Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 30 OF 2024
IN
WRIT PETITION NO. 451 OF 2024

Dattatray Balbhim Shinde and Ors. .. Petitioners

Versus

Sangli Urban Co-operative Bank Ltd. and Ors. .. Respondents

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- Mr. Surel Shah a/w. Mr. Ajit Alange and Mr. Amol Kanaki, Advocates for Petitioners.
- Mr. Vikram Walawalkar a/w. Mr. Amey Sawant and Ms. Sayali Gangal, Advocates for Respondent No.1 – Bank.

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CORAM : MILIND N. JADHAV, J.

RESERVED ON : JULY 22, 2024.
PRONOUNCED ON : JULY 24, 2024.

ORDER:

1. Heard Mr. Shah, learned Advocate for Petitioners and Mr. Walawalkar, learned Advocate for Respondent No.1 – Bank.

2. This Review Petition seeks review of the order dated 02.02.2024 passed by this Court while disposing of Civil Writ Petition No.451 of 2024.

3. The principal ground in the Review is that there is an error apparent on the face of record while passing the order dated 02.02.2024 and that error is so palpable that the Writ Petitioners had not disclosed to the Court a similar fact which has been considered by the Court while disposing of the said Writ Petition.

4. The facts in the present case are extremely serious as they amount a clear suppression and therefore the relevant necessary facts need to be quoted.

5. In Writ Petition No.451 of 2024, the judgment and order dated 26.10.2023 passed by the learned Divisional Joint Registrar, Co-operative Society, Pune in Revision Application No.97 of 2023 was challenged. One of the ground, rather the principal ground enumerated in the Writ Petition was that the Petitioner – Bank on 15.03.2023 had filed an Application challenging the maintainability of Review Application and had prayed for rejection of the Review Application as not being maintainable. The Writ Petitioner – Bank urge that the said Application dated 15.03.2023 ought to have been allowed. It is solely on this very ground, present Writ Petition was filed and which was also agitated before this Court.

6. When the Writ Petition was heard by me on 02.02.2024, learned Advocate appearing for the Petitioners urged this very ground which has been noted by me in paragraph No.3 of my order considering that the Review Application was disposed of without passing any order on the maintainability by the impugned order dated 26.10.2023 on Application filed by the Petitioners and thereafter decide the Review Application No.97 of 2023. I held that in view of the aforesaid Application for maintainability of the Revision

Application having not been decided by the impugned order dated 26.10.2023 passed by the Revisional Authority did not stand to test in view of the specific provisions of Section 154-2(A) of the Maharashtra Co-operative Societies Act, 1960 (for short "**the said Act**") as under the said provision a deposit of 50% of the total amount of recoverable dues was an essential condition. Grievance of the Writ Petitioners before me was that this essential condition under the statutory provision was not complied with and therefore the impugned dated 26.10.2023 was bad in law.

7. However, on perusal of the averments made in paragraph Nos.12, 14 and ground (B) in the Writ Petition, it is gathered that the principal ground of the Petitioners was non decision of the maintainability Application dated 15.03.2023 by the Revisional Authority.

8. Today, when the Review Petition is taken up for hearing, it is urged by the Review Petitioner that the Application dated 15.03.2023 which was filed by the Petitioners is in fact decided comprehensively and stood rejected by the Revisional Authority by its order dated 30.06.2023 which is appended at Exhibit "C" – page No.28 of the Review Petition.

9. In view of the above, Respondents in the Review Petition who were the Writ Petitioners before me in Writ Petition. Petitioners had filed Affidavit-in-Reply giving certain reasons as to why and how they were not aware of the order dated 30.06.2023, but while arguing the matter, Mr. Walawalkar in his usual fairness would informed the Court that Review Petition deserves to be allowed and the impugned order dated 02.02.2024 deserves to be set aside in view of there being a clear apparent on the face of record with respect to the Petitioners having been stated that the maintainability Application was undecided. He would agree with the fact that after perusing the order dated 30.06.2023, it is clear that the said maintainability Application filed by the Writ Petitioners was indeed decided by the Revisional Authority and it stood dismissed.

10. In support of the Petitioners' case, Mr. Walawalkar would draw my attention to the Affidavit-in-Reply dated 18.06.2024 filed by one Mr. Rajendra Waskey, working as Branch Manager with the Petitioner No.1 – Bank. After narrating the details with respect to the reply in Review Petition, in paragraph No.8 it is stated that by the Petitioners that the Bank was under *bonafide* impression that the Application dated 15.03.2023 filed for taking objection to the maintainability of the Revision Application had remained undecided. On the basis of the roznama maintained by the office of Revisional Authority pertaining to the Revision Application No.907 of 2023. It is further urged that the said roznama would show that the decision taken on the Application filed by the Bank is not recorded and there is no mention of the same in the impugned final order.

