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

CIVIL APPLICATION (CAO) NO.44 OF 2018
IN
MISC. CIVIL APPLN. ST. NO. 17327 OF 2017 (R)
IN
WRIT PETITION NO.4974 OF 2014
(GANESH RAMDAS PATIL....VS.. BULDANA ZILLA DUDH UTPADAK SAH. SANGH & OTH.)

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

Shri C.S.Kaptan, Sr. Advocate a/b Shri R.M.Ahirrao, Advocate for applicant/ Org. Respondent No.6.

CORAM : Z.A.HAQ, J.
DATED : APRIL 04, 2018.

The applicant/ respondent in the writ petition has filed application seeking review of the judgment delivered in Writ Petition No. 4974 of 2014 on 17th June, 2016. The Miscellaneous Civil Application is filed after about 414 days of delivery of judgment and reeling under the impression that limitation for filing the review application is 30 days, this civil application is filed praying for condonation of delay in filing the review application.

2. At the time of hearing, a query was made to the learned Senior Advocate inquiring about the provisions which prescribe the limitation for filing the application seeking review of the judgment passed on an application under Articles 226 and 227 of the Constitution of India. As the title of the Miscellaneous Civil Application does not disclose the provision under which the Miscellaneous Civil Application is filed a further query was made to the learned Senior Advocate seeking clarification as to under which provision the Miscellaneous Civil Application is filed.

3. The learned Senior Advocate referred to Article 124 of the Limitation Act, 1963 which lays down that the limitation for seeking review of the judgment delivered by the Court other than the Supreme Court would be 30 days. The learned Senior Advocate further submitted that the Miscellaneous Civil Application seeking review of the judgment delivered in the writ petition has to be treated as under Article 226 of the Constitution of India. The learned Senior Advocate submitted that though he could not find out any judgment which decides that the limitation for filing application seeking review of the judgment delivered on the application under Articles 226 and 227 of the Constitution of India would be governed by Article 124 of the Limitation Act, 1963 and would be 30 days, there are judgments which hold that the application for seeking review of the judgment delivered on application filed under Articles 226 and 227 of the Constitution of India would also be under Article 226 of the Constitution of India and therefore the Limitation Act, 1963 cannot govern such application. The judgments on this point are as follows:

i) Judgment given in the case of *Shella Action Committee Vs. The State of Meghalaya & oth*, reported in **2017 SCC Online Megh 75**;

ii) Judgment given by the Gauhati High Court in the case of *Mori Riba Vs. Yomkar Riba*, reported in **(2011) 2 Gau.LR 510**;

iii) Judgment given by the Gauhati High Court in the case of *Kanak Chandra Sarma Vs. Board of Secondary Education*, reported in **(1995)1 Gau.LR 116**;

iv) Judgment given by the Gujrat High Court in the case of Ahmedabad Electricity Company *Vs. Municipal Corporation of the City*, in **Misc. Civil Application No. 1410 of 2001**;

4. As according to the learned Senior Advocate appearing for the applicant, the Miscellaneous Civil Application seeking review of the judgment delivered in writ petition is under Article 226 of the Constitution of India, Article 124 of the Limitation Act, 1963 cannot govern these proceedings.

5. In view of the above, I find that the civil application praying for condonation of delay in filing the Miscellaneous Civil Application is unnecessary, it is disposed accordingly.

MISC. CIVIL APPLN. ST. NO.17327/2017.

1. Taken up for consideration.

2. By this application, the original respondent No.6 seeks review of the judgment delivered by this Court in Writ Petition No. 4974 of 2014 on 17th June, 2016. According to the review applicant, the respondent No.3-Bank and the applicant were not represented when the writ petition was heard and therefore, some relevant aspects could not be brought to notice of this Court. It is submitted that the property in question was put to auction as per the second notice of auction dated 11th March, 2011 and in this auction, the review applicant was the highest bidder. However, this

auction was cancelled, as according to the respondent No.3-Bank the highest bid was much below the expected amount, and then the respondent No.3-bank decided to hold another auction and for that notice dated 7th August, 2011 was issued and again the review applicant was the highest bidder. According to the review applicant, he had deposited 25% of the amount on the third day and the balance amount was paid on 12th September, 2011 i.e. within one month and the bid of the review applicant was accepted by the respondent No.1-bank on 17th December, 2011 and the sale-deed was executed on 11th January, 2012.

