
(2016) 11 KL CK 0081

In the High Court Of Kerala

Case No : WA.NO. 895 OF 2016 In RP.981/2014

Tom Thomas

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 30-11-2016

Acts Referred:

Contract Act, 1872 — Section 128, Section 140, Section 141

Citation : (2017) 1 KerLJ 270

Hon'ble Judges : Mr. Mohan M. Shantanagoudar, CJ. and Mr. Sathish Ninan, J.

Bench : Division Bench

Advocate : Sri. P.K. Suresh Kumar (Sr.) and Sri. Brijesh Mohan, Advocates, for the Petitioner; Sri. Alexander Joseph, Advocate, for the Respondent No. 3; Sri. K.K. Chandran Pillai (Sr.) and Smt. S. Ambily, Advocates, for the Respondent No. 1; Sri. A. Sudhi Vasudevan

Final Decision : Dismissed

Judgement

Mr. Sathish Ninan, J. - The appeal is directed against the order dated 08.04.2016 in R.P No.981 of 2014 in W.P.(C) No.8259 of 2009, by the petitioners in the writ petition who were respondents 1 and 2, in the Review Petition.

2. The subject matter relates to the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act). The first respondent in the appeal is the secured creditor, who is the 1st respondent in the writ petition and the petitioner in the review petition. The second respondent company was the borrower. The appellants were the original Directors of the second respondent company. They have guaranteed the due repayment of the credit facilities. The third respondent in the appeal is the assignee of the shares of the appellants in the second respondent company. For the sake of convenience, hereinafter, the appellants are referred to as guarantors; the 1st respondent as the creditor; the 2nd respondent as the borrower company; and the 3rd respondent as the 3rd respondent.

3. From the year 1994, various credit facilities were availed of by the borrower company from the creditor bank. Towards security for the credit facilities, immovable properties of the borrower company, as well as of the guarantors were equitably mortgaged in favour of the creditor. While so, as is seen from the records, as per Exts.P1 and P2 share transfer forms, the shares held by the guarantors in the company were transferred by them to the third respondent. Since the accounts became irregular and non-performing assets, proceedings were initiated by the creditor for recovery of the debt under the SARFAESI Act. Notices under Section 13(2) of the SARFAESI Act dated 26.11.2008, marked as Exts.P3 and P4, were issued by the creditor. Since the amounts as demanded were not paid and the liabilities were not settled, the creditor continued with the steps under the SARFAESI Act. The proceedings under the SARFAESI Act were sought to be intercepted by the guarantors/appellants by filing the writ petition.

4. The contention of the guarantors in a nut-shell is that, the borrower company and its assets are to be proceeded against by the creditor bank initially, for recovery of its debts and the guarantors and their assets should be proceeded against only for the balance amounts, if any, remaining unsatisfied from the assets of the borrower company. Towards security for the credit facilities availed by the borrower company, immovable properties belonging to the company were mortgaged in favour of the creditor bank. The properties mortgaged by the guarantors are residential properties. The entire loan amounts could be recovered by the creditor from the assets of the borrower company, and that if there is any balance amounts due to the creditor bank after proceeding against the borrower company, then only the guarantors/appellants and their assets are to be proceeded against. There was a further contention for the guarantors that pursuant to Exts.P1 and P2 share transfer agreements, on 20.12.2006 all the shares held by the guarantors, who were the erstwhile Directors of the company, were sold by them to the third respondent. As per clause 4(a) of Ext.P1 agreement, the third respondent who is the purchaser, had undertaken to take over all the liabilities due from the borrower company to the creditor bank. It is further alleged that the creditor bank was made aware of Exts.P1 and P2 share transfer agreements and that the creditor bank had assured the guarantors/appellants that no action will be taken against them. Exhibit P5 dated 12.12.2008 is a letter stated to have been sent by the guarantors to the creditor bank in reply to Exts.P3 and P4 notices. In Ext.P5, it is stated that the guarantors are discharged from the liability to the bank consequent to the transfer of the company by them to the third respondent and that the consent of the bank had been obtained to the said effect. The receipt of Ext.P5 has been denied by the creditor bank in their statement dated 24.03.2009 and also in their counter affidavit dated 22.05.2009. There is no material on record to conclude that Ext.P5 had been sent to the creditor bank and it was received by them or that what is stated therein has been agreed to by the Bank. It is seen that the said contention was not pursued by the guarantors before the learned single Judge.

