

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.54 OF 2016
IN
REVIEW PETITION (ST.) NO.151 OF 2016
IN
WRIT PETITION NO.3648 OF 2012

M/s. Gannon Dunkerly Holding Pvt. Ltd. ...Petitioner

vs.

Dena Bank and Others ...Respondents

Mr. G.S. Godbole i/b. Ms. Mahesh Jani & Co., for the Petitioner
Mr. Rajesh Shethia, for Respondent No. 1.

CORAM : R. G. KETKAR, J.

DATE : AUGUST 08, 2019

P.C.:

. Heard Mr. G.S. Godbole, learned counsel for the Petitioner
and Mr. Rajesh Shethia, learned counsel for Respondent No. 1.

2. By this Application, the Applicant has sought condonation of delay of 3 years and 5 months in filing the Petition seeking review of the order dated 25th June, 2012 passed in Petition No. 3648 of 2012. Mr. Godbole submitted that for the reasons recorded in paragraph 3 he seeks condonation of delay in filing the Review Petition. After perusing the reasons given in paragraph 3 and 6, though no sufficient cause is made out, in the interest of justice, the delay is condoned. Civil Application is disposed of.

3. By consent of the parties, the Review Petition is taken up for admission.

4. By this Petition under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (for short C.P.C.) the Petitioner has sought review of the order dated 25th June, 2012 passed by this Court in Writ Petition No. 3648 of 2012. By that order the Writ Petition instituted by the Petitioner was dismissed.

5. In support of this Petition, Mr. Godbole has relied on decision in ***Dr. Suhas Hari Pophale and Anr. vs. Oriental Insurance Company Limited, (2014) 4 SCC 657*** and contended that the Petitioner were inducted in Office on the first floor, Dena Bank Building No.2, Horniman Circle, Mumbai 23 before Respondent taking over the suit premises. He submitted that the Petition seeking review of the order in *Dr. Suhas Pophale's* case was dismissed by the Apex Court on 9th September, 2014 and even the curative Petition was dismissed on 10th September, 2015. Thus as on date, the law laid down by the Apex Court in the case of *Dr. Suhas Pophale* (supra) governs the field. As the Petitioner were inducted in the suit premises prior to taking over by the

Respondent, the order under review deserves to be recalled and the Petition deserves to be restored to its original position.

6. On the other hand, Mr. Rajesh Shethia submitted that no case is made out for review. He submitted that against the order passed by this Court, the Petitioner had preferred S.L.P. which was dismissed by the Apex Court on 26th April, 2013. That apart, the Petitioner had instituted subsequent Writ Petition under Article 226 of the Constitution of India in this Court. By an order dated 2nd July, 2015 Writ Petition No. 1626 of 2014 was dismissed. The Petitioner has surrendered possession of the suit premises to the Respondent on 26th April, 2013. He also relied upon the explanation to Order XLVII of C.P.C. to contend that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

7. I have considered the rival submissions advanced by the learned counsel for the parties and also perused the material on record. As mentioned earlier, the Petition was dismissed on 25th

June, 2012. The Petitioner thereafter preferred S.L.P which was also dismissed on 26th April, 2013. Present Petition filed is mainly based upon the decision of the *Dr. Suhas Pophale* (supra) case. The explanation to Order XLVII of C.P.C. reads thus:

Explanation.-The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgement.

8. In view thereof, the decision of the Apex Court in *Dr. Suhas Pophale* (supra) cannot be a ground for review. That apart, the Petitioner had also instituted a subsequent Petition under Article 226 of the Constitution of India which was dismissed by the Division Bench of this Court by order dated 2nd July, 2015. Apart from that the Petitioner has also surrendered the possession of the suit premises to the first Respondent. In view thereof, no case is made out for reviewing the order dated 25th June, 2012 passed in Writ Petition No. 3648 of 2012. Hence, the Petition fails and the same is dismissed.

(R.G. KETKAR, J.)