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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION (LODGING) NO.31 OF 2017
IN
TRUST PETITION NO.3 OF 2011

Salim I. Kachwalla ...Applicant / …Petitioner

***IN THE MATTER BETWEEN :***

Dr.Neguib Y.E. Kachwalla ...Original ...Petitioner

V/s.

Saifee Burhani Upliftment Trust & Ors. ...Respondents

Ms.A. Lambay with Mr.Vikas Singh i/b Lambay & Co. for the Applicant / Petitioner.

Mr.Pravin Samdhani, Senior Counsel with Mr.Denzil Arambhan and Mr.Shlok Bolar i/b Wadia Ghandy & Co. for the Respondent Nos.1 to 16.

Mr.Ruchir Tolat i/b L.C. Tolat & Co. for the Respondent No.17.

**CORAM : R.D. DHANUKA, J.**
**DATE : 29TH JANUARY, 2018.**

**P.C. :-**

1. By this review petition, the review petitioner seeks recall of the order dated 18th April, 2013 passed by this Court in Trust Petition No.3 of 2011, allowing the said Trust Petition in terms of prayer clauses (a) to (c). By the said order, this Court had sanctioned the sale of the suit properties described in the said order and rendered a

finding that the sale proceeds offered by the respondent Trust to the petitioner therein in respect of those two properties were fair and reasonable. This Court also directed the petitioner herein to invest the consideration amount received on sale of those two properties in accordance with the provisions of the Trust Deed.

2. The review petitioner claims to be the beneficiary of the Trust.

3. It is the case of the review petitioner that the review petitioner came to know about the order passed by this Court only on 24th April, 2017 when the review petitioner received a copy of the notice dated 12th April, 2017 from the office of the Collector and District Magistrate, Mumbai. It is further case of the review petitioner that the review petitioner did not have any documents and thus had applied for inspection of the documents.

4. At the threshold, Mr.Samdhani, learned senior counsel for the respondent nos.1 to 16 raises a preliminary objection in respect of limitation in filing this review petition in view of the petitioner filing this petition beyond the period prescribed under Article 124 of Schedule-I to Limitation Act, 1963. The matter was partly heard by this Court on 17th January, 2018. In view of the objection of limitation raised by the respondent nos.1 to 16, learned counsel for the review petitioner was called upon to state whether her client would file a notice of motion

for condonation of any alleged delay. Learned counsel made a statement before this Court that the review petition has been filed within 30 days from the date of knowledge in question and thus the review petition was filed within the time prescribed and her client was not required to file notice of motion of the alleged delay.

5. A perusal of Article 124 of Schedule-I to the Limitation Act, 1963 clearly indicates that the review petition has to be filed within 30 days from the date of decree or order. The said provision does not indicate that the review petition has to be filed within 30 days from the date of knowledge or decree or the order in question.

6. Learned counsel for the review petitioner placed reliance on section 17 of the Limitation Act and would submit that since the review petitioner was not at all aware of the order in question and since the original petitioner had committed fraud upon this Court in obtaining the order under review, the limitation would commence from the date of knowledge by the review petitioner about the said order fraudulently obtained by the original petitioner and not from the date of the order as contemplated under Article 124 of Schedule-I to Limitation Act, 1963.

7. Before I deal with the merits of the matter, since the issue of limitation has been raised by the respondent nos.1 to 16, it would be appropriate to refer to some of the averments made by the review

petitioner in the review petition insofar as the allegations of fraud are made by the review petitioner. In paragraphs 15 to 17, the only allegation made by the review petitioner is that after perusing all the documents and the pleadings filed by the original petitioner, the review petitioner learnt about the fraud alleged to have been played by the original petitioner in collusion with the respondents upon the Court and the various authorities. The allegations of fraud have to be made with particulars and details and cannot be vague. In my view, such vague pleadings of fraud alleged in paragraphs 15 to 17 cannot be considered as sufficient. In my view, the review petitioner thus cannot seek benefit of section 17 of the Limitation Act, 1963. Though an opportunity was granted to the review petitioner to consider whether any notice of motion would be filed by the review petitioner for seeking condonation of delay, if any, the review petitioner did not avail of such opportunity and proceeded with the matter on the premise that there was no delay in filing the review petition. In my view, the review petition thus deserves to be dismissed on the ground of delay itself.

