IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST) NO.9797 OF 2014
IN
WRIT PETITION NO.123 OF 2012

NKGSB Co-operative Bank Ltd Petitioner
Vs
1.S.S.Engineers Kamagar
Sangharsha Sanghatana and Ors .. Respondents

Mr. Jay Choksi i/b Law Frame, Advocate for Petitioner.
Mr. Manmohan A. Amonkar Advocate for Respondent No.1.
Mr. Rakesh Sawant, Advocate for Respondent Nos.2 and 3.

CORAM : R.G.KETKAR,J.
DATE : 20/02/2015

PC:

1. Heard Mr. Jay Chowksi, learned counsel for the petitioner, Mr. Manmohan Amonkar, learned counsel for respondent no.1 and Mr. Rakesh Sawant, learned counsel for respondents no.2 and 3 at length. By consent of the parties, Review Petition is taken on Board.

2. Rule. Learned Counsel for the respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Section 114 read with Order 47 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), the petitioner has sought review of the order dated 14.2.2012 passed in Writ Petition No.123 of 2012 and in particular paragraph 2 thereof. Paragraph 2 of the order dated 14.2.2012 reads as under:

> “2. It is an admitted position that the land and building of the respondent no.1-Firm and one crane has been sold under the provisions of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Sale Certificate was issued whereby the Bank has recovered a sum of Rs. 8.19 crores. The Bank is in possession of the remaining machinery. The sale of remaining machinery will be conducted by the authorised representative **by respondent nos 1 and 2** even the buyer may be brought **by respondent no.3**. Further as and when said buyer is found either by the Bank or by respondent nos 1 and 2, entire documents and particulars of buyer and the purchase price should be communicated to the petitioner and statement to that effect should be filed before the Industrial Court in the pending complaint.”

It is submitted that there is a typographical error in the line beginning with the words “The sale of”. In that, instead of respondents no.1 and 2, it should have been respondent no.3 and instead of respondent no.3, it should have been respondents no.1 and 2. Mr.Chowksi relied upon the definition of the expression “authorised officer” in Rule 2(a) of the Security Interest (Enforcement) Rules, 2002 (for short, 'Rules'), which reads as under :-

> “2. In these rules, unless the context otherwise requires,-
>
> (a) “authorised officer” means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the Board of Directors or Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the Act”

He submitted that this Court has consciously used the words 'authorised representative' thereby meaning that the Court intended to permit the Bank to sell machinery through its authroised representative.

4. On the other hand, Mr. Sawant submitted that there was conscious arrangement made between the parties permitting respondents no.1 and 2 to sell the machinery and not the Bank. It is further submitted that even in the order dated 20.7.2012 passed by the Industrial Court below Exhibit U-2 in Complaint (ULP) No.186/2012, it is specifically recorded that “As agreed the respondent-employer shall sell/auction the machinery the property as directed by the High Court, if it could get a buyer. This order was passed by consent of the parties permitting the borrowers to sell the machinery. It is further submitted that there is no typographical error in paragraph 2 of the order. In support of his submission, reliance is placed on the decision of the Apex Court in the case of J.Samuel Vs. Gattu Mahesh, 2012 (2) SCC 300 and in particular paragraphs 15 and 16. In paragraph 15, the Apex Court dealt with the expression “typographical error”. The term typographical error is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. In other words, the petitioner has not made out a case of typographical error as

laid down by the Apex Court in paragraph 15 of the said decision. Mr. Sawant also relied upon the orders dated 11.4.2012 passed by Debt Recovery Tribunal (D.R.T.) in Securitisation Application No.15 of 2012 and dated 4.10.2012 passed by Debt Recovery Appellate Tribunal (D.R.A.T.) in Misc. Application No.740 of 2012. The D.R.A.T directed the parties to maintain status quo as regards security/asset till then.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. Paragraph 2 of the order dated 14.2.2012, extracted herein above, shows that this Court specifically recorded that it was an admitted position that the land and building therein and one crane was sold under the provisions of the Act and the Sale Certificate was issued whereby the petitioner-Bank has recovered a sum of Rs. 8.19 crores. It was also noted that the Bank is in possession of the remaining machinery. It was further directed that the sale of machinery will be conducted by the “authorised representative” by **respondents no.1 and 2**. Even the buyer may be brought by **respondent no.3**. Further as and when the said buyer is found either by the Bank or by respondents no.1 and 2, entire documents of buyer and the purchase price was ordered to be communicated to the petitioner and statement to that effect was ordered to be filed before the Industrial Court in the pending

complaint. The question is whether there is typographical error in respect of respondents no. 1 and 2 and respondent no. 3. The petitioner contends that in place of respondents no. 1 and 2 it should have been respondent no.3 and in place of respondent no.3 it should have been respondents no.1 and 2. Respondents no.2 and 3 contend that there is no typographical error.

6. Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Act provides for the manner in which security interest can be enforced. Section 13(4) provides that in case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely, (a) take possession of the secured assets of the borrower **including the right to transfer by way of lease, assignment or sale for realising the secured asset**. Perusal of Section 13(4)(a) clearly shows that in the event of failure of borrower to discharge his liability in full within the period specified in sub-section (2), it is the secured creditor who is empowered to take possession of the secured assets of the borrower and is also conferred right to transfer secured asset by way of lease, assignment or sale. Rule 2(a) defines the expression 'authorised officer'. If the provisions of section 13(4) and Rule 2(a) are considered in the light of paragraph 2 of the

order dated 14.2.2012, it is obvious that the Court intended to permit the petitioner-Bank to sell the remaining machinery through authorised representative. Liberty was also reserved to respondents 1 and 2, namely, borrower to find buyer and intimate the same to the Bank. I am, therefore, on the opinion that paragraph 2, extracted herein above, contains typographical errors which are required to be corrected by substituting respondents no.1 and 2 by respondent no.3 and by substituting respondent no.3 by respondents no. 1 and 2.

7. Mr. Sawant relied upon the decision of the Apex Court in the case of J.Samuel (supra). In that case, respondents 1 and 2 entered into contract for sale of property on 27.9.1985. Respondents no.1 and 2 instituted suit for specific performance some time in the year 2004. In the Written Statement inherent defects, namely, absence of mandatory requirements of section 16(c) of Specific Relief Act,1963 and Form 47, Appendix “A” of C.P.C. was pointed out. On 24.9.2010, respondents 1 and 2 took out I. A. No.1078 of 2010 under Order VI, Rule 17 of C.P.C seeking amendment of the plaint to incorporate specific pleading in compliance of section 16(c) of the Specific Relief Act, 1963 on the ground that the same was missed due to typographical error. The application was dismissed by the trial Court. The High Court allowed the amendment application on 8.2.2011. It is against that order, S.L.P was preferred before the Apex Court. It is, in

that context, the Apex Court observed in paragraphs 15 and 16 which read as under:

> 15. In the given facts, there is a clear lack of 'due diligence' and the mistake committed certainly does not come within the preview of a typographical error. The term typographical error is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.
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> 16. The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the Plaintiffs. All these aspects have been rightly considered and concluded by the Trial Court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip. Though the Counsel for the Appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order VI Rule 17 with proviso or on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order VI Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient

> knowledge of other's case. It also helps checking the delays in filing the applications. (vide Aniglase Yohannan v. Ramlatha and Ors. : (2005) 7 SCC 534, Ajendraprasadji N. Pandey and Anr. v. Swami Keshavprakeshdasji N. and Ors. Chander Kanta Bansal v. Rajinder Singh Anand: (2008) 5 SCC 117, Rajkumar Guraward (Dead) through LRS. v. S.K. Sarwagi and Company Private Limited and Anr.: (2008) 14 SCC 364, Vidyabai and Ors. v. Padmalatha and Anr.: (2009) 2 SCC 409, Man Kaur (Dead) by L.Rs. v. Hartar Singh Sangha: (2010) 10 SCC 512."

Perusal of paragraph 15 shows that the Apex Court has observed that requirement of Order VI Rule 17 is exercise of due diligence. It was observed that in the given facts, there was a clear lack of "due diligence" and the mistake committed certainly did not come within the preview of a typographical error. The term 'typographical error' is defined as a mistake made in the printed/typed material during a printing/tying process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance.

8. In my opinion, if the facts of the present case are considered, it has to be held that there was a clear case of typographical error in paragraph 2 of the order dated 14.2.2012 extracted herein above. The submission made by Mr. Sawant that the case does not fall in 'typographical error", cannot be accepted. Reliance was also placed on the orders dated 11.4.2012 and 4.10.1012 passed by D.R.T and the D.R.A.T respectively. Perusal of the proceedings before the D.R.T shows

that what was in question was Plot No. B-11, Panchpakhadi in Thane Industrial Area, admeasuring 2178 sq. meters with building constructed thereon admeasuring 1597.87 sq. meter. In the first place, the High Court while disposing of the petition had recorded admitted position about sale of land and building and one crane and the question was sale of the remaining machinery. That was not the subject matter of the proceedings before the D.R.T. In other words, after the sale of land and building was conducted, the proceedings are initiated before the D.R.T. Secondly, the order of status quo was not in relation to the machinery. In view thereof, I do not find any merit in the submission of Mr Sawant. In my opinion, the petitioner has made out a case for reviewing the order dated 14.2.2012 and paragraph 2 of the said order stands corrected as follows:

> In paragraph 2 of the order dated 14.2.2012, respondents no.1 and 2 shall be substituted by respondent no.3 and respondent no.3 shall be substituted by respondents no.1 and 2.

Rule is made absolute in the above terms with no order as to costs.

9. At this stage, Mr. Sawant orally prays for stay of this order for a period of four weeks from today. Mr. Chowksi opposes the prayer. Having regard to the fact that the petitioner has filed this Review Petition in 2014 seeking review of the order dated

14.2.2012. I find that the request made by Mr.Sawant is reasonable. Hence, this order shall remain stayed for a period of four weeks from today.

Authenticated copy of this order is expedited.

(R.G.KETKAR, J.)