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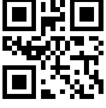

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3330]**
(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT
THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION No: 232/2025

Between:

Balina Srimannarayana **...PETITIONER**

AND

M/s Srr Hospitalities Private Limited and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1. PARIMI RAMA RAYUDU

Counsel for the Respondent(S):

1. DALAPATHI RAO RAJESH

The Court made the following:

ORDER:

The 1st respondent who is plaintiff filed suit claiming an amount of Rs. 13,45,17,354 towards compensation and for amounts invested for installation, damages and for mandatory injunction directing the 1st defendant in the suit to provide bore well water, municipal water, lifts facility, ground water tanks, and to remove obstructions to septic tanks, shops let out on stair case to remove from on generator to keys of the shutters and to lift garbage to remove constructions in parking area in cellar portion for ingress and ages to get NOC/occupancy certificate from Ongole Municipal Corporation and fire department and to obtain legal enforceable documents form 2nd respondent/2nd defendant in pursuance of agreement dated 02.05.2006 vide suit O.S.No.284 of 2014 on the file of VIII Additional District Judge, Prakasham at Ongole.

2. The said suit was decreed partly with a direction to the 1st defendant in the suit to pay an amount of Rs. 13,45,17,354/- with future interest @ 12% per annum from the date of filing of the suit and @ 6% per annum from the date of decree till the date of realisation on principal amount and the rest of the claim of the claim of the plaintiff was dismissed and further directed to pay an amount of Rs.13,97,756/-.

3. Now the 1st defendant in the suit filed CFR 5826 of 2024 under Order 41 Rule 5 of CPC to stay of Judgment and Decree dated 30.09.2024 including E.P.No.61 of 2024 till the date of disposal of review application also filed CFR 5825 of 2024 under Order 47 rule 1 and Sections 114 and 151 of CPC to review the Judgment and Decree dated 30.09.2024 in O.S.No.284 of 2014.

4. The learned trial Court Judge has rejected the application CFR 5826 of 2024 through an order dated 31.12.2024 filed under Order 41 rule 5 of CPC to stay of Judgment and decree dated 30.09.2024 with an observation that that the review petition is not maintainable and cannot be numbered, citing the judgments of the Apex Court. Consequently the application filed to review is also dismissed at numbering stage. The stay rejected application vide CSR No.5826 of 2024 is now being challenged in the present Civil Revision Petition on several grounds mentioned in the review petition (which are extracted hereunder as it is essential, for proper and effective disposal of revision petition) and further assailed that the court should have been addressed the merits of the matter based on the material submitted and the grounds presented. Furthermore, it is argued that the order lacks valid reasoning and that the trial court erred in rejecting the application before even numbering the review petition. The argument draws upon the decisions of the Supreme Court in the cases of Parsion Devi and Others v. Sumitri Devi and Others, reported in (1997) 8 SCC 715, and BCCI and Others v. Netaji Cricket Club and Others, reported in AIR 2005 SC 592, to support the maintainability of a review under Order 47, Rule 1 of the Code of Civil Procedure (CPC). Additionally, another judgment of the earnest while High Court of Andhra Pradesh in Raja Ratan Gopal Sainehar (died) by LR's reported in 2008 (1) ALT 623, is filed to reinforce the assertion that a revision is maintainable against the rejection of a review petition.

5. **GROUNDS OF REVIEW:**

1. The learned VIII Additional District Judge, Ongole, ought to have seen the burden of proof lies on the plaintiff to plead and establish his case.
2. The learned Additional District Judge ought to have seen the case of plaintiff is that there is no legally enforceable document between the parties. In the absence of privity of contract between the parties, the question of breach of contract does not arise to award damages to the plaintiff.
3. The learned Additional District Judge ought to have seen that the case of the defendant No.1 is that the original of agreement between plaintiff and the defendant No.1 is with the plaintiff. As per the pleadings in O.S.No.173/2013 and in the written statement in the present suit, notice under Ex.A-37, in the absence of marking such document an adverse inference to be drawn against the plaintiff.
4. The error apparent on the face of record is the question of providing the basic amenities and awarding damages would arose only if the defendant agreed and failed to provide men, amenities. Admittedly in the absence of such agreement the question of gave finding in this regard would not arise.
5. The learned Additional District Judge, ought to have seen whether the finding arrived in the judgment in O.S.No.173/2013, between the same parties can be ignored while decreeing the suit for damages?
6. The learned Additional District Judge, ought to have seen there is no written understanding between the plaintiff and 1st defendant, that the defendant execute the work to suit the convenience of plaintiff, the question of recording findings in favour of plaintiff would not arise.

7. The learned Additional District Judge failed to appreciate as per the pleadings in the plaint, the 2nd defendant herein failed to get the approval as per the agreed terms for development and failed to provide basic amenities for running the plot. The said pleadings are not supported by any proof to substantiate such pleading as such it ought not have recorded the findings that the defendant No.1 failed to provide amenities.

