

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

Review Application No.19 of 2017

1. R.Dhanalakshmi
2. R.Ananthakumar
3. R.Veeresh Kumar

.. Applicants

Vs.

1. Parthas
rep. by its Managing Partner
Building No.1515, Ward 38
Post Box No.5716
Power House Road
Thiruvananthapuram – 695 036.
2. Standard Chartered Bank
having its Regional Office at
Haddows Road
Chennai – 600 006.

3. Phoenix ARC Private Limited
rep. by its Manager and POA
K.Velmurugan

.. Respondents

PRAYER: Review Application to review and recall the judgment dated
1.2.2017 made in O.S.A.No.400 of 2012.

For Applicants

: Mr.M.S.Krishnan
Senior Counsel
for M/s.Sarvabhauman Associates

(2)

For Respondents : Ms.Anupama
for Mr.Madan Babu
for 1st respondent

Mr.V.Jayachandran
for respondents 2 and 3

ORDER

(Order of the Court was made by *the Hon'ble Chief Justice*)

This is an application for review of a judgment and order dated 1.2.2017 passed by the Division Bench of this Court in O.S.A.No.400 of 2012. The judgment and order under review is extracted herein below for convenience:

"The Assignee of the fourth respondent has been formally impleaded as the fifth respondent today.

2. In so far as the discharge of the mortgage created is concerned, the appellant/plaintiff is stated to have discharged the same vide Demand Draft dated 27.01.2017 for a sum of Rs.15,00,000/- (Rupees fifteen lakhs only) in favour of the fifth respondent.

3. In view of the aforesaid, orders are sought in the appeal in the following terms:

- a) Making absolute the order of interim injunction granted in O.A.No.688 of 2006 in C.S.No.659 of 2006;

- b) Recording the discharge of mortgage created in favour of the 4th respondent / 4th defendant bank in respect of Plaint Schedule item nos.3 and 4 by payment of Rs.15 lakhs by the appellant/plaintiff, and that the 4th respondent/4th defendant bank and/or its assignee shall not have any further claim over Plaint Schedule item nos.3 and 4;
- c) Directing the 4th respondent / 4th defendant bank and/or its assignee viz., "Phoenix ARC" to deposit the entire title and other documents pertaining to Plaint Schedule item no.3 and 4 and the mortgage created in respect thereof with the Registrar General of this Hon'ble Court for safe custody and subject to the outcome of C.S.No.659 of 2006;
- d) Treating the said sum of Rs.15 Lakhs as part and parcel of the sale consideration payable by the appellant/plaintiff under the agreement for sale dated 02.04.2005 and supplementary agreement dated 30.06.2005 and granting liberty to the appellant/plaintiff and respondents/defendants 1 to 3 to agitate their respective rights as mentioned in the impugned order dated 25.06.2012.

4. The appeal, by agreement, is disposed of in the

aforesaid terms. No costs.

5. We are informed that the defendants have not even filed the written statement for ten years. List on 13.02.2017 before the learned Single Judge on the undefended Board."

2. It appears that the attention of this Court was not drawn to the fact that as on the date of the order of this Court, as also the interim order of the Single Bench appealed against, there was no *lis* pending between the parties, as the suit being C.S.No.659 of 2006 for specific performance stood dismissed on 15.10.2008 as against the applicants for review, being defendant Nos.1, 2 and 3 in the suit. The judgment and order was passed without noticing the material fact that the suit stood dismissed as against the review applicants herein. The judgment and order is, thus, liable to be reviewed and recalled.

3. In this context, it would be pertinent to note that the main relief of specific performance was sought in the suit against the defendant Nos.1, 2 and 3, that is, the review applicants, and the assignee of the fourth respondent/mortgagee bank was impleaded as the fifth defendant only in the Original Side Appeal.

4. It appears that pursuant to the judgment and order under review, the plaintiff paid to the mortgagee bank and/or its assignee a sum of Rs.15,00,000/- in full and final settlement of the claims of the mortgagee bank and/or its assignee against the review applicants. The said amount was, in terms of the judgment and order under review, paid by the plaintiff/appellant as part and parcel of the sale consideration payable under the agreement/s of which specific performance had been sought in the suit.

