IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (ST.) NO. 21431 OF 2023

IN

FIRST APPEAL NO. 117 OF 2022

WITH CIVIL APPLICATION NO. 9995 OF 2023

IN REVIEW APPLICATION (ST) NO. 21431 OF 2023

Vienna Multi Ventures Pvt Ltd.
Through Amarnath Matadin Sharma
R/o 607, Ijmima Complex, Interface,
Off. Link Road, Malad West, Mumbai ... Applicant.
(original appellant)

Versus

1. M/s Challani Ginning and Pressing Factory, A registered Partnership Firm, Through its partner Jainendra Inderchand Chhallani
Age : 55 yrs, occ : business
R/o Plot No. 29, N-3, CIDCO, Aurangabad (original decree holder)

2. Narendra Vishwanath Jadhav
Age ; 49 yrs, occ : business
R/o 1, Shriniketan Colony,
Jalna Road, Aurangabad.

3. Yog Industries Ltd.
Through its Managing Director,
Narendra Vishwanath Jadhav
Age ; 49 yrs, occ : business
R/o 1, Shriniketan Colony,
Jalna Road, Aurangabad. ... Respondents
(original judgment debtors)

WITH

CIVIL APPLICATION NO. 12427 OF 2023

IN REVIEW APPLICATION (ST) NO. 21431 OF 2023

HDFC Bank Ltd.
Through its Authorised Officer
Rupesh Sadanand Waghe
Age : 36 yrs, occ : service
R/o HDFC Bank House,
Senapati Bapat Marg, Lower
Parel, Mumbai. Applicant

Versus

1. Vienna Multi Ventures Pvt Ltd.
Through Amarnath Matadin Sharma
R/o 607, Ijmima Complex, Interface,
Off. Link Road, Malad West, Mumbai

2. M/s Challani Ginning and
Pressing Factory, A registered
Partnership Firm, Through
its partner
Jainendra Inderchand Chhallani
Age : 49 yrs, occ : business
R/o Plot No. 29, N-3, CIDCO,
Aurangabad

3. Yog Industries Ltd.
Through its Managing Director,
Narendra Vishwanath Jadhav
Age ; 49 yrs, occ : business
R/o 1, Shriniketan Colony,
Jalna Road, Aurangabad. Respondents

...

Mr. S.B. Deshpande, Senior Counsel i/b Mr. Bhargav Kulkarni, Advocate for the applicant/review petitioner.
Mr. P.F. Patni, Advocate for respondent No.1.
Mr. Shrikishan S. Shinde, Advocate for Intervenor.

...

CORAM : **MANGESH S. PATIL AND SANDIPKUMAR C. MORE, JJ.**

Order Reserved on : 11.10.2023
Order pronounced on : 31.10.2023

Order (per Sandipkumar C. More, J.) :

1. By consent of the learned Counsel for the rival parties, heard main review application finally alongwith delay condonation application. By way of this review application, the applicant, who is the original appellant in First Appeal No. 117 of 2022, is seeking review of the order passed by this Court in the aforesaid appeal on 16.06.2022, mainly on the ground that there is an error apparent on the face of record, which, this Court did not consider while passing the judgment under review.

2. Learned Counsel for the applicant vehemently argued that the applicant being a corporate debtor had purchased property in question from present respondent No.2 by way of registered sale deed on 10.10.2017 and by that time the alleged order of attachment passed by the Executing Court in Special Darkhast No. 32/2017 on 21.09.2017 was not actually effected as per Order XXI Rule 54 of the Code of Civil Procedure (for short, "C.P.C."). It was subsequently effected on 13.10.2017, and therefore, the applicant is a bona fide purchaser. He also pointed out that though notice of *lis pendens* as reflected from the order under review was registered much prior i.e. on 10.01.2016, but on passing of the decree in Special Civil Suit No.201/2013 only for refund of

earnest money and not allowing specific performance, the notice had already come to an end. He also raised issue of powers of applicant being Interim Resolution Professional appointed by National Company Law Tribunal and contended that under Insolvency and Bankruptcy Code, 2016, Interim Resolution Professional was exercising all the powers of Resolution Professional since he was already included in the definition of "Resolution Professional" under the Code. Learned Counsel for the applicant relied on the following judgments :

(i) ***Ramesan vs Kunhipalu & ors, AIR 1977 Kerala 119***

(ii) ***M. Marathchalam Pilla vs Padmavathi Ammal 1971 (3) SCC 878***

(iii) ***First Appeal No. 38 of 2018 (Narendra Vishwanath Jadhav vs M/s Chhallani Ginning and Pressing Factory & another), dated 14.01.2019 (Bom.)***

3. On the contrary, learned Counsel for respondent No.1 strongly opposed the application on the ground that the concept of *lis pendens* is applicable even in case of money decree and it is not necessary that the same should be in respect of only immovable property. According to him, the applicant was not at all diligent in verifying the title of disputed property before it was purchased. Therefore, it is rightly held by this Court that attachment was actually

effected at the site on 13.10.2017 i.e. after purchase of property on 10.10.2017. It was not decisive particularly when the notice of *lis pendens* was registered much prior thereto. As such, he pointed out that the applicant is neither a bona fide purchaser nor has he acquired any title over the disputed property under the sale deed dated 10.10.2017. Thus, he prayed for rejection of the application. He also relied on the following judgments :

