

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

CRIMINAL WRIT PETITION NO.22 OF 2022

1. M/s. Krishna Constructions,
Through its Partners Shri Raju Hindustani
S/o Teomal Agrawal, Aged – 58 Years,
Occupation – Business, R/o Flat No.17,
Akar Building, Chitnavis Layout,
Byramji Town, Nagpur,
Tahsil & District Nagpur [Maharashtra State].
2. Shri Raju Hindustani S/o Teomal Agrawal,
Partner M/s. Krishna Constructions,
Aged – 58 years, Occupation – Business,
R/o Flat No.17, Akar Building, Chitnavis Layout,
Byramji Town, Nagpur, Tahsil & District
Nagpur [Maharashtra State]. **PETITIONERS**

...V E R S U S...

1. State Bank of India, Through its
Branch Manager, Panchpaoli, Nagpur,
Tahsil & District – Nagpur [Maharashtra State].
2. Anand D. Gawande,
Aged – Major, Occupation – Valuer,
R/o 165, Abhyankar Nagar, Nagpur,
Tahsil & District Nagpur
[Maharashtra State]. **RESPONDENTS**

Ms. Bhavika Raju Hindustani, Advocate h/f Mr. H. Dangre,
Advocate for Petitioners.
None for Respondent No.1.
Respondent No.2 appear in person.

CORAM: **VINAY JOSHI, J.**
DATE: **28th JULY, 2022.**

ORAL JUDGMENT:

Heard learned Counsel for the parties.

2. By consent the matter is taken up for final disposal by issuing the Rule, making the same returnable forthwith.

3. **Rule.**

4. Despite service, respondent no.1 – Bank remained absent on last date. However, today also respondent no.1 – Bank is absent. Respondent no.2 party-in-person has appeared and filed Pursis informing that he is nothing to say in the petition. Pursis is taken on record and for the purpose of identification marked as Article 'A'.

5. The petitioners limited grievance is that Criminal Revision No.18/2016, which was filed by them came to be adjudicated without hearing the petitioners. The petitioners have earlier filed Regular Criminal Case 120/2010, alleging commission of offence punishable under Sections 210, 420, 506 and 408 of the Indian Penal Code. The learned Magistrate after taking cognizance of the same has directed the police to investigate the matter and

report the same. On receipt of report, the learned Magistrate has considered the available material on the basis of which it is found that there are no sufficient ground to proceed further. Accordingly, the complaint was dismissed in terms of Section 203 of the Criminal Procedure Code vide order dated 26.10.2015. Being aggrieved, the petitioners who are the original complainants have filed Criminal Revision in the Court of Session. The record indicates that on the date of hearing the petitioners were absent, hence the Revisional Court proceeded further. The Revisional Court has perused the record and ultimately dismissed the revision which is impugned herein.

6. The only contention raised by petitioners is that the Revisional Court without giving an opportunity has proceeded to dispose of the revision. According to the petitioners, there are sufficient grounds for issuance of process. However, the learned Magistrate failed to consider the same as well as Revisional Court. The petitioners urged that an opportunity of hearing be given to them so that they can put up their case before the Revisional Court.

7. The copy of Roznama of the revision petition is made

available. It reveals that petitioners were present on 16.09.2021. However, the matter was adjourned on 28.09.2021. On which date, by noting absence of the petitioners the matter was disposed of on merit. It is submitted that due to pandemic situation the learned counsel for the petitioners was unable to attend which has proved to be fatal. There is no resistance to the present application as respondent no.1 – Bank despite service chooses to remain absent. In the circumstances, to sub-serve the interest of justice, an opportunity can be given to the petitioners by directing Revisional Court to decide the matter afresh after hearing the parties. However, as there were some lapses on the part of the petitioners they shall pay reasonable costs to compensate otherside. In view of that I pass the following order:

- [i] Application stands allowed.
- [ii] The impugned order dated 28.09.2021 passed in Criminal Revision Application No.18/2016 is hereby quashed and set aside.
- [iii] Criminal Revision Application is restored subject to the petitioners depositing costs of Rs.5000/- in the Revisional Court within two weeks from today.

- [iv] The petitioners shall remain present in the Revisional Court on 10.08.2022 and file their *suo moto* appearance.
- [v] On restoration, the Revisional Court shall issue fresh notices to the then respondents and on their appearance decide the same in accordance with law.
- [vi] The respondent no.1 Bank is entitled for withdrawal of costs amount.
- [vii] The application stands disposed of in the above terms.

JUDGE

NSN