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A.C. Muthiah Vs. Madras Refineries Ltd., Represented by Its Company Secretary V. Srinivasan and 4 ors.

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Court : Chennai

Decided On : Aug-11-1997

Reported in : 1997(3)CTC134

Judge : Thanikkachalam and ;N.V. Balasubramanian, JJ.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 47, Rule 1

Appeal No. : Review Application Nos. 20 and 23 to 28 of 1997

Appellant : A.C. Muthiah

Respondent : Madras Refineries Ltd., Represented by Its Company Secretary V. Srinivasan and 4 ors.

Advocate for Def. : K.T.S. Tulsi, Sr. Counsel for ;Aravind Dattar, Adv.

Advocate for Pet/Ap. : K. Parasaran, ;R. Krishnamoorthy and ;Gopal Subramaniam, Sr. Counsels for ;Rangarajan, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Thanikkachalam, J.

1. These review applications are filed against the common judgment, dated 18-3-1997, delivered in O.S. Appeal Nos. 171 to 174, 190 to 193 and 243 to 246 of 1996.

2. Review C.M.P. No. 20 of 1997 is filed by Dr. A.C. Muthiah, who is the 2nd appellant in O.S.A. No. 243 of 1996. Review C.M.P. Nos. 23 to 28 of 1997 are filed by Southern Petrochemical Industries Corporation Ltd., rep. by its Director and Secretary Mr. A. Santhanakrishnan and SPIC Petrochemicals Ltd., rep. by its Company Secretary Mr. S. Natarajan, who are the appellants in O.S.A. Nos. 190 to 192 of 1996 and respondents 1 and 2 on O.S.A. Nos. 171 to 173 of 1996. These review applications are filed to review the common judgment, dated 18-3-1997, delivered in O.S.A. Nos. 171 to 174, 190 to 193 and 243 to 246 of 1996.

3. In the said O.S. Appeals, this Court held that Madras Refineries Limited (MRL) has made out aprima facie case for grant of interim injunction in its favour; it has also established that balance of convenience rests in its favour for grant of injunction and that if injunction is not granted as prayed for that would cause irreparable loss and hardship to it. However, the prayer of MRL for grant of temporary mandatory injunction, directing the 7th respondent to handover possession of 168.38 acres of suit land to the 8th respondent was negatived as the said relief cannot be granted at this stage. Accordingly, this Court upheld the order of injunction granted by the learned single Judge. However, this Court thought fit to modify the order of injunction granted by the learned single Judge, by vacating the conditions imposed by the learned single Judge while granting the interim injunction. Accordingly, O.S.A. Nos. 171 to 173 of 1996 were allowed with costs and O.S.A. Nos. 174 of 1996 was dismissed, and O.S.A. Nos. 190 to 193 and 243 to 246 of 1996 were also dismissed with costs.

4. Though in the grounds of review, several grounds were raised, assailing almost each and every finding given by this Court in the common judgment dated 18-3-1997, both on facts and in law, the sum and substance of the arguments advanced by the Shri K. Parasaran, Shri R. Krishnamoorthy, Shri Gopal Subramanian and Mrs. Nalini Chidambaram, learned, senior counsel appearing for the review

petitioners are as follows:

There is an error apparent on the face of the common judgment dated 18-3-1997 passed by this Court in the said O.S. Appeals, warranting review by this Court as contemplated under Order 47, Rule 1, C.P.C. The review applications satisfy the requirements for review both on the grounds of mistake and error apparent on the face of the record and also for 'any other sufficient reason'. If a judgment did not effectively deal with and determine the maintainability of the suit, then it is a fit case for review on the ground of error apparent on the face of the record. The relief of injunction, whether permanent or temporary, is itself is a specific relief as per the provisions contained in Section 35 to Section 42 of the Specific Relief Act. Any injunction which may be granted should only be such as would facilitate integration and this is what the learned single judge did by making the injunction conditional on complying with certain conditions imposed by the learned single Judge. Such conditions were mutual and reciprocal obligations. The Division Bench, in the O.S. Appeals, ought not to have lifted the conditions imposed by the learned single Judge. The Division Bench was not correct in stating that the conditions imposed by the learned single Judge cannot be complied with without the intervention of the Court.

5. Assuming that conditions imposed by the learned single Judge cannot be complied with without the intervention of the Court, then for that very reason, injunction should be refused because specific relief should not be granted in the case of a contract which involves the performance of a continuous duty, which the Court cannot supervise, as can be seen from the provisions contained in Section 14(1)(d) of the Specific Relief Act. If the reasoning of the Division Bench is correct that the conditions imposed by the learned single Judge cannot be complied with without the intervention of the Court, then injunction should have been refused to MRL. Therefore, the judgment of the Division Bench is erroneous in law and the same is vitiated by this error, which is apparent on the face of the judgment.

6. There is also another error apparent on the face of the judgment under review, which flows from the settled principles of the law of injunction. Grant of interim injunction in this case at a stage when the existence of the legal right is asserted

