IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION STAMP NO.17446 OF 2016
IN
WRIT PETITION NO.3446 OF 2016

The Administrator,	**]**
Maharashtra Rajya Krishi Gramin	**]**
Bhuvikas Bank Mydt. Mumbai,	**]**
Through its Manager,	**]**
Branch Office at Pandharpur,	**]..Review**
District Solapur	**] Petitioner**

Versus

1. Navnath Vitthal Manjare,	**]**
Occupation :- Agriculture,	**]**
Residing at Karkamb, Taluka Pandharpur,	**]**
District Solapur.	**]**
2. Arjun Rama Mali,	**]**
Occupation :- Agriculture,	**]**
Residing at Karkamb, Taluka Pandharpur,	**]**
District Solapur.	**]**
3. The Additional Commissioner, Pune.	**]**
4. The Collector, Solapur.	**]**
5. The Sub Divisional Officer,	**]**
Pandharpur, District Solapur.	**]**
6. The Tahsildar, Pandharpur,	**]**
Taluka Pandharpur, District Solapur.	**]**
7. The State of Maharashtra,	**]**
Through its Secretary,	**]**
Revenue and Forest Department,	**]**
Mantralaya, Mumbai.	**]..Respondents**

Shri. P. D. Dalvi for the Review Petitioner.

Shri. G. N. Salunkhe i/by Shri. Ashok M. Misal for the Respondent No.1.

Shri. Ajay A. Joshi for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 4th APRIL, 2017

P.C.

1 By the above Review Petition review is sought of the order dated 21.03.2016 passed by this Court (R. M. Savant, J) in the above Writ Petition. By the said order, the above Writ Petition No.3446 of 2016 filed by the Petitioner Bank came to be dismissed and resultantly, the order dated 22.01.2016 passed by the Hon'ble Minister for Revenue, Government of Maharashtra came to be confirmed.

2 The Petitioner herein is a Land Development Bank and provides finance to the agriculturist. The Respondent No.2 herein had obtained financial assistance from the Petitioner Bank and as a consequence had executed a registered mortgage dated 28.01.1993 in favour of the Petitioner Bank in respect of the land in question. The Respondent No.2 had also executed a document in form 'E' as provided in the Maharashtra Co-operative Societies Rules, 1961. It is after the said

registered mortgage was executed in favour of the Petitioner Bank and the document in form 'E' executed by the Respondent No.2 that the Respondent No.2 by registered Sale Deed sold the said plot of land to the Respondent No.1 herein without obtaining the NOC of the Petitioner Bank. On the said Sale Deed being executed in his favour, the Respondent No.1 applied for his name being entered in the revenue record. The said application came to be rejected by the Circle Officer. Against the rejection of the application by the Circle Officer, the Respondent No.1 filed an Appeal being RTS No.1567 of 2006 which was partly allowed by the Sub Divisional Officer by his order dated 29.04.2008 thereby directing the name of the Respondent No.1 to be incorporated in the other rights column in the 7/12 extract of the land in question.

3 The Respondent No.1 aggrieved by the said order dated 29.04.2008 passed by the Sub Divisional Officer preferred a Second Appeal being RTS Appeal No.106 of 2008 before the Additional Collector, Solapur. The Additional Collector by his order dated 15.11.2011 allowed the said Appeal and resultantly quashed and set aside the order dated 29.04.2008 passed by the Sub Divisional Officer, Pandharpur. Against the said order dated 15.11.2011 passed by the Additional Collector, the Respondent No.1 preferred Revision Application No.120 of 2012 before the Additional Commissioner, Pune. The Additional Commissioner by

order dated 19.11.2013 dismissed the Revision Application filed by the Respondent No.1. The Respondent No.1 thereafter preferred Second Revision being No.705 of 2014 against the said order dated 19.11.2013 passed by the Additional Commissioner, Pune. The said Second Revision was allowed by the Revisionary Authority i.e. the Hon'ble Minister for Revenue by order dated 22.01.2016. By the said order, the Revisionary Authority directed the name of the Respondent No.1 to be entered in the ownership column and the name of the Petitioner Bank to be entered in the other rights column in the 7/12 extract of the land in question. As indicated above, it was the said order dated 22.01.2016 which was taken exception to by way of the above Writ Petition.

4 The said order was challenged inter-alia on the grounds mentioned in the said Writ Petition amongst which are the grounds at item Nos.(i) and (ii) which for the sake of ready reference are reproduced hereinunder :-

> “i) The Learned Minister failed to consider the provision of Section 48, 122 of the Maharashtra Co-operative Societies Act read with Rule 64 of the Maharashtra Co-operative Societies Rule, 1961.
>
> ii) The Learned Minister failed to consider the fact that once the land is mortgage with the Bank and accordingly the name of the Bank is shown in the revenue records at that time it is duty of the

> Respondent Nos.1 and 2 to take consent from the Petitioner Bank. Therefore an agreement between the Respondent No.1 and 2 is void ab initio and it not binding to Petitioner Bank."

