

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1001 OF 2018**

CITY AND INDUSTRIAL DEVP. CORP.
OF MAHARASHTRA LTD. (CIDCO) ... PETITIONER
Versus
RASHMI CONSTRUCTIONS PVT. LTD. ... RESPONDENT

Mr. Ajit R. Kantak, Advocate for the Petitioner.

Mr. A.F. Diniz and Mr. A.D. Bhobe, Advocates for the Respondent.

CORAM : C.V. BHADANG, J.

Date : 27th February, 2019

ORAL ORDER:

By this petition, the petitioner/decreed holder, is challenging the order dated 17.04.2017, (below Exhibit-66), passed by the Executing Court, in Special Execution Application No. 11/2006/B. By the impugned order, the application Exhibit-66, filed by the petitioner, under Order XXI, Rule 41 of CPC has been dismissed.

2. The petitioner filed the aforesaid application for summoning Mr. Narayan Bandekar (Ex-Director of the respondent-judgment debtor), as a witness to depose in the matter in respect of affairs of the Company. The Executing

Court found that the earlier application filed by the petitioner seeking similar relief, was withdrawn on 17.01.2008 and the matter as to the affairs of the Company were available with the respondent-Company.

3. It is a matter of record that the petitioner filed Civil Review Application No. 06/2017/A for review of the order dated 17.04.2017 and that application for review was allowed on 07.07.2017. The Executing Court has found that in the year 2013, Mr. Narayan Bandekar was summoned as a witness and not in the capacity of the Director of the respondent and thus, in the earlier order the Court had not noted the change in the status of Narayan Bandekar, when the earlier application was filed in 2013. Thus, in the opinion of the Executing Court, the withdrawal of the earlier application was not relevant and this, according to the learned Executing Court, was an error apparent on the face of the record, requiring review.

4. The respondent challenged the order dated 07.07.2017 before this Court in Appeal From Order No. 30/2017. This Court found that there were no grounds made out for review of the earlier order dated 17.04.2017. This Court also found that the Executing Court was in error in

finding that the withdrawal of the earlier application in the year 2013 was not relevant on account of the change of the status of Mr. Narayan Bandekar. In short, this Court found that the Executing Court was in error in reviewing the earlier order. The net result is that the original order dated 17.04.2017, dismissing the application Exhibit-66 stands restored. After that, this petition is filed challenging the order dated 17.04.2017.

5. I have heard Mr. Kantak, the learned Counsel for the petitioner and Mr. Diniz, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record.

6. I find that the present petition cannot be entertained as it would not be open to the petitioner now, to challenge the original order dated 17.04.2017. The Hon'ble Supreme Court in the case of **DSR Steel (P) Ltd. Vs. State of Rajasthan, 2012 AIR (SC) 1602** has held thus in para 13 of the judgment.

"13. Different situations may arise in relation to review petitions filed before a Court or Tribunal. One of the situations could be where the review application is allowed, the decree or order passed by the Court or Tribunal is vacated and the

appeal/proceedings in which the same is made are re-heard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the Court hearing the review petition. The second situation that one can conceive of is where a Court or Tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review reversed or modified. Such an order shall then be a composite order whereby the Court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for purposes of a further appeal, if any, maintainable under law."

It can thus be seen that as per the second situation envisaged by the Hon'ble Supreme Court, where the Court or Tribunal makes an order, by which the review petition is allowed and the decree/order under review is reversed or modified (as in the present case), such an order shall be a composite order, whereby the Court not only vacates the earlier

decree or order, but simultaneous with such vacation of the earlier decree or order, passes another order and in such a case, the decree/order so vacated, reversed or modified is then the decree that is effective for purposes of a further appeal, if any, maintainable in law.

7. In the present case, the petitioner succeeded in the review application, which order was challenged by the respondent before this Court and this Court found that no ground was made out for review of the earlier order dated 17.04.2017. Thus, it is not now open to the petitioner to challenge the original order, which has merged in the order of review, after which the composite order was challenged before this Court.

8. Mr. Kantak, the learned Counsel for the petitioner submitted that this Court has only examined the question whether, any ground for a review was made out or not. In other words, it is submitted that all that this Court has examined is whether, there was any error apparent on the face of the record in the order dated 17.04.2017 and this Court found that there was none. It is submitted that the fact that this Court allowed the appeal and set aside the order passed in review application,

would not mean that this Court has confirmed the earlier order dated 17.04.2017.

9. The contention in my considered view, cannot be accepted. As noticed earlier, this is a case where there was a composite order, by which, while allowing the application for review, the earlier order, by which the application Exhibit-66 was rejected, was recalled and the net result was that the application (Exhibit-66) stood allowed by the order dated 07.07.2017. That order passed in review application, having been set aside by this Court, it cannot now be said that the earlier order dated 17.04.2017 is open for challenge.

10. I have carefully gone through the impugned order dated 26.07.2018, passed in Appeal From Order No. 30/2017 and particularly, paras 7, 8 and 9 thereof and I find that there were submissions made on behalf of the petitioner, on merits of the order dated 17.04.2017 also. This Court in para 8 of the order dated 26.07.2018 has held that there was no reason for the Executing Court to have held that the withdrawal of the earlier application had no relation to the filing of the subsequent application. In other words, this Court found that the reasoning articulated in the earlier order dated 17.04.2017,

while rejecting the application Exhibit-66, on the ground of withdrawal of the earlier application, was a correct view.

11. Thus, the petition is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

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