

HIGH COURT OF KERALA

Bench: Justice K. Babu

Date of Decision: 31 October 2023

RP NO. 1108 OF 2023**AGAINST THE ORDER/JUDGMENT IN OP (DRT) 350/2023 OF****HIGH COURT OF KERALA**

ROSAMMA TONY REVIEW PETITIONER

Versus

1 THE SOUTH INDIAN BANK LTD. REGD. OFFICE AT SIB HOUSE
2 THE CHIEF MANAGER AND AUTHORIZED OFFICER
3 SOUTH INDIAN BANK LTD., REGIONAL OFFICER THE BRANCH
MANAGER, SOUTH INDIAN BANK LTD.
.....RESPONDENTS

Section, Acts, Rules, and Articles:**Section 31(i) of the SARFAESI Act****Section 114 and Order 47 Rule 1 of the Code of Civil Procedure****Subject: Review Petition against the original judgment in O.P.(DRT) No. 350/2023, concerning appointment of an Advocate Commissioner and stay of proceedings under the SARFAESI Act.****Headnotes****Review Petition – Grounds for Review: Judgment discusses criteria under which a review petition may be entertained, specifying conditions like discovery of new evidence, errors apparent on record, or any other sufficient reason. [Para 5, 9-19]****SARFAESI Act – Agricultural Land: The review petitioner seeks the appointment of an Advocate Commissioner to ascertain if the property in question is agricultural land, invoking Section 31(i) of the SARFAESI Act. [Para 3-4]****Discretion of Tribunal: Directions to the Debts Recovery Tribunal to consider the applications for appointing an Advocate Commissioner and staying proceedings under the SARFAESI Act. [Para 4, 7]****Dismissal of Review Petition: The Court finds that the review petitioner has failed to meet any of the requirements for a review and dismisses the petition. [Para 6]**

Stay on Proceedings: While dismissing the review, the Court allows the petitioner to seek a stay on proceedings under the SARFAESI Act till the application for the appointment of Commissioner is considered. [Para 7]

Referred Cases

- **Vijay Kumar and Anr. V. Travancore Devaswom Board [2022 (6) KHC 407]**
- **Sow Chandra Kante v. Sheikh Habib [(1975) 1 SCC 674]**
- **Meera Bhanja v. Nirmala Kumari Choudhury [(1995) 1 SCC 170]**
- **Chhajju Ram v. Neki (AIR 1922 PC 112)**
- **Moran Mar Basselios Catholicos and another v. Most Rev. Mar Poulouse Athanasius and others [(1955) 1 SCR 520]**
- **T.C. Basappa v. T. Nagappa [(1955) 1 SCR 250]**
- **Hari Vishnu Kamath v. Syed Ahmad Ishaque (AIR 1955 SC 233)**
- **Kerala State Electricity Board v. Hitech Electrothermics and Hydropower Ltd., and others [(2005) 6 SCC 651]**
- **Jain Studios Ltd. V. Shin Satellite Public Co.Ltd [(2006) 5 SCC 501]**
- **S. Madhusudhan Reddy v. V. Narayana Reddy and Others (MANU/SC/1013/2022)**
- **Patel Narshi Thakershi and others v. Shri. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844]**

Representing Advocates

- For Review Petitioner: R.Suraj Kumar, N.G. Sindhu, Anjana R.S., Sunil J. Chakkalackal

- For Respondents: Sri. Mohan Jacob George S.C.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BABU, J.

R.P.No.1108 of 2023

Dated this the 31st day of October, 2023

ORDER

The review petition is filed for reviewing the judgment passed by this Court on 30.09.2023 in O.P.(DRT) No.350/2023.