5. The creditor bank contended that the relief as sought for in the writ petition is

not liable to be granted. The Bank cannot be compelled to proceed against any particular item of property or exhaust its remedies against any properties before proceeding against any particular item of security. It is further contended that though notices were issued under Section 13(2) of the SARFAESI Act, the guarantors have not even replied to the same. According to the bank, an original application has been filed by the bank before the Debt Recovery Tribunal, Ernakulam for recovery of the debt as per which, as on 19.01.2009, an amount of 2,12,66,919/- was due. It is further contended by the bank that notices under Section 13(4) of the SARFAESI Act were also issued by the bank. In view of the effective alternative remedy provided for under the SARFAESI Act by way of an appeal before the Debt Recovery Tribunal, the writ petition is not liable to be entertained, was the contention.

6. The learned single Judge, as per the judgment dated 05.06.2009, found that the steps initiated by the creditor bank is strictly in conformity with the relevant statutory provisions. It was further held that the proceedings initiated by the creditor bank under the SARFAESI Act is against the secured assets and hence the writ petition is not maintainable. However, taking note of the submission of the learned counsel for the guarantors/appellants expressing their earnestness to settle the liability and that the only attempt is to save the residential property, the court passed the following directions.

"However, taking note of the submission made by the learned counsel for the petitioners asserting that the petitioners earnestly want the liability to be cleared and that the only attempt is to save the residential property, if possible, this Court declares that the sale can be go on as scheduled; but the residential portion will be put to sale, only if the sale of the other extents of property to be conducted prior to the sale of the residential portion does not fetch adequate amount to satisfy the entire outstanding liability. With the above observation interference is declined on merits and the writ petition is disposed of."

7. Therefore, the learned single Judge though negatived the claims of the appellants/guarantors, by the concluding portion of the judgment quoted supra, the relief as prayed for was in effect granted.

8. The judgment as above was passed on 05.06.2009. Five and a half years later, on 04.12.2014, the first respondent in the writ petition, namely the creditor bank, filed R.P No.981 of 2014 seeking review of the judgment dated 05.06.2009 in W.P.(C) No.8259 of 2009, accompanied by an application numbered as C.M. Appl. No.396 of 2014, to condone the delay of 1942 days in filing the Review Petition. The Review Petition was filed for recalling the direction in paragraph 5 of the judgment wherein the Court directed that the residential property shall be put to sale only if the sale of other items of properties do not fetch adequate amount to satisfy the entire outstanding liability. It is stated in the review petition that though attempts were made pursuant to the judgment in the writ petition for sale of the other items of properties, the same did not turn out to be fruitful consequent to various hurdles that came in the way. It is alleged that

proceedings against the other properties for sale could not be effected on account of interference, obstructions and hurdles caused by the appellants/ guarantors and the third respondent. The creditor bank refers to the various proceedings it had to come across in the process of its attempt to bring the other secured assets for sale, namely, the proceedings in S.A No.402 of 2009 filed before the Debt Recovery Tribunal by the appellants; the interim order of stay granted by the Debt Recovery Tribunal; S.A No.468 of 2009 before the Debt Recovery Tribunal; the delay in getting the Securitisation Appeals disposed of, which necessitated the bank filing O.P(DRT) No.1 of 2014; the institution and pendency of W.P.(C) No.13026 of 2014, which also, according to the creditor bank, was caused to be filed at the instance of the debtors; and W.P.(C) No.24768 of 2014, W.P.(C) No.29239 of 2014 and W.P.(C) No.24268 of 2013 before this court. Thus, the bank refers to various litigations which interfered with the steps for sale of other items of properties. According to the creditor bank, the steps for sale of the other items of properties were being interfered with by or at the instance of the debtors on one ground or other, and in view of the order interdicting the creditor bank from proceeding against the residential properties, the bank is not entitled to proceed with further steps for realisation of the debt due to the bank and hence the Review Petition was necessitated.