(i) ***Annakkili Ayyuanar vs Murugan Govindan AIR 2002 Madras 63***

(ii) ***Jain Studios Ltd vs Shin Satellite Public Co. Ltd. (2006) 5 SCC 501***

(iii) ***Arun Dev Upadhyaya vs Integrated Sales Services Ltd. (2023) 8 SCC 11***

(iv) ***Shanti Conductors Pvt. Ltd vs Assam State Electricity Board & ors, (2020) 2 SCC 677***

4. It is not in dispute that present respondent No.1 had filed Special Civil Suit No. 201/2013 against the present respondent Nos.2 and 3 for specific performance in respect of the disputed property. However, on 24.07.2017 the suit was decreed only to the extent of refund of earnest amount by respondent Nos.2 and 3 to respondent No.1. The respondent No.1 had filed Special Darkhast No. 32/2017 since respondent Nos.2 and 3 did not repay the said amount. The Executing Court on an application of respondent No.1 (decree holder),

issued order of attachment of the disputed property on 21.09.2017. Further, it is not in dispute that the applicant being a corporate debtor, purchased the disputed property from respondent No.2 by way of registered sale deed on 10.10.2017 and the earlier order of attachment dated 21.09.2017 was actually effected on 13.10.2017 i.e. after sale deed dated 10.10.2017.

5. It is significant to note that the applicant being appointed as Interim Resolution Professional, is seeking review of the judgment dated 16.06.2022 passed by this Court in First Appeal No. 117 of 2022 mainly on the ground that there is an error apparent on the face of record in the impugned order. The main grounds raised by the applicant on the aspect of error apparent on the face of record are that this Court wrongly considered the issue of *lis pendens* specially when after registration of notice of *lis pendens*, the suit was decreed only in respect of refund of money and not in respect of specific performance of contract, and therefore, the aforesaid notice had already outlived its utility and that since *lis pendens* notice had actually expired on the decree of suit, the applicant was therefore a bona fide purchaser since the attachment order was not at all actually effected at the site as required under Order XXI Rule 54 of the C.P.C.

Besides, the learned Counsel for the applicant also argued as to how the purchase of disputed property by way of sale deed dated 10.10.2017 was not a 'void transfer' as contemplated in Section 64 of the Transfer of Property Act.

6. It is significant to note that the learned Counsel for respondent No.1, while opposing the submissions made on behalf of the applicant, supported the impugned order and pointed out as to how the applicant failed to carry out due diligence for verification of title before purchasing the disputed property. He also relied on the judgments wherein it is observed that the concept of *lis pendens* is also applicable to money decree and on rejection of specific performance by the learned trial Court, the notice of *lis pendens* never got expired as claimed by the applicant. The learned Counsel for respondent No.1 also pointed out that the alleged error apparent on the face of record as submitted by the learned Counsel for the appellant cannot be treated as basis for filing review application, since it is not actually an error on the face of record. According to him, under the guise of the same, the applicant wants to re-argue the matter which is beyond the scope of review.

7. It is to be noted here that both the rival Counsels have argued on various aspects of law involving the issues,

such as, bona fide purchase, doctrine of *lis pendens* and its applicability, concept of coming into actual effect of attachment order under Order XXI Rule 54 of the C.P.C. and void transfer as contemplated in Section 64 of the Transfer of Property Act. The main questions raised by the applicant are that, whether the notice of *lis pendens* was in existence even after refusal of specific performance and as to whether it was a void transfer by the applicant especially when the order of attachment which was passed much prior to purchase of property on 10.10.2017, was not effected actually at site as required under Order XXI Rule 54 of C.P.C. However, the learned Counsel for respondent No.1 has also relied on the provisions of law to rebut the submission made on behalf of the applicant. Thus, it appears that to decide all these questions, the entire matter needs to be taken into consideration once again.

8. It is extremely important to note that the Hon'ble Apex Court in various judgments relied by the learned Counsel for respondent No.1 has discussed the scope or power of review. In the judgment reported in the case of ***Arun Dev Upadhyaya vs Integrated Sales Services Ltd*** (supra), it is specially observed that power to review cannot be exercised as an appellate power and has to be strictly confined to the

scope and ambit of Order XLVII Rule 1 of C.P.C. Further, an error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions. Further, the Hon'ble Apex Court in the case of ***Shanti Conductors Pvt. Ltd. vs Assam State Electricity Board*** (supra) has observed that scope of review is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions, which have already been addressed and decided. Further, under Order XLVII Rule 1 of C.P.C. a judgment may be open to review *inter alia* if there is a mistake or an error apparent on face of record. However, such an error which is not self evident and has to be detected by process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power to review.

9. In the instant matter, the rival Counsel have raised so many questions of law and also relied on various judgments on those aspects which are already mentioned above. Thus, it appears that there are 4-5 grounds on the basis of which the applicant is claiming that there is an error apparent on the face of record in the impugned order. Thus,

keeping in mind all these aspects or grounds for determination of the aforesaid error apparent on the face of record, the entire matter needs to be considered again which is not permissible as per the observation of the Hon'ble Apex Court on the point of scope of review. Under the guise of exercising review powers we cannot sit as an appellate authority in respect of our own order. Therefore, considering the limited scope of review application, we do not find that there is actual error apparent on the face of record as claimed by the applicant. On the contrary, it appears that the grounds raised by the applicant under this review application are in fact required to be decided by the superior court.

10. Thus, considering all these aspects, the review application stands dismissed and application for condonation of delay also is disposed of. Needless to say that the intervention application bearing Civil Application No. 12427 of 2023 also stands disposed of since review application itself is dismissed.

(SANDIPKUMAR C. MORE, J.) **(MANGESH S. PATIL, J.)**