
(2014) 09 MAD CK 0418

In the Madras High Court

Case No : C.R.P. (NPD) Nos. 2330 and 2331 of 2014 and M.P. Nos. 1 and 1 of 2014 in Rev. Appl. (SR) Nos. 61020 and 61024 of 2014 and S.A. Nos. 678 and 703 of 2004 and M.P. Nos. 1 and 1 of 2014

Tiruvarur Municipality

APPELLANT

Vs

A.K.M. Towers Private Ltd.

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 1(1)(a), Order 47 Rule 1(2)(a)

Citation : (2014) 6 CTC 255

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Judgement

S. Vimala, J.—Both the Review Petitions have been filed Appellant/Applicant Tiruvarur Municipality, challenging the Decrees and Judgments passed in Second Appeal Nos. 678 of 2004 & 703 of 2004. The Review Petitions/Applications have been filed, with Applications to condone the delay of 658 & 670 days in filing the Review Petitions.

2. In the supporting Affidavits, it has been stated that the delay has been occurred only on account of the Special Leave Petitions being filed before the Hon"ble Supreme Court and because of the contest of two Revision Petitions before this Court, admittedly these proceedings were pending for all these days.

2.1. The delay seems to have occurred mainly because of the pendency of Special Leave Petition before the Hon"ble Supreme Court. Considering the convincing reasons stated, the delay is condoned.

3. The learned Counsel for the Respondent in the Review Petitions submitted that the Review Petitions are not maintainable, when the Special Leave Petition has been dismissed by the Hon"ble Supreme Court. In support of the contention, the decision reported in Kunhayammed and others v. State of Kerala and another, AIR (1) 2000 SC 2587, is relied upon:

"Once leave to Appeal has been granted and Appellate jurisdiction of Supreme Court has been invoked the Order passed in Appeal would attract the Doctrine of Merger; the order may be of reversal, modification or merely affirmation. On an Appeal having been preferred or a Petition seeking leave to Appeal having been converted into an Appeal before Supreme Court the jurisdiction of High Court to entertain a Review Petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 of the C.P.C."

4. On the other hand, the learned Counsel for the Review Petitioner contended that the dismissal of the Special Leave Petition on the ground of delay which is not on merits, will not debar the Applicant from seeking review of the impugned Judgment.

4.1. This contention is sought to be supported by the Judgment of the Hon^{ble} Supreme Court reported in *Bakshi Dev Raj and Another Vs. Sudhir Kumar*, , and the relevant observation reads thus:

"SLP filed by Appellants was dismissed as withdrawn. Thereafter, Appellants filed Review Petition before High Court for review of Order passed in Second Appeal. Reiterated, review can be filed even after SLP is dismissed. This is clear from language of Order 47, Rule 1(2)(a). Words "no Appeal" preferred in Order 47, Rule 1(1)(a), would also mean a situation where Special Leave is granted. Till then there is no Appeal in the eye of law before superior Court. Therefore, review can be preferred in High Court before Special Leave is granted, but not after it is granted. Reason obviously is, once Special Leave is granted, the jurisdiction to consider validity of High Court's Order vests in Supreme Court and High Court cannot entertain a review thereafter, unless such a Review Application was preferred in High Court before Special Leave was granted...."

4.2. The decision cited supra relied upon by the learned Counsel for the Review Petitioner is applicable to the facts of this case and as the SLP has been dismissed not on merits the Review Petition can be filed even after the dismissal of S.L.P.

5. Learned Counsel for the Respondent in the Review Petition relied upon the following decisions towards highlighting the principles to be followed in deciding Review Petitions:

"(i) *Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs.*, :

"Review Court does not sit in Appeal over its own order. Rehearing of matter in review is impermissible in law. Court under Review jurisdiction could not mould relief despite holding that Plaintiff was not entitled to grant of Decree. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

..... In *Lily Thomas, Vs. Union of India and Others*, , this Court held:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be

exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an Appeal in disguise."

(ii) 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, :

"Normal principle that once Judgment is passed by Court is final and binding can be departed when circumstances of substantial and compelling character make it necessary to do so. Review of Judgment or Order is contemplated to correct some mistake or error apparent on face of record but not substitute view. Power of review cannot be exercised to seek review of Judgment already delivered for purpose of rehearing and fresh decision in case. Review cannot be Appeal in disguise. Phrase "any other sufficient cause" occurring in Order 47, Rule 1, must mean reason sufficient on grounds at least analogous to those specified in rule. Power of review may be exercised on discovery of new and important matter and evidence which after exercise of due diligence was not within knowledge of person seeking review or could not be produced by person seeking review."

(iii) The Tamil Nadu Housing Board Vs. A. Viswam and Others, :

"Omission to consider error in pleadings and finding rendered or elaborate consideration are not just grounds of review. Error apparent on the face of the record and substantial injustice are relevant reasons for Review....."