9. As mentioned, there was a delay of 1942 days in filing the Review Petition. In the affidavit filed in support of the application, the deponent who is the Chief Manager of the Stress Assess Management Branch of the bank, has sworn to regarding the hurdles faced by the bank as referred to above, while attempting to proceed for sale of the properties, excluding the residential properties, in terms of the directions of the learned single Judge and also the inability faced by the bank in selling the same. It is stated that though SARFAESI proceedings commenced in the year 2008, not even a single paise is recovered till date and that as on December, 2014, the dues are more than 4.75 Crores. The delay in filing the Review Petition has occurred consequent to the proceedings taken by the creditor bank against the other properties in terms of the judgment of the learned single judge, though were futile.

10. The learned single Judge, as per common order dated 08.04.2016, condoned the delay in filing the review petition and allowed the Review Petition. The order on the Review Petition is under challenge in the writ appeal.

11. Heard the learned Senior Counsel Shri P.K. Suresh Kumar for the appellants, the learned Senior Counsel Shri K.K. Chandran Pillai for the first respondent and Shri Alexander Joseph, for respondents 2 and 3.

12. It is argued by the learned Senior Counsel for the guarantors that, the learned single Judge went wrong in reviewing the judgment dated 05.06.2009 in W.P.(C) No.8259 of 2009 since none of the grounds required under Order 47 of the Code of Civil Procedure exists in the instant case. According to the learned Senior Counsel, the powers of review can be exercised only in the specific contingencies as enumerated under Order 47 Rule (1) of the Code of Civil

Procedure. The exercise of power by the learned single Judge in reviewing the judgment dated 05.06.2009 beyond the provisions of Order 47 of the Code of Civil Procedure is illegal and liable to be interfered with. It is further contended that apart from the residential properties of the guarantors, the company who is the borrower has sufficient assets which are mortgaged in favour of the bank and that the same could be proceeded against for realisation of the debt due to the bank. The residential properties may be proceeded against only after exhausting the remedy against the other secured assets, is the contention.

13. We do not think that any of the grounds urged by the learned Senior Counsel are liable to be sustained. On the merits of the Review Petition, it is to be noticed that the very prayer of the guarantors is essentially for a direction to the creditor bank to proceed against certain other items of secured assets initially, and to proceed against the residential properties only thereafter. Law is well settled that the debtor cannot dictate to the creditor as to the manner in which the debt is to be recovered. It is for the secured creditor to choose the best and easily realisable mode of recovery of the debt as permitted under law. Guarantees and other securities in the form of collateral securities and otherwise are taken by the creditors in order to ensure that the credit granted to the borrower could be easily and speedily recovered. A creditor bank which deals with public money, owes a duty and responsibility to the public at large to see that the debt is sufficiently secured and that the debt is realised as expeditiously as possible in case of violation of the terms of the facility. The borrower and the guarantor offer and provide securities on their assurance that the same can be proceeded against for realisation of the debt. No restrictions are imposed at the time of offering the assets and securities, towards security for the credit facilities. When it comes to the point of recovery, neither the debtor nor the guarantor is entitled to contend that a particular property or a particular mode of recovery is to be adopted by the creditor for recovery of the debt. There is no logic in contending so. If the guarantor or the borrower had brought the said claims/contentions to the notice of the creditor, under normal circumstances the creditor would never have agreed for grant of the credit at all. The claim as raised, goes against the very purpose and intent of accepting security and guarantee. All legally permitted methods are available to the creditor to proceed against, for recovery of the debt. There is no equity to contend otherwise. The principle of equity is not a one sided formula. It would be worthwhile to refer to certain provisions of the Indian Contract Act while dwelling into the issue at hand, which read:

"128. Surety's liability:-The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

140. Rights of surety on payment or performance:-Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

141. Surety's right to benefit of creditor's securities:-A surety is entitled to the

benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security"

14. The liability of the surety is co-extensive with that of the principal debtor. The guarantor is by virtue of the obligation under the guarantee assured to the creditor, bound to pay off the liability due to the creditor. His right is to proceed against the principal debtor for realisation of the amounts. He is, under law entitled to all the securities that the creditor had as against the principal debtor. The guarantor, in paying off the creditor is only acting in terms of the assurance given by him to the principal debtor.

