S.R.JOSHI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

REVIEW PETITION NO. 31 OF 2024
IN
WRIT PETITION NO.16145 OF 2023

Shree Vaishnav Alloys Pvt. Ltd., … Petitioner

Versus

State of Maharashtra
& Others …Respondents

Mr. Niranjan Deshpande, for the Review Pertinent.
Ms. S.D.Vyas, Addl.G.P. for Respondent-State.
Mr. Suhas S. Deokar i/b. SSP Legal, for Respondent No.4-SBI.
Mr. Sanjiv Sawant with Mr. Malhar Bageshwar i/b. Abhishek Matkar, for Respondent No.6.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 6th MARCH, 2024

P.C.

We have heard learned Counsel for the Review Petitioner (Original Respondent No. 6), learned Counsel for Writ Petitioner (Respondent No.6 in the present Petitioner)and also Ms. Vyas, the learned AGP.

2 By this Review Petition, a Review is sought of the Judgement and Order dated 14th February, 2024, whereby we had disposed of the Petition filed by Respondent No.6/ Original Petitioner, which primarily pertained to the relief, as prayed for in regard to the Registration of the Sale Certificate issued in favour of Respondent No.6 in respect of the property purchased by Respondent No.6 in an auction held by Respondent No.4 – State Bank of India under the SARFAESI Act.

3 There were dues of the Sales Tax Department, and such dues were not cleared by the borrower. The concerned Sub-Registrar was not permitting the Writ Petitioner to register the sale certificate. It is for such reason the Writ Petition was filed. It so transpired that during the pendency of the Writ Petition, the original Petitioner stated before the Court that the dues of the Sales Tax Department, which were in the sum of Rs.6,48,12,732/-, were paid, and taking in to consideration such payment, the Sales Tax Department had also informed the Revenue Authority, to remove the entry in that regard indicating the charge of the Sales Tax Department. As the sales tax dues were paid, such revenue entry came to be deleted. In such context, the Court had made the following observations:-

> *"7:- Being confronted with such situation for such confirmation, when the petitioner resorted to a search of the revenue records and upon examining the 7/12 extract of the property, it was revealed to the petitioner that there was mutation entry no.751 in the Other Rights Column, which mentioned that there was a charge of the Deputy Commissioner of State Tax E002 GST Office, Palghar of one Vaishnav Alloys Pvt. Ltd., the original owners for a sum of Rs.6,42,12,732/-. It is for such reason, the registration of the Sale Certificate was denied to the Petitioner. In the above circumstances, the petitioner has approached this Court praying for the reliefs as noted by us hereinabove.*
>
> *8:- Learned Counsel for the petitioner would submit that during the pendency of the petitioner, there were certain developments inasmuch as the dues of the Sales Tax Department are stated to have been cleared by respondent no.6, who is represented by Mr. Kode, being the original owners of the property. In consequence thereto, the mutation entry no.751 itself stands deleted, which indicated the charge of the Sales Tax Department. As the mutation entry in regard to the charge of the Sales Tax Department has now been deleted, it is urged on behalf of the petitioner that there is no impediment/ hurdle for the Sub-Registrar of Assurance to register the Sale Certificate in question.*

9:- As the only embargo which was informed to the petitioner on 29 November, 2023 has now been removed and it no more exists, Ms. Vyas, learned Addl. G. P. and Mr. Kankal, learned AGP on behalf of respondent no.1 to 3 in not disputing such position, have fairly stated that there would not be any embargo for registration of the Sale Certificate and the Deed of Confirmation.

10:- Mr. Kode, learned counsel for respondent no.6, however, would oppose the prayers as made by the petitioner. He would submit that as the amounts are paid by his client so as to satisfy the sales tax dues, the petitioner ought not to be granted the benefit of such payment so as to enable him to get the said Sales Certificate being registered. Mr. Kode, however, has fairly stated that the Sales Certificate has not been set aside or stayed in any proceedings. He would also submit that his client has already moved DRT in appropriate proceedings to challenge the Sales Certificate, as according to him, it is the case of his client that the property has been sold at as disproportionally lower price as compared to the market value of the property."

