

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 143 OF 2012
IN
WRIT PETITION NO. 11297 OF 2011

Mr. Chandrakant Annappa	}	
Shirote and Ors.	}	Petitioners
versus		
The Collector, Kolhapur	}	
and Ors.	}	Respondents

Mr. Abhay Nevagi with Mr. Sandesh
Shukla and Mr. Santosh Sawant i/b.
M/s.Abhay Nevagi and Associates for the
petitioners.

Ms. Aparna D. Vhatkar - AGP for
respondent no. 1.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- JANUARY 19, 2017

P.C. :-

1. Heard Mr. Nevagi appearing for the petitioners. Perused the review petition and the order under review.
2. The ground of review and essentially is that this court has wrongly and erroneously relegated the petitioners to the remedy of firstly approaching the recovery officer attached to the DRT and thereafter, if aggrieved by his order and action, to approach further the DRT in appellate proceedings. Both these remedies

are unavailable to the petitioners. The petitioners, being the workers of a co-operative society, are unsecured creditors. The amounts have to be recovered on their behalf by somebody else. That somebody else, whether can approach the tribunal or not and withdraw or appropriate or adjust, from the sale proceeds or auction money, any sum payable to the petitioners was the issue under consideration. The Division Bench, therefore, erroneously assumed that it is the petitioners who are seeking the substantive relief and for themselves. That is how the order under review suffers from an error apparent on the face of the record.

3. We are unable to uphold such contention. We cannot, in review jurisdiction, which is extremely limited, revisit the factual conclusion and based on which an alleged erroneous provision of law has been invoked and applied in the Division Bench order. Had the petitioners been properly heard, the correct law noticed and the facts appreciated in that light, the conclusion as emerging from the order under review could not have been arrived at by the Division Bench, is the submission. Precisely, for this, appellate and revisional remedies are available to the parties like the petitioners. We cannot, in the garb of a review, go behind the order under review. In review jurisdiction, this is impermissible.

4. We find that the review petition is filed because of some observations in the order of the Hon'ble Supreme Court of India. The order under review was challenged by the petitioners by filing a special leave petition in the Hon'ble Supreme Court of India. That special leave petition was dismissed/disposed off with the following order:-

“UPON hearing counsel the Court made the following
ORDER

Delay condoned.

Since the submission made by the learned counsel for the petitioners is that the High court has passed the impugned order without hearing the counsel for the petitioners, in our opinion, the appropriate course for the petitioners was to seek a review of the order passed by the High Court instead of rushing to this Court by way of filing special leave petition. In view of the above, learned counsel for the petitioners seeks permission to withdraw this petition with liberty to approach the High Court. The prayer is allowed. The special leave petition is dismissed as withdrawn with liberty to approach the High Court by filing a review petition within the next thirty days.”

5. We find that the petitioners having invoked the appellate remedy, chose not to pursue it. We do not know as to how, based on a tentative or *prima facie* finding of the Hon'ble Supreme Court of India, the review petition can be entertained, much less allowed. In these circumstances, we do not think that the review petition can be entertained. It is entirely misconceived and it is dismissed.

6. Additionally, we find from the order under review that the petitioners' complaint that they were not heard is without any basis. The order under review was passed after hearing the petitioners' counsel. This is one more ground to turn down the request of the petitioners.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)