by the defendants. There is a contest. The controversies between the parties are unascertained and still remain unascertained till they are established at the trial on evidence. The interlocutory remedy, at this stage, is intended only to preserve the status quo or to maintain the situation in such a manner that it will facilitate the grant of main relief to the successful party in the suit. The Court has to put into the scales, as a relief consideration, the rights asserted by both the parties and not only asserted by one party, because at the trial it may accept the case of one or the other party, which is not decided at the interlocutory stage. The Division Bench erred in interpreting the term 'prima facie case'. By prima facie case is only mean that the claim of the plaintiff is neither frivolous nor vexatious and there is a series of questions to be tried in the suit. Therefore, merely because the plaintiff showed that it has prima facie case in its favour, it does not mean that injunction in its favour must follow as a matter of course. After showing that a prima facie case is in its favour, the plaintiff must then establish that balance of convenience rests in its favour for grant of injunction and it is the balance of convenience which determines the grant or refusal of injunction. In such matters, particularly, as the injunction is a specific relief, both at the interlocutory stage and at the final stage, the Court should first consider that even if the plaintiff were to succeed at the trial, in establishing his claim of right of permanent injunction, he could be adequately compensated by way of damages for the loss sustained. This aspect was not at all considered by the Division Bench while lifting the conditions imposed by the learned single Judge and granting injunction in favour of MRL. According to the provisions contained in Section 10(b) of the Specific Relief Act only when the act agreed to be done is such that compensation is money for its non-performance would not offer adequate relief, specific relief will be granted. In the present case, the dispute being as to the future of the project which would result in earning of profits by the parties from the project, it is capable of being compensated in damages. On this ground also, the Division Bench erred in granting injunction, without any conditions attached to it, in favour or MRL.

7. The Appellate Court, normally, will not interfere with the exercise of discretion in granting or refusing injunction by the trial court unless the discretion exercised by the trial court shown and proved to be of arbitrary, capricious and perverse or by ignoring the settled principles of law regulating the grant or refusal of interim

injunction. The Division Bench has not recorded a finding in its common judgment that the order of the learned single Judge is either perverse or vitiated by arbitrary and capricious exercise of discretion in the matter of grant of injunction. This is also an error apparent on the face of the judgment.

8. It is also stipulated that injunction is not granted unconditionally, and it is granted only subject to the plaintiff making provisions for the damages which the defendants would suffer by grant of interim injunction if the event of the suits filed by the MRL being dismissed. Such a provision has not been made in the order of the Division Bench. SPIC has already invested Rs. 792 crores in the project and on this ground also the judgment of the Division Bench requires review by this Court.

9. MRL, being an instrumentality of the State, its action must be informed with reason as otherwise it would be violative of Article 14 of the Constitution. If the choice is between killing a project or keeping alive the project, it is the latter, which advances the public interest, must be given effect to. If the review petitioners are injuncted from going ahead with the project, the State would lose an industry and nearly 5000 workmen will be left without employment. Therefore, public interest demands that there should be no injunction. The project should be allowed to go on and later on it can be integrated backward either on such terms as the Court may determine or by award of damages to the plaintiff in the event of the plaintiff succeeding in the suits.

10. On the other hand, Shri K.T.S. Tulsi, learned senior counsel appearing on behalf of MRL, submitted as under:

The contention of the review petitioners that there is error apparent on the face of the common judgment dated 18.3.1997 passed by this Court in the O.S. Appeals is without any substance. There is no error at all in the common judgment. Review petitioners failed to make out any ground as contemplated under Order 47, Civil P.C., warranting review of the common judgment dated 18.3.1997. The common judgment passed by the Division Bench in the O.S. Appeals is perfectly in order and do not suffer from any error apparent on the face of the record as contended by the review petitioners. The grounds raised by the review petitioners in these

review petitions are the repetition of the arguments made before this Court in the course of the hearing of the O.S. Appeals. Review proceedings cannot be converted into an appeal against the judgment of the same Bench. The review petitioners are virtually re-arguing the matter before this Court. A review petition is not intended to be a re-hearing of the proceeding nor is the petitioners entitled to deem it to be a second opportunity for advancing stale and rejected arguments, which have been heard at length after due consideration by the Division Bench. An error apparent, according to the learned senior counsel, is something which can be ascertained merely by looking at the record and does not require long drawn reasoning. It must strike clearly on the face of it. In support of this contention, the learned senior counsel relied on the following decisions, viz, Meera Bhanja v. Nirmala Kumari Choudary : AIR 1995 SC455 ; Sathyanarayan L. Hedge v. Mallikarjun Bhavanappu Tirumale : [1960]1SCR890 and Thungabadra Industries Ltd. v. Govt. of Andhra Pradesh AIR 1964 SC 1374.

11. The learned senior counsel then submitted that the review proceedings cannot be equated to an appeal or rehearing because the scope and ambit of review is strictly confined by Order 47, Review is not for the purpose of inviting a fresh decision of the case. If the view adopted in the original judgment is a possible view, it cannot be said to suffer from an error apparent. Forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of results. To support this line of argument, the learned senior counsel invited the attention of this Court to the following decisions viz. Meera Bhanja v. Nirmala Kumari Choudary : AIR 1995 SC455 ; Northern India Caterers v. Governor, Delhi : [1980]2SCR650 and Thunga Badra Industries Ltd. v. Govt. of Andhra Pradesh : [1964]5SCR174 . According to the learned senior counsel, the term 'any other sufficient reason' mentioned in Rule 1 of Order 47 refers to grounds analogous to those specified in the Rule. In this regard, the learned senior counsel relied on MMB Catholicos v. M.P. Athansius AIR 1954 SC 526; Chajju Ram v. Nemi AIR 1922 PC 112; Bisheshwar Pratap Sahi and Anr. v. Rath Nath and Anr. and Raja Shatrunjit v. Md. Azmat Azimthan and Ors. 1971 SC 1474.

