IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2574 OF 2014
IN
REVIEW PETITION (L) NO.9797 OF 2014
IN
WRIT PETITION NO.123 OF 2012

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

Mr. Jay Choksi i/b Law Frame, Advocate for Applicant.
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 applicant, Mr. Manmohan Amonkar, learned counsel for respondent no.1 and Mr. Rakesh Sawant, learned counsel for respondents no.2 and 3 at length.

2. Civil Application No.2574 of 2014 is filed for condoning delay of 11 days caused in filing the Review Petition. It is contended that by order dated 14.2.2012, this Court disposed of Writ Petition No.123 of 2012. This Court thereafter was moved for Speaking to Minutes of that order. On 24.2.2014, this Court disposed of Praecipe for Speaking to Minutes of the order and gave liberty to the applicant to take out appropriate proceedings, if they so desire. The Review petition is filed on 5.4.2014. It is,

therefore, contended that there is delay of 11 days caused in filing the Review petition. The delay is computed from 24.2.2014 till filing of the Review Petition on 5.4.2014.

3. Mr. Choksi submitted that for the reasons stated in paragraphs 5 to 9, the delay in filing the Review Petition may be condoned.

4. On the other hand, Mr. Sawant submitted that the delay is to be computed not from 24.2.2014 but from 14.2.2012 when this Court disposed of the Writ Petition. It is further contended that no sufficient cause is made out for condoning the delay in filing the Review Petition. It is also contended that the Review petition, itself, is not maintainable. In support of the submissions, Mr. Sawant has relied upon the following decisions :-

(i) Union of India Vs. Bashir Oil Mills, 1989(24) ECR 762 (Bombay) and in particular paragraph 3 thereof;

(ii) Sudha Hari Pophale Vs. The Oriental Insurance Co.Ltd, Review Petition No.149 of 2014 decided on 15.1.2014,

(iii) T.B.Suryawanshi Vs. Govt of Maharashtra, (2000) 10 SC 599.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. This application is filed for condoning the delay in filing the Review Petition. The Review Petition is filed seeking review of the order dated 14.2.2012 and in particular paragraph 2 thereof. Paragraph 2 thereof 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 Securitisation 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 the 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 the case of the applicant that while passing the order on 14.2.2012 the Court intended to authorise the applicant who was respondent no.3 in that petition to sell the remaining machinery. Respondents no.1 and 2 who are borrowers were also at liberty to bring buyer. However, there is a typographical error and instead of authorising the Bank, namely respondent no.3, the Court authorised respondents 1 and 2-borrowers and permitted respondent no.3-Bank to bring buyer. 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 in paragraph 2 of the order, extracted herein above. It is submitted that the said error was not realised by the Bank and the Bank tried to sell the property under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "Act").

Respondents no. 2 and 3 approached the Industrial Tribunal and opposed the same on the ground that this court has only permitted borrowers, namely, respondents no.1 and 2 to sell the machinery. Even the Industrial Court, by its order dated 20.7.2012, directed them to implement the High Court's order and did not permit the Bank to sell the machinery. It is further stated that the Bank as advised thereafter waited for respondents no.2 and 3 to bring purchaser for the machinery. Till date respondents 2 and 3 did not bring any purchaser. On the other hand, respondents no.2 and 3 instituted various proceedings before Debt Recovery Tribunal (for short, D.R.T.) and Debt Recovery Appellate Tribunal (for short, D.R.A.T.). It is only thereafter, the applicant-Bank has moved this Court for speaking to Minutes of the order as also thereafter filed the Review Petition. In the process, the delay is occasioned.

6. Mr. Sawant submitted that in any case when the Industrial Court declined the applicant to sell the machinery on 20.7.2012, immediately thereafter the applicant should have moved this Court. I do not find any merit in the submission advanced by respondents no.2 and 3. Perusal of the order dated 14.2.2012 and in particular paragraph 2 thereof extracted herein above, shows that the Court intended to permit the Bank to sell the machinery. The definition of the expression “authorised officer” in Rule 2(a) of the Security Interest (Enforcement) Rules, 2002

also supports the said contention. Rule 2(a) 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".

7. Perusal of the material on record indicates that respondents 2 and 3 did not bring any purchaser for sale of the machinery and on the other hand instituted the proceedings before the Industrial Tribunal as also D.R.T. and D.R.A.T. In the facts and circumstances of the present case, I am more than satisfied that the applicant has made out sufficient cause for condoning the delay. The question whether there is a typographical error in paragraph 2 of the order dated 14.2.2012, is required to be examined. Hence, the Civil Application is allowed and the delay in filing Review petition from 14.2.2012 till 5.4.2014 (excluding 30 days) is condoned. Office is directed to register the Review Petition, if it is otherwise ready.

(R.G.KETKAR, J.)