15. At this juncture, it would be apposite to refer to the judgment of the Apex Court in *Bank of Bihar v. Damodar Prasad* (AIR 1969 SC 297) wherein, the rights of a creditor as against a borrower and surety were succinctly stated. The Apex Court discussed about the very object and purpose behind the reason for taking securities and sureties to secure a debt. The Apex Court referred to the words of Lord Eldon in *Wright v. Simpson* (1802)6 Ves Jun 714 at p. 734= 31 ER 1272 at p. 1282:

"But the surety is a guarantee; and it is his business to see whether the principal pays, and not that of creditor."

16. It is the duty of the surety to see that the debt is paid. The Apex Court has held that liability of the surety being co-extensive with that of the principal debtor, the surety become liable to pay the entire debt and further that liability of the surety is immediate. It is not deferred till the remedy against the principal debtor is exhausted by the creditor. It is further held that the surety does not have any right to dictate to the creditor asking him to pursue his remedies firstly against the principal debtor and to defer the proceedings against him. To quote the words of the Apex Court in *Bank of Bihar v. Damodar Prasad* (supra) :

"The injunction upon the creditor not to proceed against the surety until the creditor has exhausted his remedies against the principal is of the vaguest character. It is not stated how and when the creditor would exhaust his remedies against the principal. Is the creditor to ask for imprisonment of the principal? Is he bound to discover at his peril all the properties of the principal and sell them; and if he cannot, does he lose his remedy against the surety? Has he to file an insolvency petition against the principal?"

17. The Apex Court observed that it is the duty of the surety to pay the debt, and his rights on such payment being effected to the Creditor is in terms of Section 140 of the Indian Contract Act which provides that on such payment, he will be subrogated to the rights of the creditor and he shall be entitled to recover the entire amount from the principal debtor. Therefore, it is not as if the surety is put to any peril. It was on the assurance of the surety that the creditor ventured

to provide credit to the principal debtor. When it comes to the point of recovery or repayment of the said debt, it is open for the creditor or rather it is the right of the creditor to seek for realisation of the debt by resorting to the easiest recoverable mode and against the security which he considers as the most feasible one for effecting recovery. At the said point of time, neither the principal debtor/borrower nor the guarantor is entitled to dictate to the creditor as to the manner in which or as against which of the securities recovery proceedings are to be taken by the creditor. It is purely within the wisdom of the creditor to proceed in the manner in which he considers as the most suitable. Taking any other view would be putting the creditor who granted the loans on the assurance of repayment, to peril. The very object of securing guarantee and security would be defeated if the creditor is asked to postpone his remedies against the surety. To quote the words of the Apex Court in *Bank of Bihar v. Damodar Prasad* (supra):

"The security will become useless if his rights against the surety can be so easily cut down."

18. The debt itself is granted on the assurance of the surety that he will ensure repayment of the debt. Collateral securities in the form of equitable mortgage or otherwise are also given to secure the debt in order that the Creditor may proceed against all or any of them for realisation of the debt. Here it would be relevant to refer to the view taken by the Apex Court in *Union Bank of India v. Manku Narayanan* (AIR 1987 SC 1978). There the Apex Court held that in cases of decree covered by mortgage, the creditor/deGREE holder has to initially proceed against the mortgaged property and could then only proceed against the guarantor. However, in *State of Bank of India v. M/s. Indexport Registered* (AIR 1992 SC 1740) the three Judge Bench of the Apex Court held that *Manku Narayanan*" case (supra) was not correctly decided. It would be appropriate to quote certain observations of the Apex Court in *State of Bank of India v. M/s. Indexport Registered* (supra):

" It is the right of the decree holder to proceed with it in a way he likes. Section 128 of the Indian Contract Act itself provides that "the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

14. In *Pollock and Mulla on Indian contract and Specific Relief Act*, Tenth edition, at page 728 it is observed thus:

"Co-extensive.- Surety"s liability is co-extensive with that of the principal debtor.