12. The Division Bench, in the O.S. Appeal proceedings, considered the submissions of both parties in extenso and the review petitioners had sufficient

opportunity to present their case in full. The hearing in the appeal proceedings went on for nearly four weeks and most of the time was consumed by the review petitioners, apart from the written submissions were filed by both the parties. Therefore, after such an elaborate hearing and consideration of the written arguments, the review petitioners cannot claim that their case was not properly considered by the Division Bench. The common judgment of the Division Bench in the O.S. Appeals eloquently and exhaustively recorded each and every submissions made in the course of the hearing as well as the written submissions filed by the parties. It is highly regrettable that the petitioners have attempted to mislead this Court in the review proceedings with regard to the stand taken by them before the Division Bench in the course of hearing of the O.S. Appeals. The averments of the review petitioners before this Court are factually incorrect and contrary to the affidavits filed in the course of the hearing. It is also just opposite of what was argued before this Court when the appeals were heard. In this connection, the learned senior counsel invited the attention of this Court to the averments made in CMP No. 14483 of 1996 filed in O.S.A. No. 190 of 1996 on 15-10-1996 and the written submissions of Mr. Gopal Subramaniam at pages 4, 5 and 8 and those of Mrs. Chidambaram at pages 23, 24, 28 and 30. It is inexplicable as to how the review petitioners can continue to plead that SPC is implementing the project with the intention of backwardly integrating it with AROCHEM when it had itself in formed the Court in writing about the merger having become impossible. The review petitioners have all along been approbating and reprobating on the question as to whether the MoU was operative and binding upon the parties. While before the learned single Judge, the petitioners pleaded that SPC was incorporated to achieve the objects of the MoU, before the Division Bench, in the course of hearing of O.S. Appeals, they pleaded frustration of MoU with effect from March, 1993. The petitioners also chose to escape the effect of the negative covenant contained in the MoU on the ground of force majeure in the course of arguments before the Division Bench. This was the opposite of their grounds of appeal. The present stand of the petitioners with regard to SPC implementing the PTA/PFY projects for ultimately merging with AROCHEM is another instance of a somersault taken by the review petitioners, which is just opposite of their pleading in the C.M.P. referred to above as well as their written submissions before the

Division Bench filed in rejoinder.

13. The reasons given in each of the grounds of review has been referred to and thereby considered by the Division Bench in its judgment. The plea having been referred to and considered cannot be called into question on the ground that the finding is unfavourable to the party. The plea of erroneous interpretation of law or facts is not a ground for review.

14. Though the review petitioners have raised a series of grounds in their review petitions, they have confined their case mainly to the balance of convenience. On the ground of balance of convenience, the case of the review petitioners is that there is an error apparent on the face of the common judgment as injunction has been granted solely on the ground that the conditions imposed by the learned single Judge cannot be complied with by the parties without intervention of the court. There is not a single ground in the review petition, which has not been urged at the hearing of the appeal on behalf of the review petitioners nor is there a single document or a question of law or a question of fact, which was not placed before the Bench and which is not contained in the judgment of the Division Bench while considering the submission of the parties. Neither in the pleadings nor in the documents the review petitioners contended that in case injunction is granted in favour of MRL and in case MRL is defeated in the suits, the loss caused to the review petitioners because of the order of injunction should be adequately compensated. Therefore there is no necessity to pass an order adequately compensating the petitioners herein while granting the injunction in favour of MRL. The contention of the review petitioners that the Division Bench has not adverted to the prejudice to them as result of the grant of injunction is factually wrong and the same has been considered by the Division Bench in detail.

15. It was therefore pleaded by the learned senior counsel appearing on behalf of MRL that no ground has been made out by the review petitioners under Order 47, C.P.C. warranting review of the common judgment dated 18.3.1997 passed by the Division Bench in the O.S. Appeals and the review petitions are liable to be dismissed.

16. We have heard the learned senior counsel appearing on both the sides and carefully gone through the grounds raised in the review petitions, submissions made by the learned senior counsel and the authorities relied on by them in support of their respective contentions.

17. Before dealing with the merits of the review petitions, we would like to clarify certain aspects. By our common judgment, dated 18-3-1997, passed in O.S. Appeals, we modified the order of injunction granted by the learned single Judge, by vacating the conditions imposed by the learned single Judge. For arriving at such a conclusion, this Court took into consideration all the necessary aspects, such as rights of the respective parties, pleadings filed, documents produced and arguments advanced on both sides etc.

18. In paragraphs 1 to 11 of the common judgment, this court dealt with the background in which the appeals were filed. Submissions made by MRL is found place in paragraphs 12 and 13. Paragraphs 14 to 36 contain the submission made on behalf of SPIC and SPC. The submissions made on behalf of SACL and Directors of SPIC were catalogued in paragraphs 30 to 50. Paragraphs 52 to 58 contain the submissions made by MRL by way of rejoinder. The undisputed facts were summarised and narrated in paragraphs 59 to 70. After considering all these aspects, the Division Bench framed two questions to be answered in the O.S. Appeals, which is found in para 71. What are found in paragraphs 72 onwards are the discussion of the Division Bench on the relevant facts, which are directly relevant to the question for grant of injunction both in the context of undisputed as well as disputed facts on record. The discussions found in paragraphs 72 to 102 of the common judgment are for arriving at an answer to the questions formulated in para 71. In paragraphs 103 to 112, the Division Bench has recorded its findings in respect of the factors deemed relevant for answering the questions formulated in para 71.

19. After analysing all these factors, the Division Bench came to the following conclusions:

(1) MoU between the parties is still in existence and in force.

(2) The action of SPIC in starting a new company to the conclusion of MRL is not justified in law.

(3) SPIC could not join with defendants 2 and 4 in floating new ventures for doing business rival to that of AROCHEM.

(4) There were certain irregularities in the matter of land transfer.

(5) If the defendants are allowed to continue the project, it would cause irreparable injury and the hardship to MRL.

(6) MRL has made out a prima facie for grant of injunction in its favour .

(7) Balance of convenience rests in favour of MRL for grant of injuction.

(8) SPC commenced its project without obtaining the Environmental clearance.

(9) In the acquisition proceedings, it was held that the acquisition was for the purpose of MRL.

