

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

M.C.A. (Review) No.101 of 2018
in
Civil Revision Application No.1 of 2016
(Sanjay s/o Shamrao Deulkar .vs. Ajitpalsingh Nirmalsingh Khalsa and
another.)

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

Mr. M.V. Mohokar, Advocate for Applicant.
Mr. P.J. Mehta, Advocate for Respondent No.1.
Mr. Anup Gilda, Advocate for Respondent No.2.

CORAM : Manish Pitale, J.
DATED : April 03, 2018.

By this review application, the applicant is seeking to challenge judgment and order dated 29.06.2017 passed by this Court, whereby the civil revision application filed by the respondent no.1 herein was allowed and the plaint of the applicants was rejected.

2. Since the said judgment and order dated 29.06.2017 passed by this Court states facts of the present case in detail, only a brief reference is being made to the facts leading up to filing of this review application.

3. It is the case of the applicants that applicant no.1 had entered into an agreement with respondent no.1 herein dated 16.11.2004 in respect of the suit property. A total amount of Rs.6,50,000/- had been paid by the applicant no.1 herein to the respondent no.1 out

of the total consideration of Rs.10,00,000/-. A suit for specific performance was filed by the respondent no.1 against the applicants in respect of the said agreement which culminated in a compromise before the Lok Adalat. As per the compromise decree passed in the Lok Adalat, the applicant no.1 was supposed to refund the aforesaid amount of Rs.6,50,000/- within a period of three months and in case of failure, the respondent no.1 was entitled to get sale deed executed in terms of the aforesaid agreement through Court.

4. It is an admitted position that applicant no.1 failed to refund the said amount, as a consequence of which, the respondent no.1 filed proceedings before the executing Court. In the said proceedings, the applicant no.1 raised objection, contending that he was not in a proper mental condition when the said compromise pursis was filed before the Lok Adalat and that his advocate was allegedly not present before the Lok Adalat. There were other objections also raised pertaining to the description of the suit property etc. These objections were rejected by the executing Court, against which the applicant no.1 filed Writ Petition No.387 of 2008 before this court. During the pendency of this writ petition, in pursuance of the aforesaid execution proceedings, sale deed was executed in favour of respondent no.1 on 24.12.2007. On 11.02.2008, the applicant no.1 withdrew the aforesaid Writ Petition No.387 of 2008 before this Court. It was recorded in the order dated 11.02.2008 by this Court that the applicant no.1 was allowed to withdraw the

writ petition with liberty to take appropriate steps in accordance with law.

5. Thereafter, the applicant no.1 filed suit for cancellation of the aforesaid sale deed dated 24.12.2007 and further claimed possession of the suit property. A perusal of the plaint, shows that the applicant no.1 reiterated the contentions that had been raised by him in his objections, raised before the executing Court. The prayer pertained to cancellation of the aforesaid sale deed dated 24.12.2007, but it was nothing but a challenge to the compromise decree that was passed before the Lok Adalat.

6. In the aforesaid suit, the respondent no.1 filed an application under Order 14 Rule 2 read with Section 9A of the Code of Civil Procedure for framing a preliminary issue on the point of jurisdiction and for dismissal of the suit. It was contended on behalf of the respondent no.1 that such a suit was barred under the provisions of Legal Services Authority Act, 1987 and that the suit was also barred by limitation.

7. By order dated 21.11.2015, the preliminary objections raised by the respondent no.1 regarding tenability of the suit were rejected. Aggrieved by the same, the respondent no.1 filed Civil Revision Application No.1 of 2016, which has been allowed by the aforesaid order dated 29.06.2017 passed by this Court, which is the subject matter of challenge in the instant review application.

8. Mr. Mohokar, learned counsel appearing on behalf of the applicant, submits that there is an error apparent on the face of the record in the said judgment dated 29.06.2017 passed by this Court, because this Court has failed to appreciate that when this Court permitted the applicant no.1 to withdraw Writ Petition No. 387 of 2008, it was with liberty to take appropriate steps in accordance with law. According to the learned appearing on behalf of the applicant, such liberty for taking appropriate steps in accordance with law, clearly demonstrated that the suit for cancellation of the sale deed filed subsequently by the applicant no.1, was maintainable. It was contended that this Court failed to appreciate the fact that prayer in the suit was simpliciter for cancellation of sale deed dated 24.12.2007 and that there was no challenge to the award passed by the Lok Adalat. It was further contended that contentions raised by the respondent no.1 before the Court below concerned mixed questions of facts and law and that, therefore, there was a clear error committed by this Court while allowing civil revision application.

9. On the other hand, Mr. P.J. Mehta, learned counsel appearing on behalf of respondent no.1 and Mr. Anup Gilda, learned counsel appearing on behalf of respondent no.2, submitted that the judgment and order dated 29.06.2017 passed by this Court, allowing the civil revision application, was correct on facts and law and that the applicants have failed to demonstrate any error apparent on the face of the record, justifying

exercise of limited review jurisdiction by this Court. It was contended that although the prayer made by the applicant no.1 was only for cancellation of sale deed dated 24.12.2007, it was effectively a challenge raised to the award passed by the Lok Adalat and that all such objections had been already taken by the applicant no.1 before the executing Court, which had been rejected. It was further contended that such a rejection had attained finality in view of withdrawal of Writ Petition No. 387 of 2008 by the applicant no.1. It was submitted that the liberty to take appropriate steps in accordance with law did not give a licence to the applicant no.1 to file a fresh suit on the very same grounds on which his objections before the executing Court had been rejected.

10. A perusal of the judgment and order dated 29.06.2017 passed by this Court shows that all the contentions sought to be raised in the review application have been already dealt with by this Court while allowing the civil revision application. It has been found by this Court that although prayer in the suit filed by the applicant no.1 is ostensibly for cancellation of sale deed dated 24.12.2007, it is nothing but a challenge to the compromise decree passed in the form of award of the Lok Adalat, wherein the applicant no.1 had agreed to specific terms before the Lok Adalat. This Court has found that such a challenge in the form of separate suit was clearly not maintainable, when identical objections had been taken before the executing Court and they had been rejected. Such rejection had attained finality by

withdrawal of Writ Petition No. 387 of 2008. The contention of the learned counsel appearing on behalf of the applicants that this Court failed to appreciate the liberty granted to the applicant no.1 to take appropriate steps in accordance with law, is not justified because such liberty is obviously only to undertake proceedings that could be maintainable in law. This Court has found in the judgment and order dated 29.06.2017 that the separate suit filed by the applicant no.1 was barred by principles of *res judicata* and that the challenge sought to be raised in a convoluted manner by the applicant no.1, to the award of the Lok Adalat, could not be permitted.

11. The applicants have failed to demonstrate any error apparent on the face of record in the judgment and order dated 29.06.2017 and hence, there is no substance in the present review application. Accordingly, it is dismissed with no order as to costs.

JUDGE

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