8. The learned Additional District Judge, ought not have recorded the finding that 1st defendant is responsible for delay in obtaining bar license, trade license to establish bar and restaurant, it ought to have seen the case of the plaintiff in the pleadings is the 1st defendant has not exclusive right in the project as such the agreement should be a tripartite agreement. In the absence of any pleading or proof thereon at any point of time

[1] Whether the plaintiff made such request to enter into a tripartite agreement?

[2] Whether D-1 has a competence to insist to enter a tripartite agreement, in the absence of such averments in the pleadings to finding is unwarranted?

9. The learned Additional District Judge, failed to record the finding what are the circumstances prompted the plaintiff to continue in the leased premises beyond 10 years of agreed period. If really the continuation in the premises by the lessee is not profitable to him. He would not have continued in the premises by obtaining order from the Honourable High Court.

10. The learned Additional District Judge, ought not have recorded the finding that the sub-licence agreement dated 9.2.2009, was not acted

upon by the parties. The court ought to have seen the said license is pending for adjudication before the Honourable High Court in A.S.No.98/2017. On one hand the court came to conclusion it is not proper to the court to record the findings, on the other hand it held the same was not acted upon. The said finding recorded is contrary to section 102 of Evidence Act, as the burden of proof lies on the plaintiff to file such documents as to establish the contents thereof are not intended to act upon. In the absence of marking such document which is in his possession as per Exhibit B-11 the party who failed to prove the document in his possession shall file as he failed to discharge the burden lies on him.

11. The learned Additional District Judge, ought to have seen it is required to frame an issue, whether the suit is maintainable to claim damages based on a document which was not placed on record. It ought to have seen the court failed to frame such an issue tough the defendant raised such plea in his written statement as such the findings recorded is contrary to Order 14 of C.P.C.

12. The learned Additional District Judge, ought to have seen there is no material on record to substantiate the pleading that the defendant No.1 agreed to provide amenities but failed to provide the same. In the absence of proof thereon, the findings recorded is improper and contrary to settled principles of law.

13. The learned Additional District Judge, ought to have seen that the plaintiff having satisfied the progress of construction and took possession of property. As such it ought not to have placed reliance of the letter addressed by the defendant No.2 to 1st defendant without

referring to contents on which it is addressed. In case the building is not completed nothing prevented the plaintiff occupy the premises.

14. The findings recorded at para 27 of the judgment with regarding to paras 12, 14, 16 and 17 of the plaint is not specifically denied at Para 3 of the written statement along with the averments. It ought to have seen with regard to allegations lifts are not in operation at para 9 of the written statement stated dealt in para No.9, 10, 11, 12 and 13 as such the finding is an error apparent on the face of the record stating 1stdefendant failed to deny such allegations.

15. The finding arrived at para 32, 33 is not based on any material on record. It is not the case of the plaintiff he issued notice to 1st defendant to allow him to use such facilities as denied by the plaintiff.

16. The learned Additional District Judge, ought to have recorded the finding the drainage facilities and septic tank was blocked by is connecting the manhole neither the oral and documentary evidence on record indicates about the efforts made by the plaintiff to connect the same such efforts if any was prevented by the 1st defendant.

17. The findings recorded at para 35 on imaginary grounds based on assumptions and presumptions without any basis and is nothing but misconstruing oral and documentary evidence on record.

18. The learned Additional District Judge, ought to have seen that the documents were marked subject to objection can be relied on without recording a finding about its admissibility [ie] Ex.A-42.

19. The learned Additional District Judge, ought to have seen the case of the plaintiff is no way “to reach parking place from Ongole – Kurnool Road, but it did not mention there is no other way to enter parking area”.

20. The learned Additional District Judge, ought to have seen whether there is an agreement between the parties to provide water to fulfill the needs of the plaintiff, to run the hotel @ para 10 of written statement it is specifically stated there is a bore well, water sump and municipal water tap, it is also specifically stated the municipal tap was removed bt municipal corporation in Kurnool Road extension main water pipe was removed and also specifically stated not only the plaintiff, the other persons adjacent to other buildings south of Kurnool Road are facing the similar problem.

21. The learned Additional District Judge, wrongly recorded the findings there is an admission of D-1 as D.W.1, the D.W.1 stated he never run a bar and restaurant in his building, such finding is contrary to evidence of D.W.1.

22. The finding arrived by the learned Additional District Judge, at para 13 of judgment there are omissions on the part of D-1 and plaintiff sustained loss is concerned is run contrary to material on record and contents of written instrument placed by the plaintiff. The question of any omission would arise, the question of breach of contract arise if the terms of concluded contract is in force.

23. The learned Additional District Judge, recorded the finding as if statement made by the plaintiff is true and correct, though there is no material to substantiate the damage, in the quantity and estimate etc., to the capacity of hotel rooms, function shall and restaurant without any basis.

24. The findings arrived at para 42 of the judgment applying 74 of Contract is wholly misconceived.

6. In Parsion Devi & Ors. vs. Sumitri Devi & Ors., (1997) 8 SCC 715, the apex court Court held as under:-

“Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule I CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise". In-fact the judgement relied by the revision petitioner in Parsion Devi case referred supra is not helpful to the revision petitioner.

