

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CIVIL APPLICATION NO.603/2016

IN

MISC.CIVIL APPLICATION (ST) NO. 6516/2016

IN

WRIT PETITION NO. 191/2009 (D)

(Amarchand Ramgopal Choube vs. Anil Krushnarao Belurkar (Dead) Through LRs
Chandrakala w/o Late Anil Belurkar and others)

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

.....
Mr. M.G.Sarda, Advocate for applicant
Mr. A.S.Mehadia, Adv.for Respondent No. 1A, 1B
Mr. B.N.Mohta, Advocate for Respondent No.2

CORAM : A.S.CHANDURKAR, J.
DATED : 25th October, 2016.

C.A. NO.603/2016

Heard.

Prayer is to condone delay in filing the Review Application. In the Application, it is stated that the counsel for the review-applicant was not present when the Writ Petition was heard and hence after getting knowledge of the order, the present Application has been filed.

The Application is opposed by the learned counsel for the non-applicants on the ground that the reasons assigned are not sufficient.

By accepting the statement made that the applicant was not aware of passing of the judgment due to absence of his counsel, the delay stands condoned. The Civil Application is allowed and disposed of.

M.C.A. (ST) NO. 6516/2016

The respondent no.2 in Writ Petition No.191/2009 has filed the present Application seeking review of the judgment dated 23.11.2015. It is submitted on behalf of the applicant that the Application that was moved

by the judgment-debtor below Exh.300 dated 17.1.2003 was under provisions of Order 21 Rule 90 of the Code of Civil Procedure,1908, while in the said judgment the said application has been considered as having been moved under provisions of O.21 R.89 of the Code. It is therefore, submitted that as the Application was moved under provisions of O.21 R.90 of the Code, there was no requirement to deposit a sum equal to 5% of the purchase amount. According to the applicant,the aforesaid consideration amounts to an error apparent on the face of the record and hence the judgment deserves to be reviewed.

The Application is opposed by the learned counsel for the non-applicant nos. 1A and 1B on the ground that the Application below Exh.300 though titled as one under O.21 R.90 and seeks setting aside the sale on the ground of irregularity and fraud, but said Application does not contain any such averments. It is further submitted that against the order passed below Exh.300, the Miscellaneous Appeal itself was not maintainable.

Perusal of the judgment under review indicates that in paragraph 6 of the said judgment, the application below Exh. 300 has been treated to be one under O.21 R.89 of the Code. On that basis, it is observed that the said application was required to be accompanied by a sum equal to 5% of the purchase amount. However in paragraph 5 of the judgment, the basis on which the sale was sought to be set aside at the behest of judgment-debtor has been considered and it has been observed that the auction -purchaser was always ready to deposit 25% of the same amount but the same could not be done for want of orders by the executing court. Considering the fact that by the application under O. 21 R.90 of the Code, the judgment-debtor was aggrieved by the permission granted to the auction-purchaser to deposit 25% of the sale amount on 10.1.2003, I do not find that it would make much material difference as the grounds for setting aside the sale have been taken into consideration while deciding the Writ Petition. In my view, the reasons assigned in paragraph 5 of the

judgment consider the case of the judgment-debtor as urged in the application below Exh.300. Hence, I do not find any error apparent on the face of the record. The Application is, therefore, rejected.

JUDGE

sakae