

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.108 OF 2016
IN
WRIT PETITION NO.6590 OF 2015

M/s.Firm Foundation Realtor .. Review Petitioner

vs.

Mr.Pankaj Gul Jagasia .. Respondent

Mr.J.S.Kapre for the petitioner

Mr.H.K.Hazirani with Ms.Pushpa Goswami for the respondent

CORAM : K. K. TATED, J.
DATE : JANUARY 20, 2017

PC.:

- 1 Heard the learned counsel for the parties.
- 2 By this Review Petition, petitioner is seeking to review the order dated 6.6.2016 passed by this court in Writ Petition No.6590 of 2015.
- 3 The learned counsel for the Review Applicant submits that initially they preferred Writ Petition No.6590 of 2015 challenging the order dated 10.3.2015 passed by 7th Additional Judge, Small Causes Judge and Joint Civil Judge, Senior Division, Pune below Exhibit-10 in Special Civil Suit No.649 of 2014 allowing respondent defendant's application under section 8 of the Arbitration and Conciliation Act, 1996 for referring the parties to the suit to Arbitration. He submits that

at the time of arguing the Writ Petition on 6.6.2016, advocate for the Review Applicant was under impression that against the said order, the appeal is provided under section 37 of the Arbitration and Conciliation Act, 1996. He submits that after consulting the legal advisor Review Applicant learnt that the appeal is not provided under section 37 of the said Act after amendment if the application under section 8 of the said Act is allowed. Section 37 of the said Act reads thus:

“37. Appealable orders.—

(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:

—

(a) refusing to refer the parties to arbitration under section 8

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.—

(a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

4 The learned counsel for the Review applicant submits that by mistake, advocate for the Review applicant applied to this court for withdrawal of the Writ Petition with liberty to file Appeal under section 37 of the said Act. He submits that as soon as the Review Applicant learnt these facts they preferred the present Review Petition to review the order dated 6.6.2016. He submits that if Review Applicant is not allowed, irreparable loss will be caused to the applicant. He submits that because of mistake on the part of Advocate, litigant should not suffer.

5 On the other hand, the learned counsel for the respondent vehemently opposed the present Review Petition. He submits that Review Applicant on his own withdrew the Writ Petition by giving in writing on Farad. He submits that once petition is withdrawn, there is no question of recalling the said order because of mistake on the part of advocate. Hence, there is no substance in the present Review Petition. Same be dismissed with costs.

6 I have heard both the sides at length.

7 It is to be noted that because of mistake on the part of advocate, litigant should not suffer. In the present proceeding, advocate for the Review Applicant rightly filed Writ Petition No.6590 of 2015 challenging the order dated 10.3.2015 passed by 7th Additional Judge,

Small Cause Judge and Joint Civil Judge, Junior Division, Pune below Exhibit-10 in Special Civil Suit No.649 of 2014. By misinterpreting the provisions of section 37 of the Arbitration and Conciliation Act, 1996, advocate for the applicant withdrew the Writ Petition with liberty to file Appeal. Bare reading of section 37 shows that Appeal is not maintainable if application under section 37 of the said Act is allowed.

8 Considering these facts, I am of the opinion that petitioner has made out a case for allowing this Review Petition. Hence, following order is passed:

- a) Order dated 6.6.2016 passed by this court in Writ Petition No.6590 of 2015 is reviewed and recalled.
- b) Writ Petition No.6590 of 2015 filed by the petitioner is restored on file for hearing on its own merits.
- c) No order as to costs.
- d) Review Petition stands disposed of accordingly.

JUDGE