

sbw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

REVIEW PETITION(L)NO.6 OF 2016

IN

APPEAL NO.280 OF 2014

IN

JUDGES ORDER NO.286 OF 2013

IN

SUIT NO.418 OF 2008

Sanjay Damji Shah & Anr.

...Petitioners

(Orig.Plaintiffs/Orig. Respondents)

V/s.

Vinod Zaverchand Shah

...Respondents

(Orig.Defendants/Orig.Appellants)

Ms. Deepa Ahuja a/w Ms. Neepta Gupta i/b. Javer N. Mamniya for the appellants.

Mr. Ashok Yadav, Section Officer, Mr. V. D. Pathak, Assistant to Court Receiver.

**CORAM: V. M. KANADE &
A. K. MENON, JJ.
(IN CHAMBER)**

DATE: 29TH JULY, 2016

P.C. (PER A. K. MENON, J.):—

1. By this Review Petition, the review petitioners (original plaintiffs/respondents) seek review of the Order dated 3rd September, 2015 passed in the above appeal and to which one of us (A.K. Menon, J.)

was a party. The said order dated 3rd September, 2015 recorded a compromise between the parties whereby one Tushar Chhotalal Joshi, partner of M/s. Aditi Fast Food & Restaurant ('Aditi') agreed to purchase premises which were custodia legis, the Court Receiver having been appointed by virtue of consent terms dated 11th July, 2008 read with modified consent terms dated 8th September, 2009 in the above Suit.

2. We need not go into the details of the arrangements arrived at which are matters of record except to state that all parties present on 3rd September, 2015 agreed that premises in question will be sold to M/s. Aditi Fast Food & Restaurant for a sum of Rs.5.50 crores. A sum of Rs.70 lakhs was already deposited in Court pursuant to an order dated 4th September, 2014. A further sum of Rs.30 lakhs was deposited on 3rd September, 2015 by the intending purchaser Aditi on behalf of the respondents. Further amounts towards the purchase price was to be paid by Aditi after obtaining a bank loan. In case the bank did not provide the loan amount directly to the petitioners by 30th November, 2014 the petitioner could withdraw the amount of Rs.70 lakhs deposited and the Court Receiver would execute sale deeds in respect of various properties excluding one flat. From and out of amount of Rs.30 lakhs deposited the petitioner be entitled to Rs.10 lakhs and the balance was to be refunded to Aditi (see para 4 of the order). This exclusion of one flat is what is

sought to be challenged by way of this Review Petition .

3. In our view this is clearly an after thought and not that something could be dealt with in a Review Petition . The reason for exclusion of the flat was in recognition of the fact that the appellants and the original defendants who were using flat along with family members would not immediately be deprived of the residential premises in the event they were able to pay the entire amount through Aditi. The petitioners agreed to such exclusion on 3rd September, 2015.
4. The Review Petition is filed after a delay of about 176 days and was lodged on or about 14th March, 2016. When queried, the learned counsel appearing for the review petitioner pointed out that a notice of motion has been taken out for condonation of delay in filing the Review Petition. The reasons given in the affidavit in support of the notice of motion disclose that the petitioner had filed a Special Leave Petition on 23rd November, 2015 and by an order dated 14th December, 2015 the Special Leave Petition came to be disposed of with liberty to approach this Court by way of review. When we pointed out that we were not inclined to entertain the Review Petition on merits, the learned counsel for the Review Petitioner submitted that the exclusion of a flat was an 'error' in the order dated 3rd September, 2015 and that the

petitioners have applied for Speaking to the Minutes by praecipe dated 7th September, 2015 i.e. when the Bench that passed the order was available. We therefore called for the record of the appeal.

5. We are surprised to note that the praecipe was not for Speaking to the Minutes as suggested by counsel for the petitioners but sought circulation of the record and proceedings as the review petitioner wanted to seek Orders and directions in the matter. When we perused the order sheets we find that the matter was mentioned on 8th September, 2015 before the very Bench that passed the order of which one of us (A.K. Menon, J.) was a party. The said order reads as follows:-

“Not on board. Mentioned at 11 a.m. Taken on board.

2. Learned counsel for the respondents pray for stay of the operation of our order dated 3rd September, 2015. Having gone through the order and after hearing the learned counsel for the respondents, we do not find any justification to grant stay, as prayed for. The prayer for stay is rejected.

3. The praecipe dated 7th September, 2015 of respondents stands disposed of.”

6. It is evident from the above that the request was not for correction of any

error but for for stay of the operation of Order dated 3rd September, 2015 which in our view and as evident from the Order was a consensual arrangement. The Order dated 3rd September, 2015 also records the presence of the relevant parties and their Advocates. The appellant nos.1 and 2 were present, the sole intending purchaser and the respondents counsel and their Advocate were also present. The Respondent's Advocate Ms. Gupta who is instructing counsel today was also present when the order dated 3rd September, 2015 was passed. Ms. Gupta was present on 8th September, 2015 when the application for stay was made. This Order discloses presence of Ms. Gupta as well as the intending purchaser. The appellants were not present in Court. In any event, the stay having been declined, the respondent approached the Supreme Court by way of a Special Leave Petition and for reasons best known to them withdrew the Special Leave Petition seeking liberty to file this Review Petition.

7. We notice that in any matters parties approach the Hon'ble Supreme Court and seek liberty to file Review Petitions. In some cases the conduct of review petitioners may be justifiable in seeking liberty to file the Review Petition. However, in the instant case, we find that it is a clear abuse of process of Court inasmuch as the respondent did not apply for Speaking to the Minutes or correction of any error apparent in the

record but in fact appears to have, by way of an after thought, sought to resile from their committed position as reflected in the Order dated 3rd September, 2015 and therefore applied for stay of the operation of the order on 8th September, 2015. Stay having been refused they approached the Hon'ble Supreme Court.

8. In our view the Review Petition is nothing but an abuse of process of Court and as an after thought they have now approached this Court on a plea that they have not withdrawn the amounts deposited in the Court. When we pointed out the above facts from the record Ms. Ahuja the learned counsel for the petitioner conceded that she was unaware of the fact that a mention was made on 8th September, 2015 and stay was sought which application was rejected.

9. We do not appreciate the practice of parties and counsel making statements without verifying the facts. We therefore pass the following order:-

- 1) Review Petition is dismissed.
- 2) No order as to costs.

(A. K. MENON, J.)

(V. M. KANADE, J.)