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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 90 OF 2023
IN
WRIT PETITION NO.6022 OF 2022

Tulsabai Eknath Chavan (Died) LR and Others APPLICANTS

VERSUS

Anubai Vithoba Chavan and Others RESPONDENTS

.....
Mr. Shailendra S. Gangakhedkar, Advocate for the applicants
Mr. K.R. Doke, Advocate for respondent no.3A (i) to 3A (iv)
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 6th JULY, 2023
PRONOUNCED ON : 18th AUGUST, 2023

ORDER :

1. By this application, the applicants seek review of the order passed by this Court on 16th February, 2022 in Writ Petition No. 6022 of 2022.

2. Writ Petition No.6022 of 2022 was filed challenging the order passed by the Executing Court below Exhibits-1, 231 and common order passed below Exhibits-197 and 228 in Regular Darkhast No.29 of 1997, by Joint Civil Judge, Junior Division, Bhoom. A further prayer for setting aside the entire proceedings of Regular Darkhast No. 29 of 1997 was also made. By the order

under review, the writ petition was disposed of by this Court on 16th December, 2022, by recording statement of the learned advocate for the respondents that the decree has already been satisfied and executed and the execution proceedings are closed, by following order -

“1. *Learned counsel for respondents submits that the decree has already been satisfied, the execution proceedings are closed and the decree is executed in the present petition. Interlocutory orders passed by the Executing Court are challenged.*

2. *In view of the above, writ petition has become infructuous. The same is disposed of without any orders as to costs.”*

3. Learned advocate for the applicants, by placing reliance on the case status report of the execution proceedings, obtained from the website of the Executing Court, submits that the execution petition is still pending and, therefore, incorrect statement was made by the learned advocate for the respondents that the decree has already been satisfied and executed and the execution proceedings are closed. He submits that this is the good ground to review the order passed by this Court, thereby disposing of the writ petition as infructuous. In support of his submissions, he placed reliance on ***"Lily Thomas V/s Union of India and Others"* AIR 2000 SC 1650** and ***"Board of Control for Cricket, India and Another V/s Netaji Cricket Club***

and Others” AIR 2005 SC 592

4. Learned advocate for the respondents, on the other hand, opposed the review on various grounds, including that in view of execution of the sale deed in favour of the decree holders, the decree is satisfied and nothing remains to be adjudicated before the Executing Court. He submits that in the execution, since sale deed was executed in favour of the decree holders on 14th December, 2022, the decree is satisfied. The review applicants, by filing applications Exhibits-253 and 259 prayed to the Executing Court not to grant sale certificate in favour of the decree holders, but that does not mean that the decree is not satisfied. According to him, no ground for review is made out by the applicants and hence, the review application may be dismissed.

5. It is a matter of record that in the writ petition, the review applicants have challenged orders passed below Exhibit-1, Exhibit-231 and common order below Exhibits-197 and 228 in Regular Darkhast No. 29 of 1997. By the order passed below Exhibit-1, dated 10th February, 2022, the Executing Court has approved the draft of sale deed at Exhibit-225 and directed the Assistant Superintendent of the Court to execute sale deed as per the decree in favour of the decree holders. Pursuant to the

same, admittedly, the sale deed is executed on 14th December, 2022. By filing applications at Exhibits-197 and 228, the judgment debtors prayed for getting opportunity to adduce evidence as per directions given by this Court in Writ Petition No. 2464 of 2009 and also a prayer was made that directions be given to decide shares of the parties. By a well reasoned order, both the applications Exhibits-197 and 228 were rejected by the Executing Court. By filing application Exhibit-231, the applicants prayed that since the matter is extensively heard on the point of tenability, appropriate orders may be passed.

6. It is, therefore, clear that the execution petition is filed seeking execution of the decree passed in Regular Civil Suit No. 93 of 1991 dated 4th January, 1991, whereby it was declared that plaintiffs No.2 to 4 are owners of the suit property, described in the plaint schedule, along with defendants No.4 to 6. A further declaration was given that plaintiffs No.2 to 4 have preferential right to purchase share of defendants No.4 to 6 in the suit property. The said decree has attained finality.

7. By filing execution proceedings, decree holders No.2 to 4 sought execution of the decree contending that the judgment debtors No.4 to 6 had agreed to sale their share in the suit property. Out of the suit land, 1 hectare land comes to the share

of the judgment debtors No. 4 to 6 and the agreement to sale was executed on 17th September, 1990 which is filed at Exhibit-144 in Regular Civil Suit No.93 of 1991. Hence, it was prayed that, the judgment debtors be directed to execute sale deed of the suit land to the extent of share of defendants No.4 to 6 i.e. 1 hectare after accepting Rs.12060/-.

8. In view of execution of the sale deed in favour of the decree holders, decree is satisfied and therefore, merely because applications filed by the applicants objecting issuance of sale certificate in favour of decree holders are pending, it cannot be said that the decree is not satisfied. This Court has rightly accepted the statement made by the learned advocate for the respondents that the decree is satisfied and has rightly disposed of the writ petition, since interlocutory orders passed in the execution proceedings were challenged in the writ petition.

9. In "*Lily Thomas*" (*supra*), the concept of review is explained in the light of Article 137 of the Constitution of India read with order 47 Rule 1 of the Civil Procedure Code. There cannot be any dispute about the principles on which the review is maintainable.

10. In "*Board of Control for Cricket, India*" (*supra*), grounds on

which review is maintainable and the scope of review is explained. It is held that subsequent events can be considered in the review petition. There cannot be any dispute about the said principles, however, in the case in hand, the applicants have failed to make out any ground for review.

11. Decree passed in the year 1997 is satisfied in the year 2022. The applicants were successful in not letting the decree executed for considerably long period. In that view of the matter also the applicants have failed to make out a case for review. The review application being devoid of any merit is rejected. The applicants may prosecute the remedy as may be available in law.

[NITIN B. SURYAWANSHI]
JUDGE