IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL APPLICATION (REVIEW) NO.15 OF 2016
IN
APPEAL FROM ORDER NO. 17 of 2013.

1 Shri Latellier Shollest Gusmao Paulo Roncon Pereira aged 55 years, and his wife

2 Smt. Maya Roncon Pereira aged 50 years, both residing at H. No. 267, Laxette, Varca Salcete, Goa. ….. Review Petitioners

Versus

1 Smt. Iona Eremita Roncon Pereira aged about 53 years, w/o late Antonio Bilimoria Roncon Pereira

2 Shri Dane Roncon Pereira, aged 21 years, son of late Antonio Bilimoria Roncon Pereira

3 Shri Kano Roncon Pereira, aged 18 years, son of late Antonio Bilimoria Roncon Pereira

All three residing R/o BF2/3, Block LNL Bldg. Empresa Ema, Perseraulim, Salcete- Goa.

4 Marlayne Pereira Furtado and her husband

5 Shri Sarto Pereira Furtado(deceased) through his L.R's.

5a Mrs. Maria Carma Shereen Pereira Furtado

5b Mr. Adolfo Piedade Rajesh Da Costa both resident of Palmar Grande, Chinchinim, Salcete – Goa

6 M/s. Akar Creations Pvt. Ltd. A company registered under the Company Act 1956 with head Office at Lake Plaza Opp. Nehru Stadium, Fatorda, Goa represented by its

Managing Director Avinash Sadanand Borkar son of Sadanand Borkar aged 53 years, residing at Borda, Margao Goa. ….. Respondents.

Shri M.B. D'Costa, Senior Advocate with Ms. K. Cust Betquecar, Advocate for the review petitioner.

Mr. M. S. Joshi, Advocate for respondents no.4 and 5a and 5b.

Shri S. D. Lotlikar, Senior Advocate with Shri C. Padgaonkar, Advocate for the respondent no.6.

CORAM : NUTAN D.SARDESSAI, J.

RESERVED ON : 5th August,2016.

PRONOUNCED ON : 1st September,2016

ORDER:

Shri M.B. D'Costa, learned Senior Advocate came to be heard on behalf of the review petitioners who submitted that there was an error apparent on the face of the record in the order under review. The applicant no.1 was the successful bidder in the family auction held in 1976 in respect of the Item No.12 and the minutes of the auction were not challenged by any of the parties. The Advocate for the applicants had prayed that the allotment be done in terms of the auction and a note was made by the Public Prosecutor that the assets may be allotted taking into consideration the proposal made at page 56. The Superintendent of the Court before making the allotment had to make a record about the shares of each interested party but however made a mistake while making the allotment and contrary to the minutes of auction, note made by the Public Prosecutor and the Order of the Court allotted the Item No.12 to the brother of the applicant instead of allotting it to the applicant.

2. This Court while deciding the appeal had committed an error apparent on the face of the records and failed to observe the well laid down principle that no party shall suffer on account of mistake of the Court. The applicant was secured by an Order dated 22/02/2013 of this Court during the pendency of the Appeal from Order whereby the respondents were restrained from alienating or creating any third party rights or disposing off or dealing in any manner with the suit property and /or changing the nature of the suit property or putting up any construction thereon which was later on confirmed by another Order dated 09/05/2013. It was necessary and in the ends of the justice that pending the hearing and final disposal of the Review Petition, the respondents were restrained from creating any third party rights or part with the possession of the property or changing the status quo by an order of temporary injunction as otherwise the petitioner would suffer irreparable injury. He accordingly prayed that the impugned judgment and order dated 23/03/2016 be reviewed and set aside and the status quo be maintained during the pendency of the suit.

3. Shri S. D. Lotlikar, learned Senior Advocate for the respondents submitted that the error pointed out was relating to the Inventory Proceedings of 1976 and no error was pointed out in the Order passed by this Court. Even otherwise the so called error in the Inventory Proceedings as per the applicant's version was within their knowledge in 2006 and the suit filed in the year 2008 and subsequently the injunction application was dismissed by the Trial Court. In Appeal from Order, this court had disposed off the same by the Order dated 23/03/2016 and it was not the case of the applicant that the discretion exercised by this Court was arbitrary and/or capricious. It was his argument in the alternative without prejudice that even if there was a mistake in preparing a chart, it was not open to the applicant to question the same after more than 20-30 years and when the final chart was signed by the applicants. He relied in **Northern India Caterers (India) Ltd. V/s Lt. Governor Of Delhi**[AIR 1980 SC 674].