11. In that view of the matter, the said roznama supports the contention of the Bank about the *bonafide* belief while approaching this Court about the decision on the maintainability Application. With respect to his submission in paragraph No.8 of the reply, it is seen and stated that the maintainability Application of the Bank was decided by the Competent Authority on 30.06.2023. It is not the case of the Bank that they were not served with or aware about the copy of the order dated 30.06.2023. Bank would simply attempt to suggest that the roznama did not record mention of the said maintainability Application having not been disposed of nor there was any recording thereof in the final order dated 26.10.2023 passed by the Competent Authority.

12. Thereafter, in paragraph No.10 of its reply, it is stated by the Bank that the decision of the maintainability Application was not within the knowledge of the concerned officers of the Bank and the Bank was not aware about the decision given by the Authority upon that Application and was under *bonafide* belief that the said Application was remained to be decided. In support of this submission, at Exhibit “A” to the Affidavit-in-Reply, roznama of the proceedings before the Revisional Authority is appended. It is suggested and also argued by Mr. Walawalkar that the roznama would support the contention of the Bank that there is no mention of the said roznama with respect to the decision given on 30.06.2023. Perusal of Exhibit "A" i.e. roznama would show that the Bank was annexed the roznama on 21.03.2023, 19.04.2023, 07.06.2023, 20.06.2023, 21.02.2024 and 28.02.2024. By annexing the aforesaid roznama, it is suggested by the Bank that since the date 30.06.2023 was not available and the Bank was not aware about passing of the said order.

13. With respect to the above submission of the Bank, if it was true that the Bank was indeed was not aware about passing of the order dated 30.06.2023, then after the passing of the order dated 02.02.2024, there was no reason for the Bank to remain quiet upto 18.06.2024, when they filed their Affidavit-in-Reply to the Review Petition. Once Bank was aware about of the fact that order dated 30.06.2023 was passed, it was the duty of the Bank to have come to the Court and inform the Court that the principal ground on which they had filed the Writ Petitioner and therefore the order dated 02.02.2024 ought to have been set aside. The Bank chose to do so. It remains until the Review Petitioners i.e. original Respondent Nos.1 and 2 are compelled to bring the above fact the notice of the Court. In the Affidavit-in-Reply filed by the Bank a very vague, insufficient and submissive reply given by the Bank wherein they have merely denied knowledge about the decision in their maintainability Application. It is extremely difficult to believe the Respondents and reply given by the Bank, the said reply inspires confidence of this Court while arguing the matter, Mr. Walawalkar argued that in so far as the Writ Petition was concerned, it was filed on the premise that the maintainability Application was undecided because that was the only material information given Advocate in Mumbai by the Bank and its Advocate from Sangli.

14. However, when the reply is perused, such is not the case pleaded by the Advocate. The Bank has in paragraph Nos.8 and 10 merely pleaded that the Bank was under *bonafide* impression and the concerned officers of the Bank did not have knowledge about the disposal of the maintainability Application filed by the Bank. There is no reference to the Advocate of the Bank having knowledge about the same in the Affidavit-in-Reply. Once that is the case, then Advocate for the Bank clearly had knowledge about passing of the order dated 30.06.2023. I say this because that is the precise argument advanced by Mr. Walawalkar in response to the Review Petition.

15. I do not wish to disbelieve Mr. Walawalkar since the Writ Petition has been filed on 16.12.2023 on behalf of the Bank. What I find that despite substantial proceedings being conducted between the parties in the entire calendar year 2023, it is unfathomable to believe the case of the Bank that they were unaware about the order dated 30.06.2023. Because of the negligence of the Bank in filing an incorrect and false Writ Petition in this Court, this Court passed the order dated 02.02.2024 remanding the matter beck to the Competent Authority. However, irreparable damage to the case of the Review Petitioner in filing the present Review Petition to place on record the copy of the decision and order dated 30.06.2023 and informing the Court that the Bank had suppressed the same from this Court cannot be disregarded. Equally, it is the responsibility of either the Bank or its Advocate to ensure that there is no suppression is made by the Bank. *Prima facie*, it is urged to the Court that suppression happened because of a *bonafide* belief of the concerned officers of the Bank.

16. Perusal of the order dated 30.06.2023 clearly shows that the said order has been served upon the Petitioner No.2 i.e. the Recovery Officer of the Bank who represents the Bank. The said order is a reasoned order after taking into account the submissions made by both the parties.

