

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

REVIEW PETITION NO.161 OF 2018

IN

WRIT PETITION NO.1131 OF 2017

Umashankar Rampyare Singh and Anr. ...Petitioners

vs.

M/s. Ornate Infra Holding (P) Ltd. and Ors. ...Respondents

Mr. Umashankar Singh, the Petitioner in person.

Mr. S.R. Singh a/w. Ms. Jyoti Agarwal, for Respondent No. 1.

Mr. Amogh Singh, for Respondent No. 2

CORAM : R.D. DHANUKA, J.

DATE : JANUARY 07, 2019

P.C.:

. By this Review Petition filed by the original Petitioners in Writ Petition No. 1131 of 2017 the Review Petitioners seek recall of the order dated 17th September, 2018 passed by this Court by which this Court had rejected the Petition filed by the Petitioners under Article 227 of the Constitution of India impugning the order passed by Respondent No. 2 herein under Order 1 Rule 10 of the Code of Civil Procedure, 1908.

2. The Review Petition has been filed on the ground that the Review Petitioners had advanced arguments before this Court

and more particularly that the suit filed by the Review Petitioners was for seeking enforcement of the obligations of the Defendants under section 4 of the Maharashtra Ownership Flats Act, 1963 (in short “MOFA Act”). This Court proceeded on the premises that the suit which was for specific performance of the agreement and erroneously applied the principles laid down in the case of ***Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited and Others, AIR 2013 SC 2389***. The Review Petition is also filed on the ground that this Court did not consider various submissions made by the Review Petitioners at the stage of hearing of the Writ Petition No. 1131 of 2017.

3. Mr. Umashankar Singh, the Petitioner No. 1 who appeared in person and also appeared on behalf of the Review Petitioner-2 invited my attention to the documents annexed to the Writ Petition. The affidavit in support of Chamber Summons filed by Respondent No. 2, the letter of allotment issued in favour of the Petitioners by Respondent No. 1 and submit that the suit was filed by the Petitioner on 22nd July, 2014 whereas the alleged third party rights were created by Respondent No. 1 in favour of Respondent No. 2 on 28th July, 2014. He submitted that in view of the alleged

transfer of interest by Respondent No. 1 in favour of Respondent No. 2 during the pendency of suit filed by the Review Petitioner, in view of Section 52 of the Transfer of Property Act, such alleged transference would not get any right in the suit property and thus was neither necessary nor proper party to the suit filed by the Review Petitioners. He also placed reliance on Section 23 of the Indian Contract Act, 1972 and submit that the transfer if any, in favour of the Respondent No. 2 by Respondent No. 1 would be void.

4. Mr. Umashankar Singh, the Review Petitioner No. 1 also placed reliance on Section 4 of the MOFA Act, 1963 and Rule 5 of the Maharashtra Ownership Flat Rules, 1964 and submits that if any decree is passed against the original Defendant No. 1, the Defendant No. 1 would be directed by the trial Court to execute the Sale Deed in form 5 prescribed under the relevant rules of the Maharashtra Ownership Flat Rules, 1964. Mr. Singh placed reliance on the judgments of the Hon'ble Supreme Court in the cases of (i) **Sarvinder Singh vs. Dilip Singh and Ors., (1996) 5 Supreme Court Cases 539**, (ii) **Kanaklata Das and Ors. vs. Naba Kumar Das and Ors. 2018 ALL SCR 712**, (iii) **New Redbank Tea Co. Pvt. Ltd. vs. Kumkum Mittal and Ors., (1994)**

Supreme Court Cases 402 and (iv) M/s. Goel Ganga Developers India Pvt. Ltd. vs. Union of India, 2018 SAR (Civil) 1049.

5. It is submitted by the Review Petitioners that since this Court did not consider the submission made by the Review Petitioners when the Writ Petition No. 1131 of 2017 was heard by this Court, the Review Petitioners, remedy under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is available to the Review Petitioners to urge the said Review Petition before the same judge who had heard the Writ Petition No. 1131 of 2017.

6. It is submitted by the Review Petitioner No. 1 that the Respondent No. 2 has no right, title and interest of any nature in the suit property and thus the impugned order passed by the trial Judge ought to have been interfered with by this Court. He invited my attention to the order dated 23rd March, 2017 passed by Shri Justice R.G. Ketkar in the Writ Petition. He submits that this Court having found substance in the submissions of the Petitioners, *prima facie* had granted stay to the impugned order passed by the learned trial Judge. This Court while dismissing the Writ Petition ought to have considered the said order dated 23rd March, 2017.