7. The learned counsel for the 1st respondent/plaintiff in the suit would support the finding of the trial court inter alia it is argued that the court can reject the application before even numbering the review petition and referred Rule 4 of Order 47 CPC. Counsel would submit that under the above mentioned rule the court can reject the application even before numbering where it appears to the court that there is no sufficient ground for a review, it cat reject the application and the counsel drew the attention to the grounds raised in the review application and states that neither of the grounds are valid grounds and the court shall interfere only when there is a glaring omission or patent mistake or when a grave error has crept to review the judgment and decree in O.S.No.284 0f 2014 and relied on the following judgments: (1) Maji MohanKanwar and other vs The State reported in AIR 1967

Rajasthan 264 for the proposition that the application for review can be rejected under Rule 4 of Order 47 CPC if there is no sufficient grounds for it. (2) S. Murali Sundaram vs. Jyothibai Kannan and others reported in (2023) 13 SCC 515. The apex court in the said judgement it is observed that while exercising review jurisdiction in an application under Or. 47 rule 1 r/w 114 review court does not sit in appeal over it own order or rehear the matter an error which is require to be detected by a process of reasoning an erroneous order may be subjected to appeal before higher forum but cannot be a subject matter of review under Or 47 rule 1 CPC. (3) BCCI and Others v. Netaji Cricket Club and Others, reported in AIR 2005 SC 592 for the proposition that no revision should be entertained under Section 115 CPC against the order rejecting the review petition.

8. I answer this query quoting the judgment of the Apex Court in DSR Steel Private Limited v. State of Rajasthan [2012 (6) SCC 782], the Supreme Court pointed out that there could be three different situations to challenge an order namely (i) a case where a review application is allowed and the proceedings are reheard and a fresh decree is passed; (ii) a case where a review is allowed and the original decree or order is modified or reversed; and (iii) a case where the Court simply dismisses a review application. In the third type of cases, no merger takes place and a person aggrieved should only challenge the original order. It is pertinent to state that when the prayer for **review** is dismissed, there can be no merger. If the order passed in **review** recalls the main order and a different order is passed, definitely the main order does not exist. In this case, the application was rejected prior to assigning number,

which means no order on merits. Consequently, the revision is permissible, as neither condition specified in the judgment applies.

9. Heard learned designated senior counsel Sri N.Subba Rao for Sri Parimi Rama Rayudu, learned counsel for revision petitioner and Sri Gudapati Venkateswara Rao arguing counsel for 1st respondent.

10. After giving my thoughtful consideration to the above said argument advanced by the both the counsels, the Court makes the following order.

11. POINT FOR CONSIDERATION:

Whether the application rejected by the learned trial judge to grant stay of judgment and decree and execution proceedings is sustainable under law before assigning the number?

12. Rule 4 of Order XLVII is extracted for As it is imperative facility purpose:

Rule 4: Application where rejected— (1) Where it appears to the court that there is not sufficient ground for a review, it shall reject the application.

(2) Where the court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree, or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

13. According to Rule 4 of Order 47 of the CPC, the Court can reject an application filed for review if there are insufficient grounds, even prior to assigning it a number. This position is reinforced by the judgment of the Rajasthan High Court in the case of Maji Mohan Kanwar and others vs. The State, as reported in AIR 1967 Rajasthan 264. Therefore, the trial court's decision to reject the application is appropriate, and this court need not intervene.

14. The learned trial Court Judge while rejecting the application after quoting the judgments of the apex court has observed neither of the grounds raised in the review application would reflect the grounds enumerated under Order 47 rule 1 r/w Section 114 CPC and accordingly rejected the application. Thereby has assigned reason while rejecting the application and the contention no reason was assigned was not acceptable made by the learned designated senior counsel.

15. A review may be allowed 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, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that

the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule."

16. The words any other sufficient reason has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius & Ors., (1955) 1 SCR 520, to mean a reason sufficient on grounds at least analogous to those specified in the rule . The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors., 2013 (8) SC 337.

17. (B) When a 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 negatived."

18. Upon close scrutiny of the review grounds and evaluation against the principles established by the Apex Court, when assessed in light of the summarized principles mentioned above. The review grounds are nothing short of written arguments in the main suit there is specific grounds regarding miscarriages of justice or discovered important evidence after the judgment was rendered, or errors apparent on the face of the record, were raised.

19. Though quoting wrong provision of law or misquoting of provision law would not disentitle relief to party if he is otherwise entitled to such relief. But in the present case a review petition is filed under Order 47 Rule 1 CPC along with an application is filed under Order 41 Rule 5 of CPC to stay of Judgment and Decree dated 30.09.2024 (as if an appeal is filed under Order 41 rule 1 CPC against the judgment and decree in O.S.No.284 of 2014) and including Execution proceedings in E.P.No.61 of 2024, instead of a petition under Section 10 CPC which has no relevance at all. Review is not an appeal. An inference can be drawn that an application was filed mechanically with the aim of delaying the execution proceedings.

20. Accordingly, the Civil Revision Petition is dismissed, however, without costs.

As a sequel, interlocutory applications pending, if any, in this case shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 17.04.2025

siva

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION No.232 OF 2025

Date: 17.04.2025

siva