"In the light of the above position of law, enunciated clearly by the Apex Court, in the context of Order 47, Rule 1, C.P.C., it is made clear that unless some mistake or error apparent on the face of the record, is identified before a Court of law by an aggrieved party on the Judgments or Orders rendered by any Court or for any other sufficient reason which causes substantial injustice to the party by the very reasoning of the error or mistake committed in approaching the dispute, no Court is entitled to allow the review and if such course is allowed to be followed, it would, in my construed view, create not only a bad precedent but also conflict of decisions provide by a parts to the litigation to take an undue advantage. Therefore, for the very reasoning of non-availability of any error based on the above two grounds, I am not inclined to accept the very contentions raised by the learned Counsel for the Petitioner. On the other hand, I am fully satisfied to endorse my view to the conventions raised by the learned Counsel for the Respondents. In short to say, there is no merit identified in this Review."

(iv) Mani Janagarajan Vs. Kammavar Sangam, :

"Judgment may be open to review if there is mistake or error apparent on face of record. Error which is not self evident and has to be deducted by process of reasoning cannot be said to be such error justifying Court to exercise power of review. Power of review cannot be availed to rehear and correct erroneous decision. Review Petition rejected as error sought to be projected is not self

evident."

(v) M. Kamala Kannan and others v. M. Manikandan, 2014 (3) CTC 28:

"It is settled law that Review Application cannot be construed as an Appeal in disguise. Rehearing of matter is impermissible in review. Even in case of erroneous decision, review is not permissible. Judgment can be reviewed only when there is some mistake or error apparent on face of record. An error apparent on face of record must be such an error, which must strike one on mere looking at records and would not require any long drawn process of reasoning. Exercise of inherent jurisdiction is not invoked for reviewing any Order. In impugned Judgment, all issues raised by Appellant were considered. Review Application does not come within purview of Order 47, Rule 1. Hence, Review Application dismissed."

6. The main grounds of review are stated to be ground Nos. 4, 7, 11,12 & 13 which read thus:

"4. It is respectfully submitted that although three substantial questions of law were formulated for consideration, none on them were answered in the impugned Judgment.

7. It is respectfully submitted that the Respondent by virtue of the impugned Judgment and Decree, is attempting to misuse public property.

11. It is respectfully submitted that the Decree granted in respect of the entire stretch of property belonging to the Applicant is untenable and not based upon evidence.

12. It is respectfully submitted that the only intention of the Respondent is to annex valuable Government property.

13. It is respectfully submitted that dismissal of the Special Leave Petition on the ground of delay will not debar the Applicant from seeking review of the impugned Judgment."

7. The main contention with reference to the merits of the matter is that although three substantial questions of law were formulated for consideration, none of them were answered in the impugned Judgments. The Decrees granted in respect of the entire stretch of the property belonging to the Applicant is stated to be without evidence and untenable.

8. These contentions alone are untenable. In Paragraph 16 of the Judgment it has been very clearly pointed out that if the Plaintiffs are able to prove that:

"(a) There was a highway.

(b) There was a property belonging to them.

(c) That property was adjoining the highway."

If these things are proved, then the Plaintiffs are entitled to have the access to the public highway from each and every point of their property.

9. It is in the record of the Municipality which reads that "Panagal road is the public road". It is the evidence of Building Inspector of Tiruvarur Municipality (DW1) that the Suit property was entrusted to Municipality for the purpose of maintenance as a road. Therefore, when the findings have been arrived at based upon the documentary evidence and documents adduced mainly from the side of the Municipality itself, then the contention of the Appellant/Municipality that the Judgment is not based on evidence is obviously objectionable. Power of review can be exercised for correction of a mistake and not to substitute a view. There is not even a mistake here.

10. Power of review cannot be exercised to seek review of Judgment already delivered for purpose of rehearing and fresh decision in case.

11. The other two grounds namely Ground Nos. 7 & 12 are with reference to the intention of the Respondents to misuse Public Property and annex valuable Government Property along with his property. These two grounds cannot be considered at this distant point of time. Therefore, both the grounds are dismissed as untenable.

12. For the foregoing reasons, Rev. Appl. (SR) Nos. 61020 & 61024 of 2014 are dismissed.

13. The Decree-holders have filed Execution Petitions in E.P. Nos. 30 of 2013 & 31 of 2013, seeking removal of the fence and compound wall as per the terms of the Decree.

13.1. The Execution was resisted on the ground that SLP was pending before the Hon"ble Supreme Court.

13.2. Admittedly, S.L.P. No. 2851 of 2014 has been dismissed on 3.3.2014. Considering the duty and responsibility of the Court in ensuring that the Decree of the Court to be obeyed, the Executing Court has directed the Police Authorities to render assistance towards proper implementation of the Injunction Decree. The Orders passed by the Executing Court has to be appreciated and there is no reason as to how it could be blamed. Therefore, both the Revision Petitions are liable to be dismissed.

14. The Revision Petitions have no merits and the Revision Petitions are dismissed. No costs. In the result, M.P. Nos. 1 & 1 of 2014 in Rev. Appln.(SR.) Nos. 61020 & 61024 of 2014, filed for condoning the delay is allowed and the Rev. Appls. (SR) Nos. 61020 & 61024 of 2014 stands dismissed and C.R.P. Nos. 2330 & 2331 of 2014 are dismissed.