8. In paragraph 11 of the judgment of which review is sought, it is held that the provisions of Rule 107(11)(g), (h) & (i) of the Maharashtra Co-operative Societies Rules, 1961 are mandatory and there was breach of these mandatory rules while conducting the auction. The learned Senior Advocate has pointed out the judgment delivered by the Hon'ble Supreme Court in the case of *Shilpa Shares and Securities & Ors. vs. National Co-operative Bank Ltd. & ors.*, reported in **(2007) 12 SCC 165**, in which it is held that the provisions of Rule 107(11)(g) of the Rules of 1961 are mandatory and if there is non-compliance of this Rule, the auction sale of the property is null and void.

9. Submission on behalf of the review applicant is that though the conclusions of this Court as recorded in paragraph 11 are in consonance with the above referred judgment, in the facts of the case, the proposition laid down in the above referred judgment would not be applicable. According to the review applicant, the notice of auction issued on 7th August, 2011 provided that 25% of the amount of bid was required to be deposited within 48 hours and the

balance 75% amount was required to be deposited within 30 days after confirmation of the sale and the applicant had complied with these requirements.

10. The mandate of Rule 107(11)(g), (h) & (i) is examined and considered in paragraph No.7 of the judgment. It is recorded that the order confirming the sale was passed by District Deputy Registrar on 6th June, 2011 and the review applicant had deposited the amount for purchasing stamps for execution of the sale-deed on 5th January, 2012 i.e. after about seven months. According to the learned Senior Advocate, the error has crept in at this stage as it was not pointed out to this Court that the order dated 6th June, 2011 passed by the District Deputy Registrar confirming sale is in respect of the sale which took place as per second notice dated 11th March, 2011 and this sale was cancelled and third auction notice dated 7th August, 2011 was issued, pursuant to which the auction was conducted on 22nd August, 2011 and the highest bid of review applicant was accepted and sale was confirmed by the respondent No.1-bank on 17th December, 2011 and the amount for purchasing the stamps for execution of the sale-deed was deposited by the review applicant within 30 days from the date of confirmation of the sale.

11. Rule 107(14)(3) of the Rules of 1961 lays down that the order of confirmation of sale has to be made by the District Deputy Registrar. The review applicant has not been able to point out any order of District Deputy Registrar except an order dated 6th June, 2011 confirming the sale in favour of the review applicant. The review applicant relies on the alleged decision of the respondent No.3-bank confirming the sale in favour of the review applicant, however, the review

applicant has not been able to show any provision which enables the bank to confirm the sale.

12. Apart from this, even on admitted fact that the review applicant had deposited initial amount of 25% on third day of the auction sale, I find that there is breach of Rule 107(11)(g) of the Rules of 1961 which lays down that 15% of the price of the movable property shall be deposited at the time of purchase. This Rule is considered by the Division Bench of this Court in the judgment given in the case of *Sunil Seth Vs. Niranjan D. Woody*, reported in **2007(2) Bom.C.R. 430** and it is held that if the initial amount i.e. 15% is not deposited on the date of auction sale, the auction sale cannot be upheld.

The submission made on behalf of the review applicant that he complied with the requirements of auction notice which enabled the auction purchaser to deposit 25% of the amount within 48 hours cannot be accepted as the terms laid down in the auction notice issued by the Special Recovery Officer cannot override the mandate of the statutory rules.

13. In view of the above, I do not find any error apparent on the face of the record which necessitates exercise of the review jurisdiction.

The miscellaneous civil application is **dismissed.** No costs.

JUDGE

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