

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

CIVIL APPLICATION (CAO) NO. 361 OF 2018

IN

**M.C.A. (ST.) NO. 4566 OF 2017 IN O.L.R. NO. 16 OF 2004 & O.L.R. NO. 33 OF 2004
IN COMPANY PETITION NO. 8 OF 1990**

(Sunderlal Holaram Bajaj ..vs.. Official Liquidator, Bombay High Court, Nagpur and others)

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

Court's or Judge's orders

Mr. Anil Mardikar, Senior Counsel assisted by Mr. Saurabh Singha,
Counsel for the petitioner,
Dr. Anjan De, Counsel for respondent 1,
Mr. Rahul Dhande, Counsel for respondent 2,
Mr. A.T. Purohit, Counsel for respondent 3.

CORAM : ROHIT B. DEO, J.

DATED : 19-03-2021

The applicant is seeking condonation of delay of 4691 days in preferring the review application.

2. Review is sought of the order dated 02-7-2004 in Official Liquidator Report 33/2004 and the order dated 26-3-2004 in Official Liquidator Report 16/2004 in Company Petition 8/1990.

3. The order dated 02-7-2004 notes that Santosh Bahal/non-applicant 2 herein is the highest bidder for land situated at Tadwagade and Talashet. It is noted that the auction notice was duly advertised and Santosh Bahal enhanced his offer to Rs.11,50,000/- (Rupees Eleven Lakh Fifty Thousand). This Court then noted that considering the fact that the Official Liquidator was

required to issue second advertisement as the first advertisement did not attract any offer, the enhanced offer of Santosh Bahal deserves to be accepted. In so far as the order dated 26-3-2004 in Official Liquidator Report 16/2004 is concerned, the Official Liquidator had sought permission to sell 18 acres of land at Alibag by appointing a Valuer and inviting tenders. The Official Liquidator had also requested for permission to pay Rs.35,00,000/- (Rupees Thirty Five Lakh) to Bank of India. The learned Judge granted permission to the Official Liquidator to appoint Mr. Vijay Meghrajani as the Valuer and to issue advertisement for inviting tenders for sale of the property. It is pursuant to the order dated 26-3-2004 that the tender/auction process was completed in which Santosh Bahal emerged as the highest bidder and his bid was approved by the learned Judge vide order dated 02-7-2004.

4. According to the review applicant, he is the owner of land situated at Alibag. Perusal of the Official Liquidator Report 33/2004, reveals that every material fact concerning the said land was disclosed to the learned Company Judge.

5. The Official Liquidator did disclose that the company purchased the said land in the name of the review applicant who is the brother of the erstwhile Director, on 06-8-1984. It was further disclosed that the

review applicant addressed a communication dated 02-12-1985 to the Tahsildar, Alibag stating that the land be transferred in the name of the company since the land was purchased from the amount of the company although registered in his name. It was in view of the letter of the review applicant that the Tahsildar, Alibag transferred the land in the name of the company after issuing notices to the review applicant. The Official Liquidator further disclosed that entire land admeasuring 30 acres was mortgaged with Bank of India vide Mortgage-Deed dated 23-8-1989. The Official Liquidator did disclose to the learned Company Judge that the review applicant preferred Regular Civil Suit 4/1994 before the Alibag District Court in which suit Bank of India intervened as the mortgagee. It was further disclosed that vide order dated 19-3-2004 the civil suit came to be dismissed.

6. The review applicant seeks to justify the delay of 4691 days in preferring the review application on the premise that he was not aware of the auction sale till September 2015. In my considered view, the justification pleaded is inherently incredible and unbelievable. That apart, there is not even an attempt made to explain why, assuming that the review applicant came to know of the auction sale in September 2015, the review application was not preferred till February, 2017.

7. Non-applicant 2-Purchaser has placed on record communication dated 01-4-2004 addressed by the review applicant to the Official Liquidator, the relevant paragraphs of which read thus :

“Regarding sale notice in pursuance to Company Petition No.8 of 1990 arising out of official liquidator's report No.16 of 2004 dated 26-3-2004 issued by the Official Liquidator Nagpur calling for sealed offers for the purchase of open lands of M/s. Maharashtra Asbestos Pvt. Ltd., (in liquidation) at Talashed and Tadbaghle, Tahsil Alibag.

I the undersigned Mr. Sunderlal (Sunderdas) Holaram Bajaj was shocked to read through the sale notice captioned above appearing in the Economic Times of time page 10 dated 31-3-2004, I state that there is a serious misconception on facts and a serious error committing in issuing the sale notice while the said properties in respect of which offers to purchase were called for do belong to and is owned by me and not M/s. Maharashtra Asbestos Pvt. Ltd. Accordingly you as the Official Liquidator of Nagpur have no locus standi to sell the said land as belonging to M/s. Maharashtra Asbestos Pvt. Ltd., under liquidator.”

8. The review applicant has not disputed that the communication dated 01-4-2004 was indeed addressed to the Official Liquidator. It is, therefore, crystal clear that the review applicant was well aware of the advertisement inviting offers for the land, which was published on 30-3-2004 in Economic Times, Samna and Krishibal at Alibag. It is in response to the said advertisement dated 30-3-2004 that the review applicant addressed the communication dated 01-4-2004.

9. The advertisement dated 30-3-2004 did not evoke any response, and the Official Liquidator submitted Report 29 of 2004 seeking permission to publish the advertisement in the same newspapers and additionally in Indian Express, Loksatta and Raigarh Times. Pursuant to the order dated 23-4-2004, the Official Liquidator again published the advertisement, additionally in Indian Express, Loksatta, Raigarh Times and Krishibal.

10. It is inconceivable and indeed unbelievable that the review applicant, who lodged objection pursuant to the first advertisement, was not aware of the advertisement dated 03-5-2004 published in equally, if not more, prominent newspapers.

11. The justification that the review applicant came to know of the sale-deed dated 15-9-2004 only in September 2015 is, in my considered view, bordering on falsehood and deserves outright rejection. Notably, the sale-deed dated 15-9-2004 is a registered sale-deed. The purchaser has filed affidavit-in-response dated 22-2-2018 asserting that after purchasing the property, he developed the same by investing huge amount. Apart from the fact, that the principle of constructive notice would come into play since the sale-deed is a registered document, as a fact, the review applicant was well aware that the land is sold in auction and that the purchaser is

in possession.

12. The learned Senior Counsel Mr. Anil Mardikar has strenuously urged that the review applicant has an excellent case on merits since the title to the land could not have been transferred in favour of the company on the basis of a communication addressed to the Tahsildar. As a proposition of law, Mr. Anil Mardikar may be right in the submission that the letter addressed to the Tahsildar could not have divested the applicant of the title. However, no definite observation on the said submission is necessary since, I am not inclined to condone the delay of more that 13 years 7 months.

13. In my considered view, the explanation put forth in support of the condonation prayer is unacceptable and is indeed false. The applicant was indeed aware of the proceedings and as a fact, when the first advertisement was published on 30-3-2004, he did raise an objection. The submission that the review applicant was neither aware of the second advertisement published on 03-5-2004 nor of the sale-deed dated 15-9-2004 is unacceptable. That apart, as noted supra, there is no explanation why the review applicant did not initiate any step from September 2015 till February 2017. In the interregnum, the purchaser took possession of the land in 2004 and has invested huge amount.

14. In any view of the matter, the delay of 13 years 7 months in preferring the review application is gross and unexplained.

15. The application is dismissed.

JUDGE

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