

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION W. NO.1317/2011

IN

WRIT PETITION NO.248/2009 (D)

Anil Scrap Industries Private Limited, Nagpur

...Versus...

Union of India, through the Secretary, Ministry of Finance, Government of India
New Delhi and another

Applicants :- Sunil Ramniwas Agrawal and others

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

Court's or Judge's orders

Shri A.H. Lohiya, Advocate for petitioner
Shri V.K. Paliwal, Advocate for respondent no.2

CORAM : PRASANNA B. VARALE AND
ARUN D. UPADHYE, JJ.

DATE : 02.11.2017

1. None for the applicants. By the present application, the applicants, namely, Sunil Agrawal, Anil Agrawal, Vinod Agrawal, Sathish Agrawal and Smt. Swarnlata Agrawal are seeking recall of the order of this Court dated 4/8/2010 and 29/9/2010 in Writ Petition No.248/2009.

2. Perusal of the record shows that the petition was filed through one M/s Anil Scrap Industries Private Limited challenging certain proceedings initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Order of this Court dated 4/8/2010 is by way of an interim arrangement permitting the petitioner to take

certain steps. The petition is finally decided by the judgment and the order dated 29/9/2010.

3. Learned Counsel appearing for the original petitioner submitted that the applicants represented before this Court as if the application is filed by the original petitioners and the applicants are seeking recall of the order. The learned Counsel submitted that on 27/5/2011 notice was issued. By inviting our attention to the order dated 27/5/2011 the learned Counsel submits that the order of this Court shows that the Counsel appearing for the applicants was referred to as the Counsel for the petitioner, whereas the petitioner was represented through another Counsel in the petition. The learned Counsel appearing for the original petitioner then invited our attention to the order of this Court dated 19/6/2012. The order reads thus :-

“None for the applicants. Shri Lohiya, the learned counsel for the petitioner is present.

Civil Application is dismissed for want of prosecution.”

4. Perusal of the record further shows that by order dated 13/11/2014 an application seeking restoration of the application seeking recall which was dismissed in default was allowed. Perusal of record then shows that on 9/12/2015, 3/7/2017 and 17/7/2017 application was posted before this Court. On 9/12/2015 and 3/7/2017 the matter was adjourned at the instance of the Counsel holding for the Counsel appearing for the petitioner.

5. Today, none appears for the applicants. On a perusal of the record, it reveals that these applicants were not the petitioners and the petition was filed through M/s Anil Scrap Industries Private Limited. It is stated in the application that the applicants were unaware of the fact that a petition is pending in this Court. It is submitted that as the applicants were unaware of the fact that the petition is pending before this Court they failed to participate in the proceedings of writ petition seeking an intervention in the proceedings. The learned Counsel appearing for the original petitioner submitted that the statement made in the application is clearly contrary to the facts. The learned Counsel invited our attention to the reply filed on behalf of the respondent no.2 to the present application. It is stated in the said reply that a notice was issued by these applicants through Counsel and in reply to the said notice the respondent no.2, i.e., the Nagpur Nagrik Sahakari Bank Limited specifically stated that Writ Petition No.248/2009 is pending in this Court and there is an interim order passed by this Court. It is also stated that the interim order or direction to maintain *status quo* is maintained by the respondent no.2. Copy of the notice is placed on record along with reply filed by the respondent no.2. In our opinion, the application is devoid of any merits. The applicants though submitted that they were unaware of the fact that the petition is pending in this Court the reply to the notice issued by their Counsel to the respondent no.2 clearly shows that these applicants were made aware of the fact of pendency of the petition in this Court. If the applicants wanted to participate in the proceedings, namely, the writ petition they could have sought

an intervention in the petition, which was filed in the year 2009 and was pending before this Court for a considerable period and more particularly in view of the fact that the fact of pendency of the petition was brought to their notice.

6. Considering all these facts, we find no merit in the application. The civil application deserves to be rejected and the same is accordingly rejected. No costs.

JUDGE

JUDGE

Wadkar