2. The review petitioner is the petitioner in the Original Petition. The impugned judgment reads thus:-

“The prayers in this Original Petition are as follows:

“i)Direct the Debts Recovery Tribunal II, Ernakulam to consider and pass orders on Exhibits P10 and P11 applications

within a time frame fixed by this Hon'ble Court. ii) Order all coercive proceedings against the secured assets be kept in abeyance. iii) Such other reliefs that this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

2. Heard both sides.
3. Ext.P10 is an application to appoint an Advocate Commissioner to ascertain the nature of the land as one of the contentions raised is that the property mortgaged is an agricultural land and that petitioner is entitled to the protection contained in Section 31(i) of the SARFAESI Act.
4. Having regard to the nature of the challenges raised by the petitioner before the Tribunal, there shall be a direction to the Tribunal to consider Ext.P10 in accordance with law, after hearing both sides, within a period of one month from the date of production of a certified copy of this judgment. It is made clear that this Court has not made any observation in the merit of the contentions.

The Original Petition is disposed of as above."

3. Heard both sides.

4. The learned Counsel for the review petitioner submits that as the application seeking appointment of a commissioner is pending before the DRT, a direction be issued to the Bank not to proceed against the petitioner under the SARFAESI Act.

5. On the question of review, a Division Bench of this Court in **Vijay Kumar and Anr. v. Travancore Devaswom Board [2022 (6) KHC 407]** observed thus;

9. A review under Section 114 and Order 47 Rule 1 of the Code of Civil Procedure will be maintainable only in the following circumstances:

(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.

10. In **Sow Chandra Kante v. Sheikh Habib [(1975) 1 SCC 674]**, on the scope of review of judgment, the Apex Court held thus:

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

11. In **Meera Bhanja v. Nirmala Kumari Choudhury**

[(1995) 1 SCC 170] the Apex Court held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure.

12. In **Chhajju Ram v. Neki (AIR 1922 PC 112)**, which was approved by the Apex Court in **Moran Mar Basselios Catholicos and another v. Most Rev. Mar Poulouse Athanasius and others [(1955) 1 SCR 520]** the Privy Council held that the words “any other sufficient reason” appearing in Order 47 Rule 1 of the Code of Civil Procedure must mean “a reason sufficient on grounds at least analogous to those specified in the rule”.

13. In **Moran Mar Basselios Catholicos** (supra), the Apex Court held that error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law.

14. In **T.C. Basappa v. T. Nagappa [(1955) 1 SCR 250]** the Apex Court held that such error is an error which is a patent error and not a mere wrong decision.

15. In **Hari Vishnu Kamath v. Syed Ahmad Ishaque (AIR 1955 SC 233)** it was held that it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record.

16. In **Kerala State Electricity Board v. Hitech Electrothermics and Hydropower Ltd., and others [(2005) 6 SCC 651]**, the Apex Court on the review of judgment held thus:

“10.....In a review petition it is not open to this Court to reappraise the evidence and reach a different conclusion, even if that is possible. Learned Counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review Petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise.”

17. Under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power, which enables the Superior Court to correct errors committed by a subordinate Court (Vide: **Jain Studios Ltd. v. Shin Satellite Public Co.Ltd [(2006) 5 SCC 501]**).

18. In **S. Madhusudhan Reddy v. V. Narayana Reddy and Others** (MANU/SC/1013/2022), the Apex Court narrated the situations in which review will not be maintainable, which read thus:

“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 re-heard 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 negated.”

19. In **Patel Narshi Thakershi and others v. Shri. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844]** the Apex Court held thus:

“4..... It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.....”

6. In the present case, the review petitioner failed to place on record any of the requirements that warrant review of the impugned judgment. Therefore, the review petition lacks merits and it stands dismissed.

7. However, the review petitioner is at liberty to file an application seeking stay of the proceedings under the SARFAESI Act till the application seeking appointment of the Commissioner is considered. It is submitted that

the review petitioner has already submitted Ext.P11 application seeking stay of the proceedings before the Tribunal. Therefore, the Tribunal shall consider and decide the same at the earliest, at any rate, within a period of one week from this day. The Bank shall not dispossess the petitioner till 06.11.2023.

The review petition is disposed of as above.

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