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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 44 OF 2021
IN
WRIT PETITION NO.5627 OF 2019

Purnavadi Nagari Sahkari Pat Sanstha Maryadit
Shirsoli, Taluka and District – Jalgaon & Another **APPLICANTS**

VERSUS

Arjun Fakira Bari and Others **RESPONDENTS**

.....

Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for
the applicants

Mr. Y. G. Gujrathi, AGP for respondent - State

Mr. Subodh P. Shah, Advocate for respondent No.1

Mr. A. D. Shinde, Advocate for respondents No.7 to 9

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WITH]
REVIEW APPLICATION NO. 45 OF 2021
IN
WRIT PETITION NO.5627 OF 2019

Mahendra Narayan Kedar & Another **APPLICANTS**

VERSUS

Arjun Fakira Bari and Others **RESPONDENTS**

.....

Mr. A. D. Shinde, Advocate for the applicants

Mr. Y. G. Gujrathi, AGP for respondent - State

Mr. Subodh P. Shah, Advocate for respondent No.1

Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for

respondents No.4 and 5

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 22nd SEPTEMBER, 2022

PRONOUNCED ON : 16th NOVEMBER, 2022

ORDER :

1. These applications seek review of the judgment dated 25th May, 2021, passed by this Court in Writ Petition No. 5627 of 2019.

2. Facts, in nutshell, are that - Respondent No.1 filed writ petition against the applicants and other respondents, challenging the judgment and order dated 12th April, 2019 in Revision Application No. NIL/2011 passed by the Divisional Joint Registrar, Co-operative Societies, Nashik, thereby dismissing the revision filed by respondent No.1, challenging legality, propriety and correctness of the Recovery Certificate issued under section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter for short "the said Act") and the steps taken for recovery of amount, which culminated in the order of confirmation of sale dated 31st March, 2012.

3. For the sake of convenience, hereinafter, applicants No.1 and 2 in Review Application No.44 of 2021 will be referred to as "Patsanstha", and "Recovery Officer", respondent No.1 as

"Borrower", respondents No.4 and 5 as "Guarantors" and applicants in Review application No. 45 of 2021 as "auction purchasers".

4. The borrower had obtained loan of Rs.75,000/- from the Patsanstha and the borrower and his father had mortgaged house No. 728 in favour of the Patsanstha. Since the loan amount was not fully repaid, recovery proceedings were initiated by the Patsanstha, which culminated into issuance of recovery certificate against the borrower. Pursuant to the recovery certificate, the Recovery Officer auctioned the landed property of the borrower.

5. The borrower unsuccessfully challenged the auction sale, by filing revision. The borrower, thereafter, challenged the auction sale in Writ Petition No. 5627 of 2019. This Court, after hearing the parties, partly allowed the writ petition and set aside the auction sale, cancelled the sale certificate and directed that the amount of Rs.6,04,619/-, deposited by the borrower be paid to the Patsanstha, along with interest accrued thereon and further directed that the sale price deposited by the auction purchasers be refunded to them along with interest @ 10% p.a.

6. Patsanstha and the Recovery Officer have filed Review

Application No.44 of 2021 and the Auction Purchasers have filed Review Application No.45 of 2021

7. Heard Mr. V. D. Hon, learned senior advocate instructed by Mr. A. V. Hon for the Patsanstha, Mr. A. D. Shinde, learned advocate for the auction purchasers, Mr. Subodh P. Shah, learned advocate for the borrower and Mr. Y. G. Gujrathi, learned Assistant Government Pleader for the State.

8. Learned senior advocate for the Patsanstha, by relying on ***“Deendayal Nagari Sahakari Bank Limited and Another V/s Munjaji and Others” 2022 (7) SCC 594*** strenuously submits that it is settled legal position that unless mandatory requirement of filing application under sub Rules 12, 13, 14 of Rule 107 of the said Rules within 30 days from the date of sale along with deposit of amount due, is complied with, challenge of the borrower to the sale cannot be entertained by this Court. According to him, these rules are held to be mandatory and as the borrower failed to avail said remedy, this Court ought to have rejected the writ petition by which the auction sale was challenged. Further submission is that since the borrower failed to deposit the amount due and payable before seeking quashing of the auction sale and as the said application is not made in 30 days, before the Special Recovery Officer or before the District

Deputy Registrar, this Court ought not to have gone into the validity of the auction sale.

9. He further submits that even the revision filed by the borrower was not maintainable, in absence of compliance of Rule 107 (12), (13) and (14) of the said Rules. Mere making an application without deposit of amount of loan, is neither compliance of Rule 107 (12), (13) and (14) of the said Rules nor of section 154 of the said Act. By placing reliance on "***Board of Control for Cricket, India and another V/s Netaji Cricket Club and others***" 2005 AIR SCW 230 learned senior advocate states that this is a fit case for review.

10. Learned advocate for the auction purchasers adopted the arguments advanced by the learned senior advocate for the Patsanstha. In addition, he submits that in paragraph No.25 of the judgment under review, it is held that there is no substance in the challenge raised by the borrower to the certificate issued under section 101 of the said Act. By placing reliance on the observations in paragraph No. 49 of the judgment under review, he submits that challenge of the borrower to the auction sale, on the ground that it was not preceded by valid attachment order is negated by this Court. In this view of the matter, according to him, this Court ought to have rejected the borrower's challenge

to the auction sale.

