

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application (CAO) No.1065 of 2019

In

Misc. Civil Application No.558 of 2019

(Misc. Civil Application Stamp No.11010 of 2019) (for Review)

In

Writ Petition No.1006 of 2014 (D)

And

Misc. Civil Application No.558 of 2019

(Misc. Civil Application Stamp No.11010 of 2019) (for Review)

In

Writ Petition No.1006 of 2014 (D)

And

Civil Application No.1116 of 2019

In

Review Petition No.558 of 2019

In

Writ Petition No.1006 of 2014

Along with

Civil Application (CAO) No.1068 of 2019

In

Misc. Civil Application No.559 of 2019

(Misc. Civil Application Stamp No.11019 of 2019) (for Review)

In

Writ Petition No.3574 of 2014 (D)

And

Misc. Civil Application No.559 of 2019

(Misc. Civil Application Stamp No.11019 of 2019) (for Review)

In

Writ Petition No.3574 of 2014 (D)

And

Civil Application No.1115 of 2019**In****Review Petition No.559 of 2019****In****Writ Petition No.3574 of 2014**

Coventry Spring & Engineering Company Ltd., Kolkata (W.B.) & MIDC Industrial Area, Wadi, Nagpur, and Bombay Office at 108, Marol Cooperative Industrial Estate, Mumbai, through its Authorised Representative, Shri Nishant Bafna, and others.

Versus

Galvanotek Industries Private Ltd., through its Director, Office at Kolkata, and others.

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

Shri S.S. Sitani, Advocate for Applicants/Petitioners.

Shri M.G. Bhangde, Senior Advocate, assisted by Shri R.M. Bhangde, Advocate for Respondent No.1.

Shri S.N. Kumar, Advocate for Respondent No.2.

Coram : R.K. Deshpande & S.M. Modak, JJ.

Date : 21st June, 2019

Civil Application (CAO) No.1065 of 2019 :

This is an application for condonation of 12 days' delay in filing the review application.

Notice to the respondents, made returnable forthwith.

Heard the learned counsels appearing for the parties.

For the reasons stated in the application, we are satisfied that a sufficient cause is made out for condonation of delay. Hence, the delay caused is condoned.

The civil application is disposed of.

Misc. Civil Application No.558 of 2019 :

In Writ Petition No.1006 of 2014, decided on 15-4-2019, we set aside the order dated 13-1-2014 passed in Appeal No.135 of 2011 by the Debts Recovery Appellate Tribunal. It was the order of the said Tribunal deciding the controversy on merits, but there was a waiver of 100% deposit to entertain an appeal, which was the subject-matter of challenge before this Court in Writ Petition No.5005 of 2012. The order of waiver was set aside by this Court. In view of this, in the judgment under review, this Court has held that the order dated 13-1-2014 deciding the controversy on merits cannot be sustained. The result is that now Appeal No.135 of 2011 is pending before the Debts Recovery Appellate Tribunal and the question of pre-deposit for entertaining and deciding the appeal is concluded by the ultimate decision of the Tribunal rendered on 30-5-2018, which is the subject-matter of challenge in Writ Petition No.1978 of 2018, which was filed before the Principal Seat of this Court at Mumbai and has been withdrawn with liberty to file a fresh petition before this Bench, and it is informed that the stay for a period of six weeks is operating.

The order dated 15-4-2019 passed by this Court was taken to the Apex Court in Special Leave to Appeal (C) No(s).11624-11625 of 2019. The said SLPs were disposed of by an order dated 17-5-2019, which is reproduced below :

“ It is open to the petitioners to file an application for review to the High Court drawing the notice of the High Court to pre deposit of Rs.1.75 Crores and other relevant factors, if any,

which might not have been noticed and/or considered by the High Court.

The special leave petitions are not entertained and the same are dismissed with the above observation.

In case, any decision adverse to the petitioner is taken, it will be open to the petitioner to approach this Court.

As a sequel to the above, pending applications, if any, shall also stand disposed of.”

This Court is, therefore, required to consider the question as to whether the pre-deposit of Rs.1.75 Crores by the applicants/petitioners has any bearing on the decision rendered by this Court on 15-4-2019. What we find is that the issue of pre-deposit of Rs.1.75 Crores is concluded by the decision of this Court in Writ Petition No.4683 of 2017 decided on 25-1-2018. The said order has been set aside by this Court and thereafter the matter of pre-deposit is again adjudicated on 30-5-2018. Hence, the question of pre-deposit of Rs.1.75 crores loses its significance. We do not know whether this fact was suppressed or brought to the notice of the Apex Court on 17-5-2019. If certain other relevant factors are required to be considered, it could be a matter which can be considered in a challenge to the order dated 30-5-2018 of the Debts Recovery Appellate Tribunal directing the applicants/petitioners to deposit 50% of the amount. If such petition is filed, it can be considered in it.

With these observations, the review application is dismissed.

Civil Application No.1116 of 2019 :

This is an application for amendment of the review application.

We permit the applicants/petitioners to withdraw this application with liberty to raise the grounds of challenges in a petition challenging the order of the Debts Recovery Appellate Tribunal directing deposit of 50% of the amount.

The civil application is disposed of as withdrawn with liberty, as aforesaid.

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Shri Sitani, the learned counsel for the applicants/petitioners, submits that the interim order passed by this Court in Writ Petition No.1006 of 2014 directing not to create third-party interest for a period of six weeks be continued for a further period of two weeks so as to enable the applicants/petitioners to approach the Apex Court taking benefit of the leave granted by the Apex Court. However, in the facts and circumstances of this case, we do not find it expedient to continue the said interim order, particularly when the SLPs are already dismissed by the Apex Court. Hence, the prayer is rejected.

Civil Application (CAO) No.1068 of 2019,
Misc. Civil Application No.559 of 2019, and
Civil Application No.115 of 2019

In
Writ Petition No.3574 of 2014 :

The learned counsels appearing for the parties submit that the

controversy raised in all these applications filed in Writ Petition No.3574 of 2014 is governed by the order, which we have dictated as aforesaid. Hence, all these applications are disposed of in terms of the aforesaid order.

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The learned counsel for the applicants/petitioners wants to place on record the written notes of arguments. However, we reject the said prayer.

(S.M. Modak, J.)

(R.K. Deshpande, J.)