IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION NO. 464 OF 2015 IN WRIT PETITION NO. 4874 OF 2013

(Jigar Metal Technology Pvt. Ltd. vs. The State of Maharashtra thr. the Secretary, Ministry of Finance & Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's Orders.	Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI &
S.B. SHUKRE, JJ.
JUNE 10, 2015.

The original petitioner in Writ Petition No. 4874 of 2013, decided on 30.03.2015, has filed this review application. While disposing of writ petition, this Court granted request of the petitioner and interim protection available to it during the pendency of petition was extended by nine weeks more. After this MCA was closed for order on 27.04.2015, another Civil Application (W) No. 964 of 2015 was filed in disposed of writ petition pointing out that said period of nine weeks is likely to expire and hence further protection was sought. This Court has on 08.05.2015 partly granted that request and extended interim protection till delivery of orders on this MCA.

2) In Writ Petition, prayer was to set aside the order dated 27.02.2008 passed by the Assistant Commissioner of Sales Tax, Nagpur, rejecting objection of the petitioner to the then proposed auction sale of Plot No. C-49, MIDC, Hingna

Road, Nagpur. However, the order passed by the Joint Commissioner of Sales Tax (Appeals), Nagpur, on 27.07.2010 upholding Certificate of Sale dated 07.07.2006 and later judgment dated 14.08.2013 delivered by Maharashtra Sales Tax Tribunal, Mumbai, in Appeal No. 23 of 2010 confirming said order dated 27.07.2010 were also questioned. A declaration that the petitioner is owner of said property and Sales Tax department at the most could have proceeded against State Bank of India for recovery of its Sales Tax dues out of sale consideration paid by the petitioner to it, was also sought.

3) After hearing respective counsel, petition has been dismissed as without any merit. Review has been sought on the ground that certain contentions raised before this Court in writ petition have not been either looked into or properly evaluated.

4) We have perused the memo of application for review and heard Shri M.G. Bhangde, learned Senior Advocate with Shri R.M. Bhangde, counsel for the applicant/ petitioner and Mrs. Kalyani Deshpande, learned AGP for respondent Nos. 1 to 4.

5) Shri Bhangde, learned Senior Advocate submits that the Certificate of Sale dated 07.07.2006 issued by the State Bank of India, revealed that property purchased by the applicant was free from any encumbrances or liabilities

known to secured creditors. The finding by this Court that the applicant had knowledge of Sales Tax dues is, therefore, incorrect. Inference by it that the petitioner and defaulting debtor (dealer) had an intention to defraud revenue, is again erroneous. His submission is gross negligence even if presumed, could not have been equated with fraud and the law laying down this proposition has not been appreciated by this Court.

6) He points out that Section 62A of the Maharashtra Sales Tax Act contemplates parting of possession by dealer and transfer of property by him. Here, the applicant received possession from secured creditor viz., State Bank of India and documents on record show that State Bank of India was already in possession, therefore, said provision had no application.

7) He further argues that interpretation of proviso to Section 62(A) of the Maharashtra Sales Tax Act, by this Court is again erroneous inasmuch as the Court did not evaluate finding already recorded about scheme of said proviso by Madhya Pradesh High Court in the case of *Pooranchand Ved Prakash vs. State of Madhya Pradesh*, reported at 1973 (XXXI) STC 170, which has construed similar provision. The fact that Sales Tax Tribunal has accepted judgment of M.P. High Court and there was no challenge to it before this Court is also sought. He submits that this Court has inferred that the petitioner was aware of the status of borrower from State

Bank of India as a “dealer in default” and has further drawn an adverse inference against the applicant/ petitioner because it was registered few days prior to transfer of possession of property to it by State Bank of India. According to him, this entire exercise is not supported by record.

8) Our attention is redrawn to Section 53 of Transfer of Property Act and judgment of the Hon'ble Apex Court in the case of *Union of India vs. Rajeswari and Company and Ors*., reported at (1986) 3 SCC 426. The learned Senior Advocate submits that principle evolved therein by the Hon'ble Apex Court is equally attracted while considering sales under Section 62(A) of the Maharashtra Sales Tax Act.

9) The use of letter dated 19.11.2007 by this Court against Petitioner No. 1 is not proper as it was never pressed into service by any of the respondents against the petitioner. The opening of Joint Account was requirement of State Bank of India and this Court has found that M/s. Mahalaxmi Metal Mart is a firm under the control of Directors of Jigar Metals though there is no such material on record.

