

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 10842 OF 2018  
IN  
REVIEW APPLICATION STAMP NO. 24751 OF 2018  
IN  
WRIT PETITION NO. 13728 OF 2017

MACNALLY BHARAT ENGINEERING CO. LTD.  
VERSUS  
SAI CONSTRUCTIONS

Advocate for Applicant : Mr. R.V. Gore  
h/f. Mr. S.A. Ambad.  
Advocate for Respondent : Mr. G.D. Kale.

CORAM : RAVINDRA V. GHUGE, J.  
Dated : 31<sup>st</sup> August, 2018.

PER COURT :

1. I have heard learned advocates for the respective sides. For the reasons set out in the application, the delay of 20 days is condoned and the Civil Application is allowed.

2. By the consent of the parties, the Review Application is heard. Learned counsel for the review applicant submits that he has nothing to voice with regard to the order dated 27<sup>th</sup> June, 2018, passed by this Court in Writ Petition No. 13728/2017, except to the extent of the observations made in paragraph Nos. 5, 7 and 8 that the judgment debtor had made a false statement before the executing Court that the Regular Civil Appeal was

preferred for challenging the decree of the Trial Court.

3. Learned counsel points out from the application that was filed on 27<sup>th</sup> July, 2017, bearing Exhibit No. 45/D, in Special Darkhast No. 08/2015, which ultimately led to the filing of Writ Petition No. 13728/2017.

4. He points out that the judgment debtor had specifically stated in paragraph No. 3 that the judgment debtor desires to challenge the judgment and decree of the Trial court by preferring a Regular Civil Appeal. It was specifically stated that” “JD मूळ निकालाची अपिल करू इच्छित आहे ”. It was then submitted that some protective order be passed till the proposed appeal is decided by the appellate Court.

5. Learned counsel then points out that the executing Court which passed the order dated 27<sup>th</sup> July, 2017, mistakenly believed that the JD has made a statement that the appeal has already been preferred.

6. Learned counsel for the original petitioner has strenuously opposed this petition and submits that heavy costs be imposed and this application be rejected. He, further, submits that the order dated 27<sup>th</sup> June, 2018, is appropriate and calls for no interference. He relies upon the judgment of the Hon'ble Apex Court in the matter of Lily Thomas Versus Union of India [AIR 2000 Supreme Court 1650], that unless an error apparent on the face of the order is not pointed out, a Review Application cannot be entertained.

7. I find that the statement made by the JD/review applicant in Exhibit 45/D specifically was that the JD desires to challenge the judgment and decree of the Trial Court. The executing Court, therefore, could not have believed that the JD had already filed such a Regular Civil Appeal. I had passed the order dated 27<sup>th</sup> June, 2018, carrying the same belief and hence, it was observed in paragraph Nos. 5, 7 and 8 that the judgment debtor had made a dishonest statement.

8. Considering the above, I am of the view that the observation made by me in the order dated 27<sup>th</sup> June, 2018, as regards the dishonest intention of the judgment debtor, is not based on the

factual pleading and hence, the observation needs to be expunged.

9. In view of the above, this Review Application is allowed and the observation made by this Court in paragraph No. 5, 7 and 8 regarding the conduct of the judgment debtor, need to be expunged. Consequentially, paragraph Nos. 5, 7 and 8 of the order dated 27<sup>th</sup> June, 2018, shall now read as under :

“5. It appears from the order dated 27<sup>th</sup> July, 2017, that though the judgment debtor had made a statement that a Regular Civil Appeal was being filed, the executing Court erroneously believed that the said appeal was already filed.

7. It is, therefore, obvious that the judgment debtor had informed the executing Court about its intention to file a Regular Civil Appeal.

8. Considering the above, this Writ Petition is partly allowed.”

10. Office shall issue a corrected copy of the order dated 27<sup>th</sup> June, 2018.

11. At the request of the litigating sides, the executing Court shall decide Special Darkhast No. 08/2015 expeditiously.

( RAVINDRA V. GHUGE, J. )

S.P.C.