4. Shri M. S. Joshi, learned Advocate for the respondents no.4, 5a and 5b supported the case of the applicants /Review Petitioners. Shri M. B. D'Costa, learned Senior Advocate for the review petitioners in reply submitted that the respondents had not participated in the auction proceedings in 1976 and therefore it was not open to the respondents to say that the auction proceedings

were erroneous. In any event he relied in **Thomas Kuruvilla V/s. Canara Bank** [2015 (5) CTC 741].

5. **Thomas Kuruvilla** (supra), the applicant filed the application to review the order dated 31/08/2010, whereby and whereunder, the Court had dismissed the Civil Revision Petition filed by him. In the brief facts it had availed financial assistance from Canara Bank and as there was failure to repay the loan, the Bank initiated proceedings before the Debt Recovery Tribunal, Madurai and consequent thereto the Recovery Officer attached the secured asset and put it for sale. The applicant moved to the Debts Recovery Tribunal to stay the auction where interim stay was granted subject to the condition that the applicant shall deposit a sum of ₹2,00,000/- and settle the matter with the bank. The applicant duly complied with the condition with regard to the deposit. Even then, the property was auctioned on 25/04/2008 and the bid submitted by the third respondent was accepted by the Recovery Officer. The Debts Recovery Tribunal passed the final orders on 18/12/2008 holding that the sale validly conducted could not be set aside, but however, on account of the settlement reached with the Bank and payment of more amount by the debtor, much more than the amount fetched in the public auction, the sale would be set aside in case full satisfaction was recorded within 15 days

and interest on the sale amount was paid to the auction purchaser.

6. **Thomas Kuruvilla** (supra), challenged the order which was dismissed in the Civil Revision Petition with an observation that it was only to enable the applicant to save his property and the Recovery Officer had shown concession to pay one time settlement amount and interest to the auction purchaser. The applicant filed the Review Application primarily on the ground that the Court had omitted to consider the basic fact that the sale was conducted in violation of the stay granted by the Debts Recovery Tribunal and failed to address the issues on account of the delay in pronouncing orders. The learned Single Judge of the Madras High Court considered Order XLVII Rule 1 of the Code of Civil Procedure providing for a review of the judgment and that Order XLVII permitted the aggrieved to file a review on account of the discovery of new and important matter or evidence which was not within his knowledge, in spite of due diligence. It also provided for a review on account of some mistake or error apparent on the face of the record and the third ground permitting the aggrieved to file a review for any other sufficient reason. There is no definition for the term 'for any other sufficient reason'.

7. In **Thomas Kuruvilla** (supra), the learned Single Judge

observed that the Court has to consider the grounds raised by the applicant to decide as to whether those reasons would constitute "sufficient reason" for the purpose of exercising review jurisdiction. It was contended on his behalf that the auction sale was made in violation of the interim order passed by the Debts Recovery Tribunal. He had also produced materials to show that he complied with the mandatory condition prescribed by the Debts Recovery Tribunal for staying the auction. The typed-set of papers contained the papers relating to the full payment made to the bank towards one time settlement. It was contended by the learned Senior Counsel for the applicant that the illegal sale made on 25/04/2008 and the subsequent events were all highlighted before the Court and in spite of such submissions, the Civil Revision Petition was dismissed without adverting to the contentions. The order passed by the Court dated 31/08/2010 proceeded as if the applicant has deposited a sum of ₹5,00,000/- only towards one time settlement. The Court has not addressed specifically the issue regarding the illegal sale though it was the sheet anchor of the applicant's case and considered only the final direction given by the Debts Recovery Tribunal and there was no attempt made to decide as to whether the sale conducted on 25/04/2008 was in violation of the interim order.