(10) Promise of SPIC on backward integration/merger was given goby.

(11) All the employees or labourers can be absorbed in the work of AROCHEM or other companies.

(12) Cost incurred on construction can be reimbursed by AROCHEM after independent evaluation.

20. The aforesaid conclusions are succinctly mentioned in the arguments advanced by the learned senior counsel appearing for MRL.

21. The Division Bench had also kept in its mind the well settled principles of law that while passing an order in an interlocutory application, the court must be cautious in not pre-judging the issues raised in the suit. The Division Bench also considered the provisions contained in Order 39, Rule 1, C.P.C. for grant of interim injunction. All the three ingredients viz. prima facie case, balance of convenience and irreparable injury and hardship for grant of interim injunction were considered by this court on the basis of the pleadings, documents and arguments advanced in

the O.S. Appeals, A plain reading of the common judgment delivered in the O.S. Appeals would clearly go to show that after analysing the facts, documents and arguments advanced by both sides, clear findings were given on each and every point of dispute raised in the O.S. Appeals. Therefore it is not correct on the part of the petitioners herein to contend that no necessary findings were given and the common judgment contains only the narration of the submissions made by the parties. Ultimately, the Division Bench, though was in entire agreement with the learned single judge in granting injunction in favour of MRL, was not in agreement with the learned single Judge in imposing certain conditions for grant of injuction. Therefore, the Division Bench lifted all the conditions imposed by the learned single judge. It is not correct on the part of the petitioners herein to say that injunction without any condition was granted solely on the ground that the conditions imposed by the learned single Judge cannot be complied with by the parties without the intervention of the court. One of the conditions imposed by the learned single Judge was that MRL should deposit a sum of Rs. 75.68 crores into this court to the credit of the suits on or before 27.8.1996 and on such deposit SPC and SAL shall amalgamate and that the project now being implemented by SPC shall be implemented by AROCHEM thereafter. Amalgamation of two companies can be done only through court. It is in this context alone the Division Bench, in its common judgment dated 18-3-1997, observed that some of the conditions imposed by the learned single Judge cannot be complied with by the parties without the intervention of the court. The Division Bench granted injunction in favour of MRL only after analysing all the factors necessary for grant of interim injunction.

22. Now coming to the merits of the review petitions, it remains to be seen that almost all the points argued by the learned senior counsel appearing for the review petitioners are the same as argued before this court in the O.S. Appeals. Each and every one of the points taken by the petitioners herein were already dealt with carefully and answered by this Court in the common judgment delivered in the O.S. Appeals, without pre-judging the issues raised in the suits, which are yet to be decided in the trial on evidence. In fact, each of the conclusions/findings arrived at by this Court in the common judgment dated 18-3-1997 are based on the law laid down by the Supreme Court in the matter of grant of interim injunction.

Conditions imposed by the learned single Judge cannot be complied with by the parties without the intervention of the Court is not the sole ground, but one of the grounds, which weighed with the Division Bench for vacating the conditions for grant of interim injunction. Only after being satisfied that MRL has made out a prima facie case in its favour, that balance of convenience rests in its favour and that irreperable injury and hardship would be caused to it if injunction is not granted, the Division Bench granted injunction without any condition attached to it in favour of MRL.

23. In Meera Bhanja v. Nirmala Kumari Choudhury : AIR 1995 SC455 , the Supreme Court, while considering the scope of review power of High Court, under Order 47, Rule 1, C.P.C. held as under:

'The 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 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226.'

24. In the above said decision, the Supreme Court relied on its earlier decisions in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma : (1979)4SCC389 ; Shivdeo Singh v. State of Punjab AIR 1963 SC 1909; and S.L. Hegde v. M.B. Tirumale : [1960]1SCR890 .

25. In Thungabhadra Industries Ltd. v. Govt. of Andhra Pradesh : [1964]5SCR174 , the Supreme Court, while considering the provisions of Order 47, Rule 1, C.P.C. held as under:

'There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by error apparent. A review is by no means an appeal in disguise whereby erroneous decision is reheard and corrected, but lies only for

patent error. Where without any elaborate argument one could point out the error and say here 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 error apparent on the face of the record would be made out'.

26. We have already stated that each ground raised in these review petitions is a repetition of the arguments advanced before us in the course of hearing of the O.S. Appeals. Some of the grounds raised herein are contrary to what was argued in the O.S. Appeals. A review proceeding cannot be allowed to be converted into an appeal against the judgment of the same Bench. The power of the High Court under Order 47, Rule 1, C.P.C. is very limited and narrow and the same cannot be equated in their ambit and scope to an appeal or rehearing. In review proceedings under Order 47, Rule 1, C.P.C. the court should not act as court of appeal and reappreciate the entire case. According to the provisions contained in Order 47, Rule 1, C.P.C, a person aggrieved by a decree or order and who, from the discovery of new and important matter or evidence which, after exercise of due diligence, was not within his knowledge 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, may seek for review of the decree or order passed against him. As stated earlier, the grounds raised in the review petitions are repetition of what were argued by the parties in the O.S. Appeals. No new and important matter or evidence, which was not known to the review petitioners at the time when the common judgment dated 18.3.1997 was rendered despite their due diligence, is brought to the notice of this Court, warranting review of the common judgment delivered in the O.S. Appeals. The common judgment delivered in the O.S. Appeals also does not suffer from any mistake or error apparent on the face of it or for any other sufficient reason. The learned senior counsel for the review petitioners submitted that there is error apparent on the face of the common judgment. According to the learned senior counsel, while considering balance of convenience of grant of injunction, the Division Bench failed to protect the interest of the review petitioners against the loss they may incur on account of interim injunction granted in favour of MRL in case MRL is defeated in the suits. This, according to the learned senior counsel, is an error apparent on the face of the judgment. The contention of the learned

senior counsel on this point is without any substance. In the present case, the review petitioners herein are in an advantageous position. They are going ahead with the project in full swing to the exclusion of MRL. The respondent herein is seeking the aid of the Court to get back what they have lost. The land, which was acquired for the use and purpose of MRL, is now with the review petitioners. Therefore, there is no substance in the arguments advanced by the petitioners herein that their interest should be safeguarded against the loss they may incur on account of grant of interim injunction in favour of MRL in case MRL is defeated in the suits.