7. Mr. Amogh Singh, learned counsel appearing for Respondent No. 2 on the other hand submits that the Review Petitioners are trying to re-arguing the entire matter on the merits in the Review Petition filed under Order 47 Rule 1 of the Code of Civil Procedure, 1908 which is not permissible. He submits that whatever arguments were advanced by the Petitioners before this Court have already been considered by this Court. No error could be pointed out by the Review Petitioners on the face of the order passed by this Court. He submits that no agreement has been entered into by the Respondent No. 1 in favour of the Petitioners. The Petitioners are seeking enforcement of the letter of allotment and not agreement contemplated under the provisions of MOFA Act, 1963. He submits that his client is in possession and has paid the consideration to Respondent No. 1 of the Defendant No. 1 colludes with the Plaintiffs and obtains a decree, it would seriously prejudice the right of his client. He submitted that this Court has rightly considered the principles of law laid down by the Hon'ble Supreme Court in the case of **Thomson Press (India) Limited** (supra) and thus shall not interfere with the order passed by this Court on 17th September, 2018.

8. On perusal of the prayers in the Complaint, it clearly indicates that the Petitioners were actually issued a letter of allotment by Respondent No. 1. On 17th September, 2018 when the matter was argued by the Petitioner in person before this Court, the Petitioners had invited my attention to the prayers in the suit filed by the Petitioners inter alia praying for specific performance of the agreement dated 29th December, 2013 in respect of the suit shop.

9. Per contra, the learned counsel for the Respondent No. 2 invited my attention to the decision in **Thomson Press (India) Limited** (supra). This Court submits that after considering the prayers in the Complaint and applying the principles of Hon'ble Supreme Court in the case of **Thomson Press (India) Limited** (supra), this Court did not find any infirmity in the impugned order of the trial Judge and rejected the Writ Petition.

10. In view of the fact that the Petitioner No. 1 being an advocate practicing in this Court being a party in person, I have heard the Petitioner No. 1 at great length in this matter though the scope of the review is very limited.

11. I am not inclined to accept the submission of the Review Petitioners that several points which have been urged before this Court today were also urged when the matter was argued on 17th September, 2018 and have not been considered by this Court. This Court had considered the submissions urged by the Review Petitioners when the Writ Petition was heard by this Court and was rejected.

12. Be that as it may, the Review Petitioners did not dispute before this Court that there is no agreement entered into between the Review Petitioners and Respondent No. 1 as contemplated under the provision of MOFA Act, 1963. The scope of review under Order 47 Rule 1 is very limited. The Review Petitioners could not point out any error apparent on the face of the order.

13. The learned counsel appearing for Respondent No. 2 states that his client is in possession of the suit property. Statement made by the learned counsel is accepted. There being an order of status quo in respect of the suit property, his client's right would be seriously prejudiced if any decree is passed in the suit filed by the Review Petitioners. This statement of the Respondent

No. 2 is disputed by the Review Petitioners.

14. This Court after considering the material on record did not find any infirmity with the impugned order of the trial Judge holding that presence of Defendant No. 2 would be necessary for the purpose of deciding the suit effectively and completely and has rightly dismissed the Writ Petition.

15. In these circumstances, in my view, even otherwise, the rights of the Respondent No. 2 would be seriously prejudiced, if any decree is passed in the suit and thus the presence of Defendant No. 2 would be necessary for the purpose of deciding the suit effectively and completely.

16. In so far as the judgments relied upon by the Review Petitioners for consideration of this Court is concerned, in my view none of these judgments relied upon by the Petitioners would apply to this case. In so far as the submissions of the learned counsel appearing for the Review Petitioners that since it is the case of the Review Petitioners that some of the arguments though urged, were not considered by this Court, the Review Petition can be filed

before the same Court and can be argued before the same Judge is concerned, there is no dispute about this proposition of law. However since this Court had considered the submissions advanced by the Review Petitioners while dismissing the Writ Petition, the said judgment would not assist the case of the Review Petitioners.

17. The Review Petition is being devoid of merit and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)