

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

WRIT PETITION NO. 3156 OF 2015

Jaswinder Singh Sohal & Anr.

...

...Petitioners

Versus

Indian Bank & Ors.

...Respondents

...

Mr.Mathew Nedumpara with Ms.Priti Dambre, for the Petitioners.

Mr.Jitendra P. Patil, for the Respondent No. 1.

...

CORAM : A.A. SAYED &**RIYAZ IQBAL CHAGLA, JJ.****DATED : 22 FEBRUARY 2019****P.C.:**

The Petition is filed seeking following reliefs:

(a) to declare that order dated 20-06-2003 passed by the Debt Recovery Tribunal-II, Mumbai in O.A.No.2449 of 1999 stood merged in its order dated 20-11-2003 in Review Application No.14 of 2003, no matter whether in the review the original order dated 20-06-2003 was set aside, modified, annulled or varied or reused to be so varied and with such modification of the original order the said order stands with the order in the Review Application and thereafter the cause of action ceased to be in existence; so also the original order and what is in existence is the order dated 20-11-2003 in the Review Application and, therefore, Appeal No.73 of 2004 instituted by the Petitioners in challenge of the order in the Review Application is maintainable;

(b) without prejudice to relief (a) above, assuming that the scope of the doctrine of cause of action estoppel, nay, merger, does not extend to the extent to which the Petitioners have sought for in relief (a), then also to declare that institution of Appeal No.5 of 2012 in a incompetent forum is liable to be treated as institution of an appeal before a competent forum the moment the appeal against the original order dated 20-06-2003 is instituted, the competence of the said appeal not being questioned at all.

(c) declare that the Petitioners are entitled to a right of appeal for correction of an error, both on facts and law, which the Petitioners allege the order dated 28-12-2012 is infected of an that to deny him that right of appeal on the premise that no appeal will lie against an order in review and simultaneously to refuse to consider on merits the appeal against the original order on the ground that institution and pendency of the appeal against the order in Review Application is no ground for condonation of delay, violates the Petitioners' fundamental right for a just, fair and equitable procedure enshrined in Articles 19 and 21 of the Constitution of India;

2. The Petitioners have already filed Review Petition being Review Petition No.11 of 2014 challenging the order dated 24-02-2012 of the DRAT and the Review Application No.12 of 2014 challenging the order dated 28-12-2012 of the DRAT.

3. In the circumstances, we are not inclined to entertain the Petition.
4. Even otherwise, it is noted that the mortgage property was put to auction on 16-06-2008 and sold for Rs.41.25 crores, which sale was confirmed by D.R.T. on 30-07-2008. The Sale Certificate was issued by the Recovery Officer on 05-08-2008 and physical possession of the said property was handed over to auction purchaser on 07-08-2008.
5. In light of above, the Petition is dismissed. There shall be no order as to costs.

(RIYAZ IQBAL CHAGLA,J.)

(A.A.SAYED, J.)