27. When this Court was agreeable with the learned single Judge in granting interim injunction, it is not necessary to examine whether the learned single Judge has exercised his discretion arbitrarily, capriciously and whimsically and whether the order is perverse or whether it has ignored several principles of law regulating the grant of interim injunction. After satisfied that the learned single Judge was correct in granting injunction, this Court was concerned only with the conditions imposed by the learned single Judge for granting injunction. Since the conditions imposed were so onerous and impracticable, they were removed. The submission that rights of the review petitioners herein should be adequately protected against the damage that would be caused to them by the order of injunction in favour of MRL in case MRL is defeated in the suits was neither raised in the pleadings nor in the documents filed nor in the arguments advanced in the O.S. Appeals. This ground is raised for the first time in these review proceedings. Therefore, when this ground was not raised and urged before the Division Bench at the time of hearing of O.S. Appeals, it is not possible to expect the Bench to give a finding on this aspect. The Division Bench did take into consideration the aspect of balance of convenience and gave its finding that balance of convenience rests in favour of MRL for grant of injunction in its favour. The Division Bench also considered the law laid down by the Supreme Court in its decisions in Gujrat Bottling Co. Ltd. v. Coco Cola : AIR 1995 SC2372 ; Power Control Appliances v. Sumeet Machines : [1994]1SCR708 ; Wander Ltd. v. Auto India Ltd. ; General Electric Technical Services Company v. Punj Sons (P) Ltd. : [1991]3SCR412 ; Kumari Mathuri Patel and Anr. v. Addl. Commissioner Tribal Development and Anr. 1994 (8) SCC 241 and Gangubai Balblya Chaudary v. Sukhtanker : AIR 1983 SC742 while granting

injunction in favour of MRL.

28. The learned Senior Counsel appearing for the review petitioners heavily relied upon the decision of the Supreme Court, reported in MMB Catholicos v. M.P. Athansius AIR 1954 SC 528 in order to support his contention that review is possible in the present case. We have carefully gone through the said decision. In the said case, the review was allowed as the evidence on record has not been adverted to. Omission to refer to material evidence could certainly form the basis of an error apparent. However, in the present case, not a single material has been brought to the notice of this Court, which has not been referred to by this Court, which was placed before it, in the course of hearing of O.S. Appeals.

29. The submission that the State will lose an industry of this kind and nearly 5000 workmen will be thrown out of employment was already dealt with by this Court in the common judgment rendered in the O.S. Appeals; Since MRL is always interested in the project of manufacture of PTA/PFY, after necessary formalities were complied with and since the MRL is a Government enterprise, it cannot be said that there will be loss of this kind of. industry in this part of the State.

30. In the present proceedings not a single new material or information has been brought to the notice of this Court in these review proceedings, which has not been referred to by this Court and was placed before it in the course of hearing in the O.S. Appeals. According to the petitioners herein, MRL. is not entitled to the relief of interim injunction, because the same is a form of specific relief and therefore, controlled by the provisions of Section 14 of the Specific Relief Act. This submission of the learned Senior Counsel appearing for the petitioners herein is untenable. MRL. has not sought for any specific performance of MoU. What has been sought for by it is the enforcement of the negative continents contained in the MoU, which is expressly made specifically enforeable by the terms of the MoU. While so, the relief of interim injunction can be granted in terms of Section 41(c) and Section 42 of the Specific Relief Act. Since specific performance was not sought for, Section 14 of the Specific Relief Act will not govern the exercise of discretion, which is based on the subjective satisfaction of the three cardinal principles for the grant of injunction, namely, prima facie case, balance of

convenience and irreperable injury and hardship, which have been pleaded and established by MRL and carefully considered and accepted by this Court in the common judgment delivered in the O.S.Appeals.

31. During the course of the arguments in the review petitions, the learned senior Counsel appearing for the petitioners herein also prayed for the review of the order relating to the C.B.I. enquiry.

32. While delivering the common judgment in the O.S. Appeals, the Division Bench also passed an order directing the C.B.I. to probe into the matter of allotment of land to find out whether there were any irregularities committed in the matter of re-allotment. According to the learned counsel for Mr. A.C. Muthiah, in any view of the matter, there are no circumstances even remotely suggesting commission of any offence which calls for a direction to CBI for investigation. An investigation into the alleged commission of an offence at this stage affects the reputation of the parties concerned. A right to reputation has been held to be a right guaranteed under Article 21 of the Constitution. Therefore, the order passed ex parte for investigation by CBI. without affording any hearing on that aspect is one which calls for review in these proceedings.

