

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.02.2019

Pronounced on : 07.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Rev.Appln.No.94 of 2018

The Chief Manager,
Punjab National Bank,
Branch: ARMB,
Chennai-600 014.

...Petitioner

Vs.

1. Mr.M.V.Dillibabu
2. Mrs.Kavi Dillibabu

...Respondents

PRAYER: Review Petition is filed under Order XLVII Rule 1
r/w Sec.114 CPC, seeking to review the order dated
11.06.2018 passed in W.P.No.31692 of 2017 by this Court.

For Petitioner : Mr.M.L.Ganesh

For Respondents : Mr.R.Thiagarajan, SC for
Mr.M.Muthappan

ORDER

This Review Petition has been filed by the Chief Manager, Punjab National Bank, who is the respondent in the Writ Petition, seeking to review the order passed by this Court, dated 11.06.2018 in W.P.No.31692 of 2017.

2. Although notice had been served on the petitioner in the writ proceedings, as there was no representation on behalf of the petitioner despite the name of the petitioner/bank appeared in the cause list, this Court had taken up the Writ Petition for disposal on merits. This Court also found that even on earlier occasions prior to 11.6.2018 when the matter was listed for hearing, there was no representation despite service of notice on behalf of the petitioner herein. In such circumstances, the Writ Petition was disposed of on merits as under:

“11. Although notice has been served on the respondent and acknowledged,

there was no representation on behalf of the respondent Bank in the present writ petition. Even on earlier occasion, when the matter was called, there was no representation on behalf of the respondent. Therefore, this Court heard the submissions made by the learned senior counsel for the petitioners and posted the matter for passing orders today. Even today, there was no representation for the respondent and the learned senior counsel appearing for the petitioners has made additional submissions.

12. This Court has considered the materials and pleadings placed on record. From the materials and pleadings, it emerges that the Bank has witting or unwittingly misled the petitioners into buying the subject property without identification of the property with clear boundaries. In fact, the letter written to the Tahsildar from the Bank after the auction on 06.05.2017, would clearly establish the fact that the Bank was unable to identify the property with clear boundaries and

requested the Tahsildar to find the exact location of the property with boundaries and demarcation. When such is the position, this Court does not see how the Bank could have mentioned the property with boundaries in the auction notice and invited tenders from the purchasers. This fact clearly establishes that the Bank was careless and casual in dealing with public, particularly, in the matters where huge investments are involved. In the instant case, on believing the information furnished in the E-auction notice, the petitioners had invested Rs.50,05,000/- and such huge investment is now gone waste without any return to the investors.

13. Therefore, this Court is of the clear view that there is some force in the contention advanced by the learned senior counsel for the petitioners that having failed to reap the fruits of the investments by the purchasers and the careless and reckless conduct of the Bank in issuing E-auction notice without properly locating the property with clear boundaries, the

petitioners are entitled to the interest as prayed for in the writ petition.

14. In the above circumstances, the petitioners have made out a clear case for grant of relief. Hence, there shall be a direction to the Bank to refund the amount remitted by the petitioner to the tune of Rs.50,05,000/- with interest at the rate of 18% from 16.05.2017 till the date of realization. The Bank is directed to refund the amount with interest within a period of two weeks from the date of receipt of the copy of the order.

15. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.”

3. As against the above order, the present Review Petition has been filed. The learned counsel appearing for the petitioner would submit that the Writ Petition itself is not maintainable in view of the alternative remedy available under Section 17 of SARFAESI Act. According to the learned counsel,

the writ petitioner being aware of the terms and conditions of the sale notice dated 13.2.2017 issued by the petitioner/Bank, had participated in the auction after verification of the property details. Therefore, he cannot be allowed to turn around and ask for refund of the amount paid towards purchase of the property in the auction. Likewise, several grounds were raised by the Review Petitioner seeking to recall the order passed by this Court in the Writ Petition.

4. This Court, first of all, unable to appreciate as to how a review petition can be filed, intending to re-argue the matter afresh under Order 47 Rule 1 CPC. May be the review petitioner is correct in making his submissions in regard to existence of alternative remedy and other grounds raised in support of the review petition, however, this Court would not be justified in entertaining the Review Petition for the simple reason that in the guise of review, the parties cannot be allowed to re-agitate or re-argue the matter.

5. The order passed by this Court in the Writ Petition is on merits and in case the review petitioner is aggrieved by the order, it is always open to the review petitioner to workout the remedy in the manner known to law, but certainly it is not open to file a review and attempt to re-argue the matter. Unless there is error apparent on the face of the record or clinching material which was already in existence, but could not be unearthed during the pendency of the Writ Petition and the same is now available with the review petitioner, the Court cannot be called upon to review its own order. This Court does not find any error apparent on the face of the record as the Writ Petition is decided on merits by considering all the materials and pleadings placed on record. Even in regard to the plea of existence of alternative remedy, there is no bar in entertaining the Writ Petition in the matters like this, as the Courts have consistently held that bar of alternative remedies is only a self-imposed restraint and limitation. In the circumstances, this Court is of the view that the present Review Petition is beyond the scope of Order 47 Rule 1 CPC

and therefore, the same need not be entertained.

6. Accordingly, the Review Petition fails and the same is dismissed. No costs.

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V.PARTHIBAN, J.

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