8. In **Thomas Kuruvilla** (supra), the learned Judge considered the judgment of the Hon'ble Apex Court in **R. C. Sharma V/s. Union of India** [1976(3) SCC 574] vis-a-vis the delay in delivering judgment after conclusion of arguments leaving scope for an escape of important points unnoticed and that in **Anil Rai V/s. State of Bihar** [2001(7) SCC 318] reiterating the same proposition. Besides it considered the Apex Court's judgment in **S. Nagaraj And Ors. vs State Of Karnataka And Anr.**[1993 Supp (4) SCC 595] which indicated that the order passed by the Court under a mistake can be recalled to avoid injustice. In the facts at large it was found from the material on record that the applicant had settled the matter with the bank which was dealing with public money and in view thereof had succeeded in recovering a sum of ₹25 lakhs. The payment of the entire one time settlement amount after filing the Civil Revision Petition was omitted to be considered by this Court, notwithstanding production of the documents relating to the payment made by the applicant. It was also found that the bank had no claim against the applicant after settlement which aspect was also not considered by this Court, while dismissing the Civil Revision Petition and in that view of the matter it was held that the applicant has made out a case for review and reviewed the order dated 31/08/2010.

9. This Court had decided the Appeal from Order of the review petitioner which had challenged the Order dated 20/10/2012 passed by the Civil Judge, Senior Division, A Court, Margao, by which he had rejected the application for temporary injunction. This Court had discussed the case carved out by the parties as urged before him including the allotment of the property at the Item No.12 to the deceased husband of the respondent no.1 in the Inventory Proceedings with the Order dated 14/04/1976 and its subsequent purchase by the respondent no.6. For that matter, this Court while assessing the material had duly considered the contention of Shri M.B. D'Costa, learned Senior Counsel for the review petitioners that the applicant being the highest bidder of the Item no.12 became the owner of the property and the partition had to be effected in terms of the auction report and also the contention that a mistake was committed by the Court clerk in writing the auction report and inadvertently allotting the Item No.12 to the husband of the defendant no.1 instead of the plaintiff.

10. It is not as if this Court had not considered the said contention of Shri M.B. D'costa, learned Senior Counsel for the review petitioners but had also considered the rival contentions of Shri S.D. Lotlikar, learned Senior Counsel for the respondents that the respondent no.6 was a purchaser pursuant to the Sale Deed

dated 09/10/2006 and that the knowledge of the error committed by the Court came to the knowledge of the plaintiff 27 years later and there was no delay and laches in filing the suit. This Court had considered the record and found therefrom that the suit property Item No.12 was allotted to the deceased husband of the respondent no.1 by virtue of the Inventory Proceedings and found the contention on behalf of the review petitioner unacceptable as no party could sleep over his right for 27 to 30 years in the background that the final chart of partition was signed by all the parties. The learned Judge had also not found favour with the explanation offered on behalf of the appellants as the final chart of partition was signed by all the interested parties before the Inventory Court and it was not open to the review petitioner to contend that the final chart of partition was signed blindly. This Court found that the review petitioners had failed to establish their possession over the suit property and ultimately held that there was no reason to interfere with the impugned order and dismissed the Appeal from Order.

11. In **Northern India Caterers (India) Ltd.** (supra), Their Lordships of the Hon'ble Apex Court reiterated that it was well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of rehearing and a fresh decision in the case. Normally the principle is

that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. Justice Krishna Iyer opened his dissenting judgment with the expression " A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon".

12. In the present case, the applicant has vociferously canvased a case that there was an error in the conduct of the Inventory Proceedings and the manner of allotment of the Item No.12 in the bid and/or that the decree was signed by the Advocate in the normal course without verifying if it was confined to the judgment. An analysis of the order under review would show that no error was pointed out in the judgment of this Court justifying its review. Besides considering the law laid down by the Hon'ble Apex Court in **Northern India Caterers (India) Ltd.**(supra), apart from the factual matrix, it does not call for any review in the absence of any error apparent on the face of record, the application does not survive and is hereby dismissed.

NUTAN D. SARDESSAI,J.

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