33. On this aspect, the learned Senior Counsel appearing for MRL. submitted as under:

The petitioners have completely misconstrued the nature and jurisdiction exercised by this Court, while passing the order for probe by CBI. The very fact that the order summoning the files from the Chief Secretary to the Government and the order directing the probe by CBI have been passed as separate and independent orders and not in the appeals decided by the Division Bench, is sufficient aspect that the Division Bench passed these orders not as the Court of appeal, but as the Constitutional Court under Article 226 of the Constitution for ensuring that the motivated, arbitrary and highhanded action of the Government agencies was enquired into. Since this order is in the nature of preliminary direction, this Court may not have considered it necessary to state the nature of jurisdiction at the interim stage in the order that was communicated to CBI. However, the jurisdiction of the High Court, as a superior Court of record, to go

into the question of arbitrariness, which not only tantamount to squandering away public property, but also may reveal criminal actions of public functionaries in collusion or conspiracy with private parties is an eminent domain, in which the High Court can exercise its constitutional jurisdiction. The Court can also assume suo motu jurisdiction in this matter, whenever an act of arbitrations, which appears to be motivated by extraneous consideration, comes to the notice of the Court in respect of discharge of public function by State authorities.

34. To support the aforesaid arguments, the learned senior counsel relied on the following decisions: Ravi S. Nayak v. Union of India : [1994]1SCR754 ; Express Newspapers Pvt. Ltd. v. Union of India : AIR 1986 SC872 ; Bandhua Mukthi Morcha v. Union of India : [1984]2SCR67 and Deena @ Deen Dayal and Ors. v. Union of India, 1983 (4) SCC 653.

35. The learned senior Counsel further argued that the review petitioners failed to appreciate that the Division Bench has deliberately not used any stronger language while ordering CBI probe into the land transaction. Listing out the offences or pointing out any parties at this stage in the order would be more detrimental to the parties and since the matter was yet to be probed, this Court rightly thought it fit not to specify the offence. This Court has rightly in the operative part of the order refrained from terming them as offences and termed them as mere irregularities. This action of the Division Bench is perfectly in consonance with the law laid down by Mr. Justice J.S. Verma, as he then was, in the case of Vineet Narain and Ors. v. Union of India and Anr. : [1996]1SCR1053 . Since the criminal acts were yet to be investigated, this Court rightly refrained from expressing any opinion on the merits of the allegations contained in the order by listing out offences or the accused. Petitioners cannot equate the order of a constitutional' court to an FIR under Criminal Procedure Code. This Court passed the said order only in pursuance of the facts that were revealed on the perusal of the files summoned from the Government, it is fully empowered to take such steps as it deems necessary for establishing the truth with regard to the matter of performance of public duties. It is the duty of the Court to ensure that liability for misfeasance in public offences is fixed and those responsible are made to suffer necessary consequence under the law. This Court has full authority for dealing

with the arrogant and abusive disregard of the law displayed by high ranking functionaries at the expense of the public. The order directing a probe by CBI is perfectly just and fair. This Court can also pass such further orders in the course of monitoring of the case as are deemed to be necessary as the CBI has been directed to submit its report to this Court within eight weeks from the date of the order.

36. We have heard the learned Senior Counsel appearing for the review petitioners as well as the learned Senior Counsel appearing for the respondent on this aspect.

37. At the outset, we would like to make it clear that the order passed by this Court, while delivering the common judgment in the O.S.Appeals, directing C.B.I. to probe into the matter of allotment of land to find out whether there were any irregularities committed in the matter of re-allotment is a separate and independent order and the same does not form part of the judgment delivered in the O.S. Appeals. In fact, while advancing the arguments in the O.S. Appeals, the learned Senior Counsel appearing for MRL. suggested that there were certain irregularities in the matter of re-allotment of land to SPC. Therefore, we called for the relevant files from the Government and carefully perused the files so summoned. After such careful perusal, this Court, in the interests of justice, came to the conclusion that a probe is necessary. Accordingly, the matter was entrusted to C.B.I. In passing such an order by this Court, on its own volition, the parties to the O.S. Appeals have no role to play. Therefore, they need not be heard on this matter. They also cannot claim as a matter of right, an opportunity of being herd before such an order is passed. In ordering such probe, this Court exercised its constitutional power vested in it. Whether there is prima facie case warranting any further action would depend upon the investigation report that would be filed by C.B.I. Therefore, when the probe is ordered, it is not possible either to list out the offences or point out any particular person involved in such offences. It is only the report of the C.B.I. that would determine all the above aspects. Since the order directing C.B .I. probe in the land transaction is not part of the common judgment rendered in the O.S.Appeals, it is not possible for the petitioners herein to make any submissions with regard to the authority of this Court in ordering such a probe

by C.B.I. The said order is totally unconnected with the common judgment delivered in the O.S.Appeals. Therefore, the review petitioners cannot raise any objection for ordering a probe by CBI. in these review petitions. The review petitioners also cannot expect all the ingredients of an F.I.R. in the order passed by this Court, directing probe by CBI. There may be many things reflected in the mind of the Court in ordering the probe by CBI and what were passing in the mind of the Court cannot be reflected in its order because that would cause prejudice to the parties concerned. That is why this Court was refrained from using any stronger language, and used the expression 'irregularities'. The order passed by this Court neither specifies the nature of the offences, nor points out the persons connected thereto so as to prevent the causing of any prejudice to the parties concerned. Since the order directing a probe by CBI does not form part of the judgment delivered in the O.S, Appeals, the petitioners herein cannot seek for review of the same before this Court. Therefore, the submissions made by the learned senior counsel appearing for the review petitioners on this aspect are without any substance and they are rejected.

38. One other aspect that remains to be considered in these review petitions is, whether the petitioners herein can be permitted to continue the project while injunction granted by this Court in favour of MRL is operating against them and the suits are yet to be decided.