5 However the order dated 21.03.2016 of which review is sought does not make any reference to the challenge raised on the said two grounds, as no such contention based on the said grounds was urged by the Learned Counsel for the Petitioner appearing in the said Writ Petition and this Court therefore proceeded to adjudicate the Writ Petition oblivious of Section 48 of the Maharashtra Co-operative Societies Act, 1960 (For short "the MCS Act") and confirmed the order dated 22.01.2016 only on the basis that there was a registered Sale Deed which was executed in favour of the Respondent No.1 by the Respondent No.2 and therefore the order dated 22.01.2016 passed by the Revisionary Authority directed mutation entry to be effected in the name of the Respondent No.1 in the ownership column could not be faulted with.

6 The original Writ Petitioner i.e. the Land Development Bank has filed the above Review Petition. The review as indicated above is sought of the order dated 21.03.2016. The Review Petition is principally founded on Section 48 of the MCS Act. It is contended by the Learned Counsel appearing for the Review Petitioner that the said order dated 21.03.2016 passed in the above Writ Petition has been passed by this

Court oblivious of Section 48 of the MCS Act as the said provision though pleaded, was not brought to the notice of this Court. Based on clause (d) of the said Section 48 of the MCS Act, it is the contention of the Learned Counsel for the Petitioner that the land in question which was mortgaged to the Petitioner Bank, could not be dealt with, without the NOC of the Petitioner Bank. Consequence of dealing with the land in question without the NOC of the Petitioner Bank have been stated in clause (e) of the said Section 48 which posits that any alienation made in contravention of the provisions of clause (d) shall be void. It was therefore the submission of the Learned Counsel that the transaction between the Respondent Nos.1 and 2 without the NOC of the Petitioner being void, the document executed in favour of the Respondent No.1 by the Respondent No.2 would be of no avail in so far as the entry to be made in the revenue record is concerned.

7 On behalf of the Respondent No.1 herein, the Learned Counsel Shri. G. N. Salunkhe would contend that the review is sought on the same ground as was urged in the Writ Petition namely that the transaction could not have been entered into having regard to Section 48 of the MCS Act. It was the submission of the Learned Counsel Shri. G. N. Salunkhe that since the ground urged did not find favour with this Court whilst dismissing the Writ Petition, it was not open for the Petitioner to

file the above Review Petition and seek review of the order dated 21.03.2016 on the said ground. The Learned Counsel would next contend that the Petitioner Bank has by accepting the payment made by the Respondent No.1 towards the outstanding loan amount has impliedly consented to the transaction between the Respondent No.1 and the Respondent No.2 and therefore the Sale Deed which has been executed by the Respondent No.2 in favour of the Respondent No.1 cannot be said to be hit by the provisions of Section 48 of the MCS Act and therefore is not void. The Learned Counsel also sought to question the filing of the above Review Petition, and in support relies upon the judgments referred to herein under to contend that the Review Jurisdiction of this Court need not be exercised.

1) ***AIR 1995 SC 455*** in the matter of ***Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury***.

2) ***AIR 2000 SC 1650*** in the matter of ***Lily Thomas Vs. Union of India and others***.

3) ***AIR 2006 SC 1634*** in the matter of ***Haridas Das Vs. Smt. Usha Rani Banik and others*** and

4) Division Bench judgment of this Court reported in ***2010(5)***

Bom.C.R. 832 in the matter of ***Spanco Limited Vs. A2Z Maintenance & Engineering Services Limited & anr***.

The judgments of the Apex Court (*supra*) and this Court (*supra*) are an exposition on the aspect as to when the Review Jurisdiction can be exercised.

8 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The question that arises for consideration is whether the Review Jurisdiction of this Court is required to be exercised in the facts and circumstances of the case. To determine the said issue, a few facts would have to be revisited. There is no dispute about the fact that the Respondent No.2 is a borrower of the Petitioner Bank and has executed a registered mortgage in favour of the Petitioner Bank in respect of the land in question. The Respondent No.1 has also executed a document in form 'E' which finds a place in the said rules. The execution of the mortgage as also execution of the document in form 'E' therefore would have its consequences.

9 At this stage, it would be necessary to refer to Section 48(d) and (e) of the MCS Act. The said provision is reproduced hereinunder for the sake of ready reference :-

"**48. Charge on immovable property of members borrowing from certain societies**

Notwithstanding anything contained in this Act or in any other law for the time being in force.-

(a) ....
(b) ....
(c) ....
(d) no member shall alienate the whole or any part of the land or interest therein, specified in the declaration made under clause (a) or (b) until the whole amount borrowed by the member together with interest thereon, is repaid in full:

Provided that, it shall be lawful to a member to execute a mortgage bond [in respect of such land or any part thereof in favour of [a Co-operative Agriculture and Rural Multipurpose Development Bank] or of the State Government] under the Bombay Canal Rules made under the Bombay Irrigation Act, 1879 or under any corresponding law for the time being in force for the supply of water from a canal to such land, or to any part thereof:

Provided further that, if a part of the amount borrowed by a member is paid [the society with the approval of the Central Bank to which it may be indebted] may, on an application from the member, release from the charge created under the declaration made under clause (a) or (b), such part of the movable or immovable property specified in the said declaration, as it may deem proper, with due regard to the security of the balance of the amount remaining outstanding from the member;

(e) any alienation made in contravention of the provisions of clause (d) shall be void:"

Hence clause (d) of Section 48 postulates that no member shall alienate the whole or any part of the land or interest therein, specified in the declaration made under clause (a) and (b) until the whole amount borrowed by the member together with interest thereon, is repaid in full. In so far as clause (e) is concerned, it is in the nature of a declaration namely that any alienation made in contravention of the provisions of clause (d) shall be void.