10) Lastly, he submits that contentions based upon para 55 of writ petition could not be raised before this Court when writ petition was argued & decided because of inadvertent error on his part. He submits that Flat No. 9 which was purchased by the petitioner – applicant was not owned by Dealer/ Borrower and it was not a business asset of said

dealer. It was a residential property privately owned by Mrs. Supriya Kothari. This fact or its impact has not been looked into by the Tribunal.

11) A perusal of orders passed by this Court shows that the arguments as pressed into service before this Court are looked into and thereafter this Court has passed appropriate orders. Law laid down by the Hon'ble Apex Court relevant under Section 53 of the Transfer of Property Act &. judgment in the case of *Union of India vs. Rajeswari & Company & Ors*. (supra) has been distinguished after observing that there, there was no legal provision which prohibited the borrower from selecting a particular creditor and paying his dues. In present facts, Section 62(A) of the Maharashtra/Bombay Sales Tax Act gives primacy to dues of Sales Tax department and, therefore, said judgment is not found applicable. The correctness or otherwise of this approach cannot be a subject matter for reconsideration before this Court. In any case, in the light of arguments advanced, no case for reconsideration is made out.

12) Insofar as use of letter dated 19.11.2007 against the petitioner is concerned, the document is on record and its contents are not in dispute. Those contents being admitted, have been used by the Court while appreciating it as the material on record. The petitioner cannot expect this Court, not to properly apply its mind to the material on record. The application of mind by it, cannot be restricted to the material

as pressed into service by the parties and this Court has to peruse the entire record while appreciating the arguments advanced.

13) This Court in its judgment, found that the petitioner was aware of proceedings before the Debts Recovery Tribunal and, therefore, status of the dealer/ borrower as person in default. The applicant was, therefore, expected to plead facts and show the bonafides by placing on the records proper inquiries. The declaration by the State Bank of India that sale by it is free from all encumbrances does not obviate need of such inquiry under Section 13(6) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and effect of deeming fiction or arguments advanced in relation thereto by present applicant are already looked into in para 21 of the judgment dated 30.03.2015. This declaration is itself subject to S.62(A) of the Maharashtra Sales Tax Act.

14) Moreover, handing of possession by SBI to petitioners is also subject to claim of the Sales Tax Department. We have in our judgment, therefore, found that receipt of possession or alleged non-execution of the title document by dealer in default in favour of petitioner can not save the situation for the petitioners i.e. present applicants. In paragraph 55 of the memo of the writ petition, petitioners themselves refer to sale certificate dated 07.07.2006 as source of title. The arguments of applicant which require this Court to revisit

said contentions again, does not hold merit sufficient to invoke review jurisdiction.

15) The “proviso” to Section 62(A) of Bombay Sales Tax Act, was pressed into service in writ petition by the petitioner with a contention that it envisages a purchaser with knowledge of the sales tax recovery proceedings. The auction purchaser from Sales Tax department i.e. Respondent No. 4 did not accept it and interpretation thereof by Madhya Pradesh High Court. Said Respondent raised the stand which has found favour in the judgment of this Court of which the review is sought. It, therefore, cannot be said that interpretation of said proviso by Appellate Tribunal was not in dispute before this Court. In any case, while interpreting the legal provision, this Court has to appreciate the same independently. We, therefore, find said ground being pressed into service by review applicant, also erroneous.

16) The discussion above holds good even to support the judgment under review & to negate the argument repeated in this proceeding that the Sales tax Department can at the most follow the sale consideration amount paid by the applicant to the secured creditor viz. The State Bank Of India. There is no law which prohibits the Sales Tax Department from executing its statutorily supreme charge over the subject property.

17) The contention that Flat No. 9 was private property of said dealer, was not argued when writ petition was decided.

It was not pressed into service either by the petitioner or by the dealer in default. It is always open to parties to give up a particular contention or challenge. The transfer of ownership of said flat to petitioners due to sale certificate dated 07.07.2006 by SBI along with other properties of the dealer in default is admitted by the petitioners in paragraph 55 of their writ petition. Thus, said flat could be and was proceeded against under SARFAESI Act. In this situation, as that ground was not urged, judgment cannot be set aside solely due to submission that inadvertently it was left out.

18) We, therefore, find that under the guise of seeking review, the effort is to re-argue the matter. As no case for review is made out, Misc. Civil Application is rejected. No costs.

JUDGE **JUDGE**

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