39. It remains to be seen that the principal objection of MRL against the judgment of the learned single Judge was that the direction for merger cannot be complied with without being able to question the project cost or being permitted to re-evaluate the project cost, the product mix and the contracts. At the time when the learned single Judge passed his order, investment to the tune of Rs. 342 crores was alleged to have been made by the petitioners herein. At the intervention of this Court at the time of admission of O.S .Appeals, MRL placed an affirmative implementation strategy before the court and the petitioners respondent to the same in writing. The main dispute between the parties at that stage narrowed down to unwillingness of the petitioners to subject the project to re-evaluation on the plea that huge investment had already been made. At the stage of filing of the review petitions, petitioners claimed that investments to the tune of Rs. 792 crores

have been made. By filing CMPs. in the review petitions, the petitioners are seeking permission of this Court to make further investment to the tune of Rs. 1042 crores. If it is permitted, investment will be claimed to have been made to the tune of about Rs. 1900 crores. The total cost of the project is Rs. 2,128 crores. Therefore, the learned Senior Counsel appearing for the respondent herein submitted that if the petitioners herein were permitted to invest Rs. 1042 crores, being almost the entire expenses in relation to the project, it would be impossible for the Court to compel the undoing of the investment or compel the defendants to honour their commitment of merger after re-evaluation of the project and the contracts.

40. When the review petitions were pending, a Pronoters' meeting between the parties took place on 8.4.1997. The minutes of the said meeting show that SPIC has till now agreed to re-evaluation of the project. In the event of permitting the petitioners herein to invest more funds in the project, especially when an order of injunction is operating against them, re-evaluation will be necessary not only for the investment already made, but also for the investments which are yet to be made. The proposal for merger and re-evaluation was submitted by the petitioners herein to the respondent. But it was not accepted by the respondent.

41. It is true that suits are pending disposal and as per the common judgment delivered in the O.S.Appeals, the petitioners herein are injuncted from proceeding with the project. However, at the request of the petitioners herein, by supplementary order dated 18.3.1997, this Court suspended the operation of the injunction granted in favour of MRL for a period of eight weeks from 18.3.1997, with a condition that the review petitioners herein should not create any third party interests in the project, to enable the petitioners hereinto file an appeal before the Supreme Court. While reserving the orders in these review proceedings, the above said order was extended until further orders.

42. Now, the fact remains that the land of 168.72 acres belonging to MRL was transferred to SPC and SACL. At present, the disputed lands are with the petitioners herein and they are also proceeding with the project by raising funds from various sources such as loans from financial institutions, public issue, foreign

investment etc. Therefore, the petitioners herein are in an advantageous position and MRL is in disadvantageous position.

43. At the time of concluding the arguments in the review petitions, the learned Senior Counsel appearing for the petitioners herein submitted a proposal for integration without prejudice to their rights. The proposals are as follows:

SPIC Agreed that the project of SPC must proceed on the following terms and conditions:

(a) MRL would be given an opportunity to consider the report of IDBI upon reappraisal by any Financial institution to be completed within 2 months from today;

(b) The said report would be forwarded to Government of India by MRL along with its readiness to invest its share which shall be processed by Government of India expeditiously within six months;

(c) During the said period of 8 months, SPC agrees that 26% equity would be reserved for investment by MRL;

(d) If MRL conveys its willingness but is of the opinion that project cost has been inflated the capital contribution by MRL will be reduced proportionately to the extent indicated by IDBI in its reappraisal;

(e) If MRL does not convey its willingness within the said period, the said equity would be free from reservation contained in clause (c) supra:

(f) If MRL does not convey its willingness within the time fixed, the said nominee Directors shall cease to be on the Board;

(g) In the meanwhile (i) the order directing CBI enquiry should be kept in abeyance; and (ii) suspend the order of injunction;

44. When the abovesaid proposal was put to MRL, the learned Senior Counsel appearing for MRL said that MRL is not willing to accept the same. It remains to be seen that in the suits filed by MRL the prayers are for a direction to return the land

of 168.72 acres by the 7th defendant to the 8th defendant, permanent injunction restraining SPIC, SPC and SACL not to proceed further with their new ventures and for a declaration that starting of new ventures are against MOU dated 17.1.1989. The learned single Judge in the interlocutory applications filed in the suits granted interim injunction in the common order, subject to certain conditions. In the O.S.Appeals, this Court vacated the conditions imposed by the learned single Judge and confirmed the order of injunction granted by the learned single Judge.

45. Now, the review petitioners are seeking permission from this Court to continue to run the new ventures till the disposal of the suits, as otherwise, they pointed out that they would undergo irreparable loss and injury to their properties. They further submitted that in the interests of both parties, in the interests of justice and in the public interest, especially in the interest of the industrial growth in this State, they should be permitted to run the ventures, without closing them. According to them, killing the growing industries is neither desirable nor profitable to the respondents in the revision petitions. Further, the learned Senior Counsel appearing for the revision petitioners submitted that while considering the balance of convenience for the grant of injunction, the Division Bench failed to protect the interest of the review petitioners against the loss that may occur on account of the interim injunction granted in favour of MRL, in case MRL is defeated in the suits, for which we pointed out that the lands belonging to AROCHAM is now in the hands of the review petitioners and that the review petitioners are now going on in full swing with their new ventures, excluding MRL. and if at all, any loss would occur on account of MRL succeeding in one suits, it is MRL which is in disadvantageous position.

