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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.77 OF 2022
IN
WRIT PETITION NO.2034 OF 2020**

Lakhan Karbhari Sonawane ... Review Petitioner.

V/s

1] Kedu Ratan Aher (Since deceased)
through legal heir : Uday Kedarnath
and Others ... Respondents.

Mr. Girish S. Godbole, Senior Advocate i/b Rahul Motkari for Review
Petitioner/original Respondent No.3.

Mr. R. M. Haridas i/b Pratik Rahade for the Respondent No.1/original
Petitioner.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 08, 2023

P.C.:-

1] Heard Mr. Godbole, learned Senior Counsel appearing for the
Review Petitioner and Mr. Haridas for the Respondent No.1/original
Petitioner.

2] Prayer is for recalling of the order dated 16/11/2021, as it is
claimed by Mr. Godbole that though Review Petitioner/original
Respondent No.3 has cited judgment of Apex Court in the matter of
Thomson Press (India) Limited vs. Nanak Builders and Investors

Private Limited and Others reported in **AIR 2013 SC 2389**, this Court has failed to consider effect of the same. So as to substantiate his contention, he would invite attention of this Court to the observations in para 52 of the said judgment. According to Mr. Godbole, even if the case of Respondent No.1/original Petitioner of execution of development agreement during operation of injunction order is accepted for the sake of arguments without admitting the same, such injunction, at the most, will nullify the transaction of development agreement. Mr. Godbole has claimed that he has canvassed a plea that execution of development agreement in the teeth of injunction order can at the most be termed as a void transaction. So as to substantiate his claim, he has drawn support from the observations in para 52 of the said judgment which reads as under:-

“52. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed

is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.”

He would further claim that rights of Review Petitioner shall be subject to outcome of the suit, as could be inferred from the law laid down in the matter of *Thomson Press (India) Limited* , cited supra.

3] While countering aforesaid submissions, Mr. Haridas appearing for Respondent No.1/original Petitioner would urge that aforesaid issue cannot be considered to be germane for exercising review jurisdiction. According to him, even if the said judgment is not referred to in the order under review, this Court has already considered and dealt with the submissions of Mr.

Godbole, as could be inferred from observations made in para 9 and finding recorded on the same in the light of Bombay Amendment to Order 39 by inserting Rule 11 in para 17 of the said order. As such, he has sought dismissal of the Review Petition.

4] I have appreciated the rival submissions.

5] Provisions of Rule 11 of Order 39 were inserted vide Notification dated 15/09/1983 and are made applicable to the proceedings in the State of Maharashtra. The said provisions are brought into statute book with an object to provide remedy against the parties defying orders of Court, and committing breach of undertaking to the Court. Fact remains that the judgment in the matter of *Thomson Press (India) Limited*, cited supra is based on factual matrix of provisions of Order 39 Rule 11 as was existing in Delhi from where cause of action arose for considering and deciding the claim before the Apex Court.

6] In the case in hand, provisions of Rule 11 of Order 39

which are reproduced hereinabove are invoked. Fact remains that the review Petitioner, so also Defendant Nos. 1 and 3 with whom he has entered into development agreement have acted in defiance of injunction order. In such an eventuality Order 39 Rule 11 provides for striking out of the defence and this Court has rightly allowed the Petition based on provisions of Order 39 Rule 11 as are existing in the State of Maharashtra by way of Bombay Amendment of 1983.

7] In this backdrop, in my view, law laid down by the Apex Court in the matter of *Thomson Press (India) Limited*, cited supra will be of having hardly any support, particularly in the wake of provisions of Bombay amendment to Order 39 thereby incorporating Rule 11. As such no case is made out for exercising review jurisdiction. Review Petition stands rejected.

[NITIN W. SAMBRE, J.]