8. Be that as it may, since the parties have also argued on the merits of the matter, I am considering the arguments advanced by both the parties on merits.

9. The case of the review petitioner is that the building did not

require any repairs. The review petitioner who claimed to be the sole trustee of the Trust, was not the trustee of the Trust. If the review petitioner would have come to know about the offer made by the respondents, the review petitioner also would have participated in the bid for the said properties.

10. The respondent nos.1 to 16 have filed affidavit in reply to this review petition. In the affidavit in reply, the respondents have placed reliance on the receipt dated 4th December, 2013 signed by the review petitioner. It is the case of the respondent nos.1 to 16 that out of the sale proceeds received by the Trust, the share of the review petitioner was already paid to the review petitioner in the sum of Rs.10,40,000/- by cheque bearing No.000002 drawn on DCB Bank dated 3rd December, 2013. It is however, the case of the review petitioner that three lines in the said receipt were subsequently inserted by the Trust and that the said amount received by the review petitioner was for some other property and not for those two properties, which were subject matter of this petition in Trust Petition No.3 of 2011.

11. The review petitioner has not disputed the receipt of the said amount from the Trust. The bank passbook produced on record by the Trust would clearly indicate that the said amount was duly received by the review petitioner. A perusal of the original receipt

produced for verification of this Court by the learned counsel for the Trust would indicate that the signature of the review petitioner was also verified by the Bank. The review petitioner did not raise any objection at any point of time that those three lines were allegedly inserted by the Trust after obtaining the signature of the review petitioner. The petitioner also did not apply for cancellation of the said receipt by filing any appropriate proceedings. In my view, even otherwise, there is no substance in the allegations of the review petitioner that any fraud was committed by the Trust or by any other respondents in the Trust Petition No.3 of 2011.

12. Insofar as the submission of the learned counsel for the review petitioner that the Trust was not required to sell the properties in question is concerned, a perusal of the order dated 18th April, 2013 passed by this Court clearly indicates that this Court had considered the earlier order dated 5th November, 2012 passed by Smt.Justice SondurBaldota, as Her Ladyship then was. In the said order, this Court had observed that as far back as on 5th November, 2012 this Court was satisfied that the sale of the said two properties would be in the interest and benefit of the beneficiaries of the Trust. The properties were fully occupied by the tenants and could not fetch more than standard rent by way of income. It was further observed in the said order that the buildings were old and must be needing

repairs. Under the project of redevelopment to be undertaken by the Saifee Burhani Upliftment Trust of the area, the buildings were likely to be demolished. It is not in dispute that the said order dated 5th November, 2012 attained finality.

13. This Court while passing the order dated 18th April, 2013 has considered the affidavit in reply filed by the respondents to the said petition challenging the valuation at one stage and compared the valuation reports submitted by the Valuers appointed by this Court and also the offer received by the Trust in comparison to the said valuation report. This Court was satisfied that the market value of the property was less than the amount offered by the respondent nos.1 to 16. Having satisfied that the sale proceeds offered by the respondent Trust was fair and reasonable, this Court has sanctioned the sale after recording a finding that the sale would be in the interest of the petitioner therein and its beneficiaries.

14. I am not inclined to accept the submission made by the learned counsel for the review petitioner that the review petitioner did not come to know about the proposed sale of the properties by Trust though claims to be one of the beneficiary of the Trust. It is not the case of the review petitioner that the Trust had not issued the public notice before effecting sale of the properties in question.

15. A perusal of the averments made by the review petitioner

clearly indicates that it is not the case of the review petitioner that the properties were sold by the Trust for the price less than the market price. On the contrary, this Court was satisfied that the amount which was to be received by the Trust was more than the market price.

16. A perusal of the submissions and more particularly paragraph 16 of the review petitioner clearly indicates that the review petitioner himself was interested in buying the said properties. I am thus not inclined to accept the the submissions made by the review petitioner that the sale was not necessary or was not in the interest of the Trust or the beneficiaries. In my view, the review petition filed by the review petitioner is with an ulterior motive and thus deserves to be dismissed with costs quantified at Rs.50,000/- which shall be paid by the review petitioner to the respondent Trust within two weeks from today.

***(R.D. DHANUKA, J.)***