10 In the instant case, there is no dispute about the fact that there is no consent of the Petitioner Bank which has been obtained prior to entering into transaction by the Respondent No.2 in favour of the Respondent No.1. The case of the Respondent No.1 is of an implied consent which case cannot be countenanced having regard to the fact that the Petitioner is a Land Development Bank and therefore the no objection has to be obtained in writing. Hence it is exfacie clear from the record that no written consent was obtained by the Respondent No.2 who is the borrower from the Petitioner Bank prior to entering into transaction with the Respondent No.1. Hence, there is a breach of clause (d) of Section 48 of the MCS Act consequence of the same would be that the transaction entered into between the Respondent No.2 and the Respondent No.1 is hit by clause (e) of the said provision which as indicated above is declaratory in nature and under which any alienation made in contravention of the provisions of clause (d) is held to be void.

Hence the transaction between the Respondent No.2 and the Respondent No.1 without obtaining the NOC of the Petitioner Bank being hit by clause (e) is therefore void. If that be so, no entry on the basis of the said Sale Deed could have been made in favour of the Respondent No.1 as the said entry was made on the basis of the registered Sale Deed which was executed by the Respondent No.2 in favour of the Respondent No.1 in breach of Section 48(d) of the MCS Act. In fact the said document is of no avail to the Respondent No.1 unless the amount which was borrowed by the Respondent No.2 had been fully repaid to the Petitioner Bank.

11 In so far as the order of which review is sought is concerned, as indicated above, no contention was urged on the basis of Section 48 of the MCS Act on behalf of the original Petitioner and this Court therefore passed an order on the basis that there was a registered Sale Deed in favour of the Respondent No.1 executed by the Respondent No.2 and therefore in terms of Section 150 of the Maharashtra Land Revenue Code, 1966 (For short “the MLR Code”) was required to be taken cognizance by the Revenue Authorities whilst effecting entry in the revenue record. Though normally a case where there is a registered document would be covered by Section 150 of the MLR Code, in the instant case, the fact that the mortgage was executed in favour of the Petitioner Bank as also a document in form 'E' was also executed in favour of the Petitioner Bank

superimposes itself on the entitlement of the Respondent No.1 for his name being entered in the revenue record based on Section 150 of the MLR Code. Since the order has been passed oblivious of the statutory provision, the order dated 21.03.2016 would have to be reviewed.

12 Now coming to the judgments cited (*supra*) on behalf of the Respondent No.1. In ***Smt. Meera Bhanja***'s case (*supra*), the Apex Court following its judgment in ***Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma*** reported in ***AIR 1979 SC 1047*** held that a power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

In ***Lily Thomas***'s case (*supra*), the Apex Court has held that the power of review can be exercised for correction of a mistake and not to substitute a view. The review cannot be treated as an Appeal in disguise. In the said case, the Apex Court relied upon its judgment in ***Patel Narshi Thakershi Vs. Pradyumansinghji Arjunsinghji*** reported in ***AIR 1970 SC 1273***, in which judgment the Apex Court has held that the law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error.

In ***Haridas Das***'s case (*supra*), the Apex Court has held that the power of review under Order 47 Rule 1 is circumscribed by the eventualities mentioned in the said rule, on the basis of which review can be sought.

In ***Spanco Limited***'s case (*supra*), the Division Bench of this Court has reiterated the proposition of law that the review is not an Appeal whereby a wrong decision can be reconsidered and corrected.

13 In my view, the said judgments (*supra*) cited on behalf of the Respondent No.1 herein would not aid the case of the Respondent No.1 in so far as the exercise of the Review Jurisdiction especially having regard to the fact that the said order of which review has been sought has been passed oblivious of a statutory provision which is an obvious mistake. If the said mistake is not corrected, the same would result in an error being perpetrated resulting in grave prejudice being caused to the Petitioner Bank. In my view, therefore, case for review of the order dated 21.03.2016 is made out. The order dated 21.03.2016 would accordingly stand set aside. Resultantly, the Writ Petition would stand restored to file

and would have to be placed before the regular Court for admission for being dealt with on merits.

14 At this stage, the Learned Counsel for the Respondent No.1 applies for stay of the instant order. In the facts and circumstances of the case, the said prayer is rejected.

[R.M.SAVANT, J]