apparent on the face of record. Once an order is pronounced, it should not be altered, unless there is an apparent error. Law is well settled that erroneous finding is not a ground for review, so also improper consideration for that matter. In review application, the court does not sit in appeal over its own judgment and the said application cannot be treated as an appeal. This position has been ruled by the Supreme Court in Lily Thomas, Vs. Union of India and Others, AIR 2000 SC 1650 : (2000) CriLJ 2433 : (2000) 2 DMC 1 : (2000) 5 JT 617 : (2000) 4 SCALE 176 : (2000) 6 SCC 224 : (2000) 2 UJ 1113 : (2000) AIRSCW 1760 : (2000) 3 Supreme 601 . Therefore, in the absence of any error apparent on the face of record, we are not inclined to interfere with the order in question, except to the extent of deleting of the portions in paragraphs 14 and 15 of the impugned order, with which the applicant is concerned as to having an impact on the proceedings pending before the tribunal, as stated in the foregoing paragraph."

(emphasis supplied)

8. The above two decisions were also followed in Review Application (MD) No. 142 of 2014, dated 25.11.2014, in which, I was a party, wherein it has been held that a person in review is not entitled for re-hearing of the issue.

9. In the light of the dicta laid down by the Honourable Apex Court as well as by the Division Benches of this Court, I am of the considered view that the earlier order of the Court can be reconsidered, only if there is an error apparent on the face of the record and in that event, the said error can be rectified, otherwise, a Review Application is not at all maintainable. In the present case on hand, the Review Applicant failed to raise any ground, reason or cause, warranting interference at the hands of this Court.

10. Therefore, I do not find any error apparent on the face of record in the order, dated 14.08.2014 passed by this Court in C.R.P. (MD) No. 1162 of 2014. Accordingly, the Review Application fails.

11. In the result, the Review Application is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.