17. In view of the above, while giving benefit of doubt to the Advocates of the Bank who have filed the Writ Petition, it appears that they were clearly not aware about passing of the order dated 30.06.2023, I am not able to persuade myself to pardon the Bank for the said reason. That apart, as delineated herein above, even after passing of the order dated 02.02.2024, the Bank remained quiet and did not approach this Court to show its *bonafides* and point out the order dated 30.06.2023. False and incorrect pleadings do not deserve any place in the Courts of law. On the basis of false pleadings, any order passed by the Court leads to severe detrimental of the affected party. Infact, when the order dated 02.02.2024 was passed by me, I had specifically in paragraph No.3 noted that the facts in the present case were extremely gross as narrated by Mr. Walawalkar and therefore I did not find it fit to issue notice to the Respondents at that time. However, if the Respondents would have been issued notice this fact would have come to my knowledge about the principal grievance made by the Bank that the maintainability Application filed by the Bank was already decided. However, as stated herein above, I do not impinge anything against the Advocates of this Court who have filed the Writ Petition, since on perusal of the copy of the Writ Petition, I am of the clear opinion that they were clearly not aware or made aware about the passing of the order dated 30.06.2023.

18. The Writ Petition is filed in the month of December 2023. It is the duty of the Bank and the Advocate of the Bank who has been their to have disclosed all the details.

19. Similar case also heard and decided by me recently on 01.03.2024 in the case of ***Pravin Pralhad Gaikwad and Ors. Vs. Rakhamabai Dashrath Dhawade and Ors.*** in Writ Petition No.13261 of 2023. In that case also the Advocate had forwarded incorrect and false copies of the pleadings which was filed in this Court and ad-interim relief was secured. The stay remained for six months after which at the time of hearing of the Writ Petition for interim relief, the Respondents pointed out to the Court that the entire Writ Petition was filed on the basis of fabricated and forged documents which were not the documents before the Trial Court. After due comparison, this Court found that the submissions made by the Respondents therein were true and therefore this Court passed strictures and orders against the concerned Advocate from Pune who had infact forwarded the copies to his counter part Advocates in Mumbai for filing the Writ Petition. In that case, both set of Advocates filed their undertaking and apology to this Court for what had transpired, despite which this Court after accepting the same directed the Petitioners to pay exemplary costs of Rs.2,00,000/-. This was only to show that a strong message is sent across to the Advocates and parties who are guilty of such gross dereliction and suppression.

20. In the present case, Affidavit-in-Reply of the Bank has merely stated that the concerned officers of the Bank were not aware about the passing of the order dated 30.06.2023. This is an insufficient reply, unbelievable in the facts of the case and is rejected. The Bank and its Recovery Officer have run from pillar to post to take physical possession of the property by approaching the Collector, SDO, Tahasildar and Statutory Officers in that period. However, while making oral submissions, Mr. Walawalkar would submit to the Court that the Advocate who had forwarded the papers to the counter part Advocate in Mumbai to file Writ Petition had never forwarded the order dated 30.06.2023 nor informed the Mumbai Advocate about the same. The name of the Advocate is not disclosed and is missing in the Affidavit-in-Reply of the Bank filed in the Review Petition. The Bank cannot be let of so easily since there is a clear dereliction on the part of the Bank and/or its Advocates. Since the name of the Advocate is not mentioned, I cannot issue any process to the concerned Advocate. However, the conduct of the Bank and its Advocate from Sangli, is something which cannot be disregarded and ignored by this Court. It is deprecated by the Court as the Court is misled by the Bank and the Recovery Officer. It is unbelievable that the Bank was not aware of the order dated 30.06.2023. This is because, it could have agitated the issue before the Revisional Court in the Revision Application. It did not do so. This is crucial as what was prayed in the maintenance Application was that a 50% pre deposit before hearing the Revision Application was mandatory. Even after the passing of order dated 02.02.2024, if the Bank would have moved the Revisional Court, it would have been informed about the order dated 30.06.2023. It remained silent until the Review Petition was filed.

21. The Bank is therefore directed to pay exemplary costs of Rs.1,00,000/- (Rs. One Lakh Only) to the Kirtikar Law Library, High Court, Mumbai which shall be paid by the Bank within a period of one week from today.

22. In view of the above, the order dated 02.02.2024 passed by this Court is recalled.

23. Writ Petition No.451 of 2024 is restored to the record and file of this Court.

24. With the above directions, Review Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK UGALMUGALE Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2024.07.24 11:59:37 +0530