

Niti

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO.4 OF 2019
IN
CIVIL REVISION APPLICATION NO.13 OF 2018

LAXIMI ROHIDAS
CALANGUTKAR (DEC) THR.
LRS. AND 7 ORS.

....APPLICANTS

Versus

NILESH SANGODKAR AND
2 ORS.

....RESPONDENTS

**Mr Nigel Da Costa Frias with Ms B. Kukalekar, Advocates for
the Applicants/Review Petitioners.**

Mr Prasheen Lotlikar, Advocate for Respondent No.1.

Mr Rama Rivankar, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J.

DATE : 9th FEBRUARY 2023

ORAL ORDER :

1. Heard Mr Costa Frias for the review petitioners, Mr Prasheen Lotlikar for respondent no.1 and Mr Rama Rivankar for respondent no.2.

2. This Petition seeks to review the judgment and order dated 29.10.2018 passed by Nutan D. Sardesai, J. allowing Civil Revision Application No.13/2018 and rejecting the petitioners' plaint by resorting to the provisions of Order VII Rule 11 of CPC.

3. Mr Costa Frias, the learned Counsel for the petitioners, submits that there is an error apparent on the face of the record in the impugned judgment and order because the learned Judge failed to appreciate that Rule 37 of the Multi-State Co-operative Societies Rules, 2002 (said Rules) applies only if material irregularity or mistake or fraud is alleged in the sale process consequent upon execution of an award obtained under the Multi-State Co-operative Societies Act, 2002 (said Act) and the Rules made thereunder. He submitted that in this case, the suit was instituted by the petitioners alleging that there was fraud in the alleged execution of the mortgaged Deed based upon which the Sales Officer sold the petitioners' property in the execution proceedings. He points out that the petitioner was only a surety, and there was no proper evidence of the execution of the mortgaged Deed in the first place. In any case, Mr Frias pointed out that the so-called Deed was a product of fraud and misrepresentation. He submitted that the defence version should not have been considered at the stage of considering an application under Order VII Rule 11 of CPC. On all these grounds, he urged a review of the judgment and order dated 29.10.2018. Mr Costa Frias, in support of his contentions, relied on *Salim D. Agboarwala & Ors. V/s. Shamalji Oddhavji Thakkar & Ors. - Civil Appeal No.5641 of 2021 decided on 17.09.2021* by the Hon'ble Supreme Court.

4. Mr Lotlikar and Mr Rivankar opposed the Review Petition by pointing out that the suit was barred based on the statements in the

plaint. They submitted that Rule 37(14)(vi) declares an order made under sub-rule 14 to be final and shall not be liable to be questioned in any suit or other legal proceedings. Accordingly, they submit that there is no error, much less any error apparent on the face of the record, to warrant the exercise of review jurisdiction.

5. The rival contentions now fall for my determination.

6. On the meaningful reading of the plaint, it is apparent that the petitioners were questioning the sale of their property in pursuance of not only the mortgaged Deed but also an award in which the petitioners were held liable because they were sureties to the loan obtained by original defendant no.2 in the suit. Accordingly, in sum and substance, the suit was to question the order of sale made by the Officer under Rule 37(14) of the said Rules.

7. The contention now raised by Mr Costa Frias was duly considered and dealt with. From the detailed consideration, it is difficult to say that the judgment and order is vitiated by an error apparent on the face of the record. Merely because some other view was possible or plausible cannot be a ground for review. Admittedly, the review provision is not intended to allow parties to re-argue the matter and persuade the Review Court to take a different view. However, unless a case of an error apparent on the face is made out, a review jurisdiction would not be exercised.

8. In *Salim D. Agboatwala & Ors.* (supra), the Hon'ble Supreme Court has held that allegations of collusion and fraud can be appropriately gone into by the Civil Court, and the question of whether the order of the ALT and the Sale Certificate issued after that were products of fraud and collusion could not have been determined by the appellate or the revisional authority under the Act. Mr Frias has not pointed out the parallels between the rules framed under the Multi-State Co-operative Societies Act, 2002, with which the coordinate Bench was concerned and the provisions of the Tenancy Act, which was the subject matter of the decision of the Hon'ble Supreme Court. As noted earlier, such issues cannot ordinarily be revisited while exercising review jurisdiction.

9. Accordingly, this Review Petition is dismissed.

10. There shall be no order for costs.

M. S. SONAK, J.