5. There can be no two opinions that the judgment and order under review could never have been passed, when the suit itself stood dismissed as against the review applicants/defendants 1, 2 and 3.

6. Pursuant to the judgment and order, which is under review, the plaintiff/appellant has paid Rs.15,00,000/- to the fifth defendant, being the mortgagee of the suit property by assignment. No party should be prejudiced by an order of Court. When any act is done pursuant to an order of this Court, the party which has done the act is entitled, before that order is recalled, to be put, to the extent possible, in the position in which he would have been, had the order not been passed.

7. The review applicants have benefited from the order inasmuch as their dues to the mortgagee bank and/or its assignee have been settled, and their property released from mortgage. The review applicants shall reimburse to the plaintiff the sum of Rs.15,00,000/- paid by the plaintiff to the mortgagee bank along with interest at the rate of 14% per annum from the date of payment till the date of refund.

8. The order under review is recalled. It is made clear that this order shall not affect the settlement with the bank in any manner whatsoever and will also not prevent the mortgagee bank and/or its assignee from returning the title deeds to the rightful holder thereof.

The review application is disposed of accordingly. Consequently, C.M.P.No.3761 of 2017 is closed.

(I.B., C.J.) (M.S., J.)
30.08.2017

Index : No
Internet : Yes

sasi

To:

The Sub Assistant Registrar
Original Side

(7)

Madras High Court
Chennai.

THE HON'BLE CHIEF JUSTICE
AND
M.SUNDAR,J.

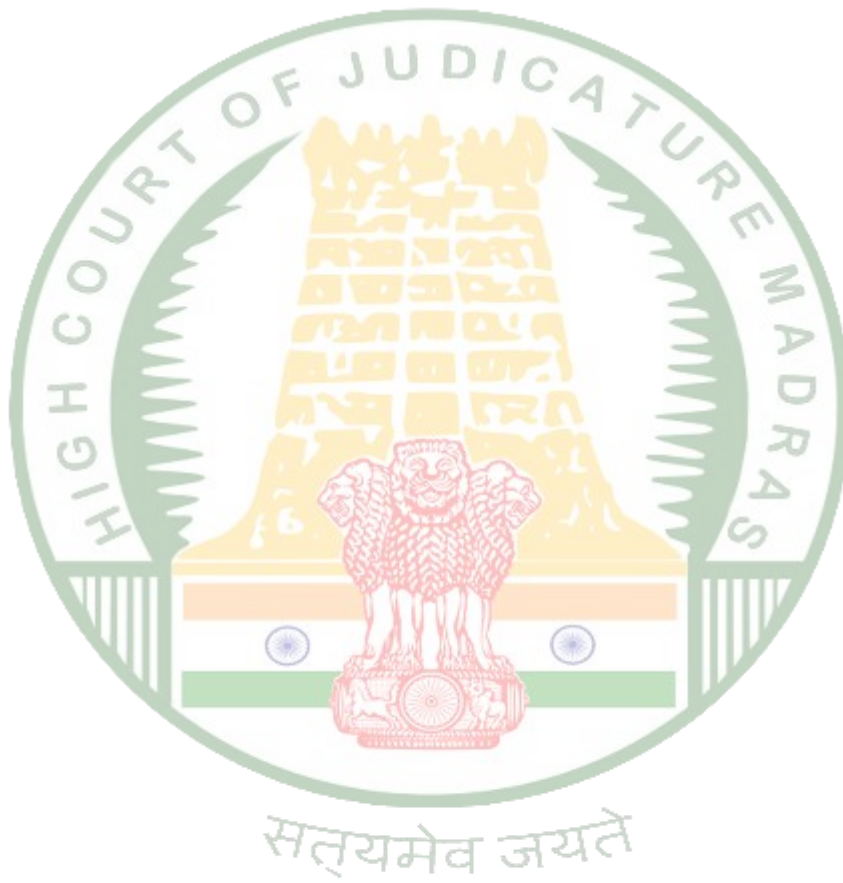
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