A surety"s liability to pay the debt is not removed by reason of the creditor"s omission to sue the principal debtor. The creditor is not bound to exhaust his remedy against the principal before suing the surety, and a suit may be maintained against the surety though the principal has not been sued."

15. In *Chitty on Contracts 24th Edition Volume 2* at page 1031 paragraph 4831 it

is stated as under:-

"Prima facie the surety may be proceeded against without demand against him, and without first proceeding against the principal debtor."

16. In Halsbury's Laws of England Fourth Edition paragraph 159 at page 87 it has been observed that "it is not necessary for the creditor, before proceeding against the surety, to request the principal debtor to pay, or to sue him, although solvent, unless this is expressly stipulated for."

18. It will be noticed that the guarantor alone could have been sued, without even suing the principal debtor, so long as the creditor satisfies the Court that the principal debtor is in default.

19. In Jagannath Ganeshram Agarwala v. Shivnarayan Bhagirath, AIR 1940 Bom. 247, a Division Bench of the Bombay High Court, (Kania and Wassoodew JJ.) held that the liability of the surety is coextensive, but is not in the alternative. Both the principal debtor and the surety are liable at the same time to the creditors."

19. In A.P. State Financial Corporation v. M/s. Gar Re-rolling Mills (AIR 1994 SC 2151), the Apex Court has held that the defaulter does not have any legal or even a moral right to object to the mode of recovery taken by the creditor in accordance with law. It was held that there is no equity in favour of a defaulting party which may justify interference by the courts in exercise of its equitable extraordinary jurisdiction under Article 226 of the Constitution of India to assist it in not repaying its debts. The aim of equity is to promote honesty and not to frustrate the legitimate rights of the Corporation (in that case Financial Corporation) which after advancing the loan takes steps to recover its dues from the defaulting party. If there are several remedies available for the creditor, it is the choice of the creditor as to which remedy it is to pursue. Neither the defaulter nor the guarantor could compel the creditor to take recourse to any particular form of remedy or as against particular security. That falls within the exclusive domain of the creditor. The said view has been reinforced by the Apex Court in a series of decisions including Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala ([2009] 9 SCC 478), United Bank of India v. Satyawati Tondon and Others ([2010] 8 SCC 110), Ram Kishan v. State of U.P. ([2012] 11 SCC 511) and Central Bank of India v. Vimla ([2015] 7 SCC 337),

20. To sum up, it is the prerogative of the creditor to proceed for recovery of its debt in any of the legally permissible modes and against the available securities. It is up to him to choose the easiest mode which according to him would enable him to realise his debt. The surety or the principal debtor do not have a right to dictate terms to the creditor as to how he should make recovery of its debt. The law as above is well crystallised.

21. Therefore, the very claim of the appellants/ guarantors is ex facie unsustainable. In view of the same, an enquiry into the correctness of the

contention of the creditor bank, about its inability as projected by it to proceed against the other secured assets in terms of the judgment of the learned single judge is not of any consequence. Suffice to hold that the very relief as sought for by the appellants in the writ petition itself is against law.

22. As regards the contention relating to power of review, that, apart from the provisions of Order 47 of the Code of Civil Procedure, no other grounds are available to review the judgment and that the learned single Judge has traversed beyond the provisions of Order 47 in the instant case in reviewing the original judgment, it would be profitable to refer to the provisions of Order 47, Rule 1 (1) of the Code of Civil Procedure:

"1. Application of review of judgment.-(1) Any person considering himself aggrieved-

(a) by a decree order from which an appeal is allowed, but from which no appeal has been preferred:

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court exercising small cause jurisdiction and who, from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of the judgment to the Court which passed the decree or made the order"

According to the learned senior counsel, Order 47 of the Code of Civil Procedure contemplates certain specified circumstances the existence of which alone entitles exercise of the power of review. They are:

1) Discovery of a new and important matter or evidence which, in spite of due diligence was not available nor was within its knowledge or could not be produced by him earlier.

2) Mistake or error apparent on the face of the record.

3) Any other sufficient reason.

It is argued that law is well settled that the term "any other sufficient reason" has to be read and understood as ejusdem generis or analogous to the earlier two contingencies. The learned senior counsel has also placed reliance on the judgment of the Apex Court reported in Kamlesh Verma v. Mayawati and Others ([2013] 8 SCC 320) in support of his contention. He argues that "any sufficient reason would only be taken as, a reason at least analogous to 1 & 2 above.