4 On the aforesaid back drop, the Writ Petition as filed by the original Petitioner - Respondent No.6 came to be allowed in terms of prayer clause (a) in terms of the following observations:-

"11:- Having heard the learned counsel for the parties and having perused the record, in our opinion, the contentions as urged on behalf of respondent no.6 cannot fall for adjudication in the present Writ Petition, as the challenge of respondent no.6 to the Sales Certificate or any steps taken by State Bank of India to sell the secured assets, is subject matter of consideration in the proceedings pending before the DRT. In any event, today there is no stay to give effect to the Sales Certificate also the Sales Certificate today is valid and subsisting. If that be so, then certainly, the benefit of Sales Certificate needs to enure to the petitioner by availing its registration. Also as now the sales tax due have also been paid, the only impediment which was informed to the petitioner in not registering the Sales Certificate stands removed."

5 The grievance of the Petitioner in the present Review Petition, which is not filed through the Advocate who had earlier represented/ appeared for the Review Petitioner (Original Respondent No.6) is in regard to

what has been stated in paragraph 8 of the Judgement under Review, which we have noted herein above. The contention is quiet peculiar inasmuch as it is argued on the Review Petition that the Writ Petitioner never made the payments to the Sales Tax Department. On such contention being urged, we called upon the Advocate for the Petitioner to point out the grounds in that regard in the Review Petition. However, none of the grounds pointed out to us urge such contentions. What is pointed out to us is ground (b), where the only averment made is that the Original Petitioner (Respondent No.6) has not been issued the sales certificate with regard to the sales tax dues.

6 We are quiet surprised to read the other grounds raised in the Petition, which are grounds (a) to (l). It appears that the grounds raised are not only untenable to seek review of the judgement but show disregard to the sanctity attached to the orders passed by the High Court. The said grounds are reckless to say the least. Some of the grounds cannot even be grounds in an appeal, much less grounds for a review. We thus find that there is no error apparent on the face of the of the record. For the above reasons, no case whatsoever has been made out to entertain this Review Petition.

7 Before parting, we would agree with Mr. Sawant, learned Counsel for the Original Petitioner (Respondent No.6 herein), when he places reliance on the decision of the Supreme Court in ***Tamil Nadu Electricity Board and Another v/s. N Raju Reddiar and Another***[1] wherein the Supreme Court has deprecated the practice of litigants engaging a fresh set of Advocates to file and also argue matters in Review proceedings, without obtaining the consent of the Advocate who had appeared at the original stage. The Supreme Court in such decision, has observed as under:-

1 (1997) 9 SCC 736

"It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary to not that court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No.2670/96 in CA No.1867/92, a Bench of three Judges to which one of us, K. Ramaswamy,J., was a member, has held as under:

The record of the appeal indicates that Shri Sudarsh Menon was heard and decided on merits. The Review Petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That part, he has not obtained " No Objection Certificate" from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to file the Review Petition. Even otherwise, the Review Petition has no merits, It is an attempt to reargue the matter on merits. On these grounds, we dismiss the Review Petition".

8 In the above case, the Supreme Court dismissed the Review Petition with exemplary costs. In our view, the present case is not different and would completely fall in the nature of the proceedings which have been deprecated by the Supreme Court in the above judgement.

9 We would, accordingly fail in our duty if we simplicitor dismiss the Review Petition. The Review Petition is accordingly dismissed with costs of Rs.50,000/- (Rupees Fifty thousand only) to be deposited by the Petitioner, within a period of four weeks from today, with the Maharashtra Legal Services Authority. In the event, if such costs are not deposited, the Maharashtra Legal Services Authority shall take further steps to recover the said costs as arrears of land revenue.

10 Copy of this Order be forwarded to the Members, Secretary, Maharashtra State Legal Services Authority.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI , J.)**