

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 13 OF 2016
IN
WRIT PETITION NO. 2546 OF 2011

Narayan G. Thakur .. Petitioner
vs.
Karnala Nagrik Sahakari
Bank Ltd. & Ors. .. Respondent

Mr. S.A. Pawar for the Petitioner.
Mr. C.G. Gavnekar for Respondent Nos.1 and 2.
Ms Aparna Vhatkar, AGP for Respondent Nos.3 and 8.
Mr. S.S. Deokar for Respondent No.9.

CORAM : M. S. SONAK, J.

Date of Reserving the Order : 14 June 2016.
Date of Pronouncing the Order : 16 June 2016.

ORDER :-

1] The review petitioner is the original petitioner in Writ Petition No. 2546 of 2011. The review applied for is not of the entire order dated 26 November 2015, by which the writ petition came to be disposed of. However, by this review petition, the review petitioner seeks interest at the rate of 17% per annum upon the amount of Rs.1,01,00,000/-, which original respondent Nos.1 and 2 were directed to refund to the review petitioner within a period of six weeks from the date of the order dated 26 November 2015.

2] Mr. S.A. Pawar, learned counsel for the review petitioner, has placed reliance upon the order dated 1 December 2011 made in Civil Application No. 2499 of 2011 in Writ Petition No. 2546 of 2011 to submit that in terms thereof, original respondent Nos.1 and 2 were duty bound to pay interest, in case, the petition succeeds and there is occasion for directing refund of the amount of Rs.1,01,00,000/-. Mr. Pawar has submitted that since ultimately, occasion did arise for directing refund of said amount, non-award of any interest upon the said amount constitutes an error apparent on the face of record. Mr. Pawar placed reliance upon the decision of the Division Bench of this Court at Nagpur Bench in *Smt. Shakuntalabai K. Bhoyar and ors. Vs. State of Maharashtra – AIR 1986 Bombay 308*.

3] Mr. C.G. Gavnekar, learned counsel for the respondent Nos.1 and 2, has submitted that the aforesaid contentions was in fact, raised by and on behalf of the petitioner when the order dated 26 November 2015, disposing of the writ petition came to be made. This Court, however, did not deem it appropriate to award any interests, except to the extent indicated in the order dated 26 November 2015. Mr. Gavnekar submitted that the review petitioner is a defaulter and owing crores of rupees to the respondent Nos.1

and 2-Cooperative Banks and taking into consideration this circumstance, there is no error, much less any error apparent on the face of record. Accordingly, he submitted that the review petition may be dismissed.

4] The rival contentions now fall for determination.

5] The review petitioner had instituted Writ Petition No. 2546 of 2011 to challenge the auction of his property. By order dated 12 August 2011, Rule was issued and the interim order was made subject to the petitioner depositing a sum of Rs.1,01,00,000/- within prescribed period. Accordingly, the petitioner deposited the amount of Rs.1,01,00,000/- within a period of ten weeks from the date of 12 August 2011.

6] By Civil Application NO. 2499 of 2011, respondent Nos.1 and 2 were permitted to withdraw the amount of Rs.1,01,00,000/- subject to the condition that in case, the writ petition is allowed and order for directing redeposit of the said amount is passed, the bank will abide by such directions including direction for payment of interest on the amount which is allowed to be withdrawn, at such

rates, as may be decided by this Court. Paragraph 4 of the order dated 1 December 2011 in Civil Application No. 2499 of 2011 reads thus:

“4. If the amount is allowed to keep lying in this court, interest will not stop. The dues of the Bank are more than Rs. 4 Crores under the Recovery certificate which has already attained finality. In view of this, it would be just and proper to permit the Applicant Bank to withdraw the sum of Rs. One Crore One Lakh deposited by the Respondent No. 1 in this court subject to the condition that in case the Writ Petition is allowed and an order for directing redeposit of the said amount is passed, the Bank will abide by such direction including direction for payment of interest on the amount which is allowed to be withdrawn at such rates, as may be decided by this Court. Subject to this condition, the amount can be allowed to be withdrawn by the Bank.”

7] On 26 November 2015, the respondent Nos.1 and 2 conceded that the auction be set aside, since, there was marginal delay on the part of the auction purchaser in depositing the amount. Mr. Gavnekar submitted that this concession was made, as the bank was desirous re-auctioning the property in order to recover its dues. Further, in view of the concession, this Court directed the respondent Nos.1 and 2 to refund the amount of Rs.1,01,00,000/- within a period of six weeks. It was made clear that in case there is any delay, such amount shall carry interest at the rate of 10% per annum from the date, the respondent Nos.1 and 2 withdrew the said amount, till the date of actual payment.

8] The order dated 1 December 2011, does not commit the petitioner that interest would be paid in case occasion arises for order of refund. The order dated 1 December 2011 merely provides that in case interest is awarded by this Court, the respondent Nos.1 and 2 will have to abide by such a direction in the matter of payment of interests. This was made a condition, subject to which, the respondent Nos.1 and 2 were permitted to withdraw the said amounts which were deposited by the petitioner in this Court.

9] The order dated 1 December 2011, upon which the review petitioner relies itself notes that the dues of the bank are more than four crores rupees in recovery certificate which has already attained finality. Learned counsel for the review petitioner submits that the recovery certificate has not yet attained finality, as the challenges against the same are pending. Be that as it may, the record indicates at least prima facie that the review petitioner had obtained loan from respondent Nos.1 and 2 banks and there are orders made by the authorities for repayment thereof. Besides, the order dated 26 November 2015, was not made *ex-parte*, but rather, the same was made after hearing the learned counsel for the review petitioner. In fact, the order was dictated in the open court. The circumstance that

the review petitioner is due and payable substantial amounts, at least *prima facie*, is also not an irrelevant circumstance in deciding whether interest ought to have been awarded. In any case, non-award of interest, in the facts and circumstances of the present case, cannot be regarded as an error apparent on the face of record.

10] The decision in case of *Smt. Shakuntalabai Bhoyar (supra)*, is distinguishable. In said case, the provisions of amended Land Acquisition Act, in the matter of award of statutory interest were not considered. In the said context, it was held that failure to consider the provisions of Amendment Act, constitutes an error apparent on the face of record. In the present case, we are not dealing with award of interests in pursuance of any statute or as any statutory requirement. The decision in case of *Smt. Shakunta Bhoyar (supra)*, is therefore, non applicable to the present case.

11] For the aforesaid reasons, review petition is dismissed. There shall however be no order as to costs.

(M. S. SONAK, J.)