23. It is true that the power of review is the creature of a statute and is to be exercised only within the delineated limits. However, it would be pertinent to

refer to the judgment of the Apex Court in Board of Control For Cricket In India and Another v. Netaji Cricket Club and Others ([2005] 4 SCC 741) wherein the Apex Court has after referring to Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius (AIR 1954 SC 526), which emphasises the three specified grounds as stated above, on which the power of review could be exercised, proceeded to hold that the said Rule is not universal. The Apex Court referred to the judgment in Lily Thomas v. Union of India ([2000] 6 SCC 224) paragraph 52, which reads thus:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v Pradyumansinghji Arjunsinghji, held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue that transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error."

24. As observed by the Apex Court in Lily Thomas v. Union of India (supra) and accepted in Board of Control For Cricket In India and Another v. Netaji Cricket Club and Others (supra), justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. If a mistake, its perpetration of which shall result in miscarriage of justice nothing would preclude the court from rectifying the error. The Apex Court has in Board of Control For Cricket In India and Another v. Netaji Cricket Club and Others (supra) held that, depending on the circumstances, the court would even take into consideration a subsequent event to exercise its power of review. To quote the Apex Court, at paragraph 93, it held thus:

"93. It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event."

The Honourable Court has in fact affirmed the view taken in that regard in Rajesh D. Darbar v. Narasingrao Krishnaji Kulkarni ([2003] 7 SCC 219). Therefore, it cannot be doubted that the Court has power to review and mould the relief on account of developments subsequent to the suit or events occurring during the appellate stage in instances where the relief as claimed or granted turns obsolete or un-serviceable. This Court in Smt. Kamala Raphael v. Earnest & Others (2011[1] KLJ 286) has relied on Board of Control For Cricket In India and Another v. Netaji Cricket Club and Others (supra) and held:

"In *Rajesh D. Darbar v. Narasingrao Krishnaji Kulkarni* this Court noticed: (SCC.p.222,para 4) The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts."

25. As is evident from the facts as already detailed supra, the creditor bank, in terms of the directions given by the learned single Judge in the judgment dated 05.06.2009, was making every endeavour and attempt to proceed against the secured assets other than the residential properties, to take possession and bring them to sale and thus realise the debt due to the bank. However, for one reason or the other, the efforts did not fructify. The creditor bank referred to various litigations that it had to pursue before various Forums in its attempt to take possession of and bring the other secured assets to sale. As pointed out by them, all their efforts were in vain. Finally, having not been able to recover even a single paise, they are necessitated to proceed against the residential properties. Since the sale of the residential properties could not be conducted in view of the direction of the learned single Judge, left with no other alternative, the creditor bank was compelled to approach the learned single Judge, after 5? years, for deletion of the restriction imposed by the court, in proceeding against the residential properties. This is a circumstance or an event that has taken place subsequent to the judgment, which has necessitated the creditor bank to file the Review Petition. As noticed earlier, there could not have been a direction to defer the proceedings against the residential properties till the other secured assets are proceeded against. That itself constitutes an error apparent on the face of the judgment and is itself a ground for seeking review of the judgment. Apart from that, as stated above, the fact that repeated attempts of the bank to pursue sale of properties excluding the residential properties did not fructify compelled the bank to seek for review. This subsequent event had to be brought to the notice of the court or else the entire recovery proceedings would stand stultified. Therefore, that is also a sufficient ground enabling the creditor bank to seek for review of the judgment. Thus viewed in any manner the Review Petition was liable to be entertained and granted.

26. From the discussions as above, we hold that the order passed by the learned single judge in condoning the delay and allowing the Review Petition and further modifying the judgment in the writ petition, and the judgment in the writ petition as it stands pursuant to the review are perfectly in accordance with law.

27. We do not find any reason to interfere with the order passed by the learned single Judge in R.P.981 of 2014 modifying the judgment in W.P.(C) No.8259 of 2009. Accordingly, the Writ Appeal fails and is dismissed.