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

**REVIEW PETITION (L) NO. 6 OF 2016**
**IN**
**COMPANY PETITION NO.681 OF 2014**

Shipping Corporation of India Ltd. … Petitioner
Versus
Bharati Shipyard Ltd. … Respondent

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Mr. Aditya Pimple a/w Ms. Asfiya Cutchi i/b K.K. Associates for the Respondent.
Mr. Shyam Kapadia i/b A. Mehta Laljee & Co., for the Petitioner.

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**CORAM : S.C.GUPTE, J.**

**DATE : 23 DECEMBER 2016.**

**<u>P.C.</u> :**

. Heard learned Counsel for the parties.

2 This review petition seeks review of an order passed by this Court on 14 October 2015. By that order, this Court adjourned the company petition *sine die* on the ground that the Respondent-company was before the Board of Industrial and Financial Reconstruction ("BIFR") in a pending reference. It is the case of the Petitioner that what apparently was not pointed out to this Court when it passed the order under review was that before the reference was made to BIFR by the Respondent-company, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), had already commenced and the financial assets of the Respondent-company were acquired by a

securitisation and reconstruction company under sub-section (1) of Section 5 of that Act. It is submitted that the reference before BIFR was, in the premises, a non est, since the second provisio to sub-section (1) of Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA") bars any reference being made to BIFR after the commencement of SARFAESI Act, where financial assets of the industrial company have been acquired by a securitisation and reconstruction company under sub-section (1) of Section 5 of SARFAESI Act.

3 It is not in dispute that the conditions mentioned in the second proviso to sub-section (1) of Section 15 of SICA are indeed satisfied in the present case. Learned Counsel for the Petitioner relies on the judgment of this Court in the case of **ICICI Bank Ltd Vs. S. Kumars Nationwide Ltd**[1] in support of his plea. This judgment makes it clear that any reference made in the face of these conditions is a non est and does not trigger the bar of proceedings under Section 22 of SICA. What is, however, submitted by leaned Counsel for the Respondent-company is that the present review petition is based on a subsequent judgment delivered by this Court, namely, **ICICI Bank Ltd** (supra). Learned Counsel in this behalf relies on the judgment of the Supreme Court in the case of **State of West Bengal Vs. Kamal Sengupta**[2]. Learned Counsel submits that in this case, the Supreme Court has held that a decision or an order cannot be reviewed under Section 22(3)(*f*) of the Administrative Tribunals Act, 1985, on the basis of a subsequent decision or judgment of a co-ordinate or larger Bench of the tribunal or of a superior court. Learned Counsel submits that theses observations clearly apply to the present application for review.

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1 C.P. No.511 of 2014 and Connected Petitions, dated 1 July 2016
2 (2008) 8 Supreme Court Cases 612

4 As per the law laid down by the Supreme Court in the case of **Kamal Sengupta** (supra), what is forbidden is the review of a judgment on the ground that in a subsequent judgment, a different view was expressed on the same subject matter by a co-ordinate or superior court. It is not that this question, namely, whether the reference filed by the Respondent-company before BIFR was non est by virtue of the second provisio to sub-section (1) of Section 15 of SICA and on that footing, the bar under Section 22 of SICA does not apply, was considered by this Court and today by reason of a subsequent judgment, this Court seeks to take a different view. The point here is that the fact that the reference was made after the commencement of the SARFAESI Act and after acquisition of financial assets of the Respondent-company by a securitisation or reconstruction company, was not brought to the notice of the Court. Had that fact been brought to notice, the decision of the Court would have been otherwise. The law on the subject has always been that a reference filed after the commencement of SARFAESI Act, where there is acquisition of financial assets by a securitisation or reconstruction company, is non est and does not trigger the bar of proceedings under Section 22 of SICA. This law and its applicability to the facts of the case were not noticed by the Court when the order under review was passed.

5 Under Order 47 Rule 1 of the Code of Civil Procedure, 1908, a decree or order of a court can be reviewed *inter alia* on account of some mistake or error or for any other sufficient reason. That the decree or order was passed by disregarding a binding provision of law, which was not noticed by the Court when the decree or order was passed, is sufficient reason why the decree or order ought to be reviewed.

6 Particularly considering the fact that this involves merely a discussion of law and there is no factual dispute, the review petition needs to be allowed and the order adjourning the petition *sine die* needs to be recalled and set aside.

7 The review petition is, accordingly, allowed and the order adjourning the petition *sine die* is recalled. The Petition shall now appear on board for hearing on **17 January 2017**.

8 Learned Counsel for the Respondent applies for stay of the order. Learned Counsel submits that the order of **ICICI Bank Ltd** (supra) is in appeal before a Division Bench of this Court. He also submits that the operation of the order in **ICICI Bank Ltd** (supra) is stayed by the learned Single Judge himself, who passed the order, presumably on the footing that there are conflicting decisions on the point. He submits that accordingly this order also needs to be stayed. In any event, since I have circulated the petition for hearing after three weeks, there is no need to grant any stay.

**(S.C.GUPTE, J.)**