11. Per contra, learned advocate for the borrower submits that the property, which was auctioned, was not the mortgaged property. By selling the mortgaged property, the Patsanstha could have recovered its dues, which is deliberately not done. By relying on the observations in paragraphs No. 78 to 82 of the judgment under review, he submits that it is rightly held that upset price was not determined prior to the auction sale and the Patsanstha failed to proceed against the mortgaged property, without there being any legally sustainable ground. He, therefore, submits that this Court was perfectly justified in partly allowing the writ petition holding that the auction sale was illegal and without jurisdiction. In support of his submissions, he relied on *"Water and Land Management Institute, Kanchanwadi, Aurangabad V/s Sudhakar Namdeo Gaikwad and Others"* (2020) 2 Mh.L.J. 244 and *"Parsion Devi and Others V/s Sumitri Devi and Others"* (1997) 8 SCC 715. He further submits that, no ground is made out to review the judgment and all the arguments were already advanced and considered by this Court, while passing the judgment under review. Hence, there is no substance in the review application.

12. Learned Assistant Government Pleader submits that

appropriate orders may be passed.

13. Heard Mr. V. D. Hon, learned senior advocate instructed by Mr. A. V. Hon for the Patsanstha, Mr. A. D. Shinde, learned advocate for the auction purchasers, Mr. Subodh P. Shah, learned advocate for the borrower and Mr. Y. G. Gujrathi, learned Assistant Government Pleader for the State, at length. Perused the judgment under review, record of the writ petition and the grounds raised in the review applications. I have also gone through the citations relied upon by the respective parties.

14. On going through the judgment under review it is evident that this Court has set aside the auction sale by taking into consideration the peculiar facts of the present case. The auction sale is set aside holding that the property, which was not mortgaged, was auctioned in violation of Sub Rule (4) of Rule 107 of the said Rules and no attempt was made to sale the mortgaged property, which was sufficient to recover the due amount. Landed property, admeasuring 3 Acre 11 Guntha, which was not mortgaged and which was far excess in value than the outstanding amount, was put to sale with oblique motive, in violation of sub rule (15) of Rule 107 of the said Rules. Upset price of the land was determined two months after the auction sale. After considering the record and facts of the case and after

going through the citations relied on by both the sides, it is held that *"For the serious lapses and illegalities committed, the auction sale suffers from fundamental error in law and resulted in serious prejudice to the borrower"*.

15. The argument of the Patsanstha that the borrower failed to avail statutory remedy and case laws relied on by the Patsanstha in this behalf, is considered in paragraph No. 39 of the judgment under review. After considering the relevant rules and the facts of the present case, it is held :

"Generally, a person aggrieved by the auction sale of an immovable property has to work out his remedies as envisaged by the elaborate provisions contained in Rule 107."

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"However, these provisions cannot be said to be the sole repository of the remedy which an aggrieved person may have, especially where it could be demonstrated that the impugned action was wholly without jurisdiction or malafide and in flagrant violation of the provisions of the Act, 1960 and Rules, 1961. In such a situation, in my considered view, the writ Court cannot be precluded from examining the legality of the impugned auction, especially where the constitutional right to property is shown to have been blatantly infringed."

16. It is, therefore, clear that the arguments now advanced by the applicants, were advanced at the time of arguing the writ petition and after considering the same, the judgment under

review is rendered. Learned senior advocate for the applicants has argued the matter as if he is arguing the writ petition, which is not permissible in law, as this Court is not sitting in appeal over the judgment under review. These review petitions appear to be appeals in disguise. Old and overruled arguments, which had concluded by the judgment under review, are repeated.

17. In "**Kamlesh Verma Vs. Mayawati and Others**" reported in **(2013) 8 SCC 320**, it is held:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

18. In "**State of West Bengal and Others Vs. Kamal Sengupta and Another**" reported in **(2008) 8 SCC 612** the Supreme Court has observed;

"22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court-tribunal on a

point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

19. In the present case, the judgment under review cannot be corrected on the ground that different view could have been taken by the Court on the point of fact or law and this Court cannot sit in appeal over its own judgment while exercising review jurisdiction.

20. In ***"Board of Control for Cricket in India and Another Vs Netaji Cricket Club and Others"*** reported in ***(2005) 4 SCC 741*** the grounds on which review can be entertained, are noted as follows;

“88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An

application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

92. Yet again in Lily Thomas (supra), this Court has laid down the law in the following terms:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error"

21. There cannot be any dispute about the above ratio, however, the applicants have failed to point out any error apparent on the face of record, which has resulted into miscarriage of justice and have failed to make out any case for review. Hence, this Court is not inclined to exercise review

jurisdiction. The review applications, being devoid of merit are dismissed. No costs.

22. At this stage, learned advocate for the applicants in Review Application No. 45 of 2021 requests for continuation of interim relief granted on 7th July, 2021. For the reasons stated in the judgment under review and in the present order, the request is rejected.

[NITIN B. SURYAWANSHI]
JUDGE

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