46. Keeping all these facts in mind and considering the public interest, industrial growth in the State and in the interests of both parties, we consider that the review petitioners can be allowed to continue to run the new ventures, subject to the conditions imposed by this Court for safeguarding the rights of both parties. Accordingly, we are allowing the review to petitions and keeping the injunction in abeyance, subject to the following conditions:

(1) SPIC is directed to ensure that SPC and SACL will integrate with AROCHAM and arrange to allot 26% of equity on market value in favour of MRL during the pendency of the suits;

(2) SPIC is directed to ensure that SPD/SACL will set apart in a separate account in favour of MRL. proportionate amount of dividend declared by SPC/SACL on the notional value of 26% of equity, pending disposal of the suits;

(3) SPIC, SPC and SACL are directed to file affidavits of undertakings to abovesaid effect within two (2) weeks from the date of this order;

(4) The approximate value of the land of 168.32 acres said to have been taken over by the review petitioners is fixed at Rs. Two crores and SPIC SPC and SACL are directed to furnish bank guarantee to the extent of Rs. 2 crores being the value of the land of an extent of 168.32 acres re-allotted to SPC from AROCHAM in order to secure the interest of MRL, pending disposal of the suits, within two (2) weeks from the date of this order;

(5) IF SPIC, SPC and SACL failed to arrange to give the affidavits of undertakings and bank guarantee within two weeks from the date of this order, injunction restarting SPIC SPC and SACL. from proceeding further with their new ventures with PTA/PFY and aromatic projects, shall operate pending disposal of the suits;

(6) IF SPIC, SAC, and SACL complied with above said conditions, injunction will not operate;

To the extent indicated above, the review petitions are allowed. There will be no order as to costs. In view of the above said order, further proceedings of CBI enquiry is directed to be kept in abeyance, pending disposal of the suits. Consequently, CMP. Nos. 5076 to 1079 of 1997 are dismissed.

N.V. Balasubramanian, J.

1. I have carefully gone through the judgment of my learned brother, Thanikkachalam.J. in Review C.M.P. Nos. 20 and 23 to 28 of 1997 filed to review the common judgment dated 18.3.1997 delivered in O.S.Appeal Nos. 171 to 174,

190 to 193 and 243 to 246 of 1996. With great respect to my learned brother, I am not able to agree with my learned brother insofar as the directions given by my learned brother in paragraph 44 of the judgment. The facts of the case and arguments advanced by the learned senior counsel for the petitioner and the respondents have been set out in detail by my learned brother and they need no repetition.

2. My learned brother has set out in paragraph - 19 the conclusions arrived at by the Division Bench in O.S.Appeals and the reasons for the grant of interim injunction in favour of the respondents. My learned brother after quoting the decisions in Meera Bhanja v. Nirmala Kumari Choudury : AIR 1995 SC455 wherein the earlier decisions of the Supreme Court in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma : (1979)4SCC389 , Shivdeo Singh v. State of Punjab A.I.R. 1963 SC 1909 and S.L. Hegde v. M.B.Tirumale : [1960]1SCR890 were considered, has held that the review proceedings cannot be considered as an appeal on the judgment of the same Bench and this Court in review proceedings cannot act as a Court of appeal. That apart, the Supreme Court in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma : 1979 CriLJ908 and this Court in Chockalingam Chettiar v. Chidambaram Pillai : (1960)2MLJ327 have taken the view that the term for any other reason in Order 47, Rule 1, C.P.C. should be construed as analogous or as as ejusdem generis with the other provisions of the rule laying down the limits of the exercise of the power of the review. In Shanmuga Sundara Nadar v. Tamil Nadu Housing Board, represented by its Chairman, Madras and Ors. 1988 (2) L.W. 57 (MAD.) this Court held as under:-

'The power to review is a restricted power which authorises the Court to look through the judgment not in order to substitute a fresh or second judgment but in order to correct it or improve it, because some material which it ought to have considered has escaped consideration or failed to be placed before it for any other reason or because it suffers from a patent error which cannot be sustained by any process of reasoning. The Court cannot under cover of review arrogate to itself the power to decide the case over again bepause it feels then that the assessment of evidence, etc., done formerly was faulty or even incorrect. An erroneous view of evidence of law is not a ground for review. A wrong exposition of the law, a wrong

application of the law and failure to apply the correct law have been held to be not a ground for review.'

3. Viewed in the above perspective, I hold that any further direction in the review applications which would affect the operation of the injunction granted in those appeals would be beyond the scope of the powers of the review Court. In my view, the directions, though interim, allowing the review petitioners to run the project and to run the new venture subject to certain conditions would be against the very term of order injunction granted earlier. In my view, so long as the order of injunction operates, it is not permissible for this Court to whittle down the operation of the earlier order or suspend the operation of the same by imposing certain conditions. No doubt, it is true and it is recognised that the public interest requires the running of the project, particularly, a mega project like the one involved in this case. But, on that account, this Court, sitting as a Review Court, cannot pass an order which would, in effect, be contrary to the order of the injunction earlier passed in the O.S.Appeals. In my view, granting the order of injunction in the appeals and keeping the injunction in abeyance during the pendency of the suit in the review petition would be just contrary to each other. That apart, it is relevant to notice that this Court has not set aside the prima facie finding on the basis of which the injunction was earlier granted. I, therefore, hold that without setting aside the finding and without setting aside order granted, it is impermissible to suspend the operation of the order, of course subject to certain conditions. Therefore, the review Court cannot keep the order of injunction in suspense during the pendency of the suit. In my view, the power to modify or suspend the order of injunction earlier granted by this Court is available only to the appellate Court. This Court, sitting in Review Court cannot hold that it will keep the operation of the order of injunction in suspense and allow the petitioners to act just in contravention of the injunction granted by this Court. Since I am of the view that this Court has no power to grant such a direction when the injunction is in force, I am not able to agree with the view of my learned brother that the operation of the order of injunction should be suspended. My learned brother has allowed the review applications to a limited extent, and to that extent, I am not agreeable. But, to the extent that my learned brother has not agreed with the contentions of the learned senior counsel for the review petitioners in the review is not maintainable, I am in

agreement. Since I have not agreed with the views of my learned brother that the review applications should be allowed to the extent indicated by him, the review applications as a whole are liable to be dismissed and they are dismissed. In this view of the matter, all the review C.M.Ps. including any direction keeping the enquiry in abeyance are dismissed.

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