

**Before Shri R.S. Virk, District Judge (Retd.)
In the matter of PACL Ltd.**

File no. 629 (For review of order dated 22/10/2018 File No. 576)

Objector : Makhouse Infratech Pvt. Ltd. (Review petition)

Argued by : Shri Harsh Gautam, Advocate (Enrolment No. D-1537/2001)

Order :

1. (a) It may be noticed at the outset that vide order dated 02/02/2016, passed in civil appeal no. 13301/2015 bearing the title Subarata Bhattacharaya Versus Securities & Exchange Board Of India, the Hon'ble supreme court had directed constitution of a committee by SEBI to be headed by Hon'ble Mr. Justice R.M. Lodha former Chief Justice of India as its Chairman for disposing of the land purchased by PACL so that the sale proceeds recovered there from can be paid to the investors who have invested their funds in the company for purchase of the land.

(b) 2nd Status Report (Volume-I) of the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd) submitted before the Hon'ble Supreme Court, had at page 77 thereof, purposed as under :-

“It would be in the interest of the investors of the Company, that all objections based on documents purportedly executed after 02-02-2016 be scrutinized and then heard and disposed of by a retired Judicial Officer(s) assisted by requisite number of Advocates, appointed by the Committee.”

(c) The aforesaid proposal of committee was accepted by the Hon'ble Supreme Court.

2. (a) Subsequent thereto, I have been appointed by the said committee to hear objections/representations against attachments of various properties in the matter of PACL Ltd which appointment has been duly notified in SEBI Press release no. 66 dated 08/12/2017.

(b) My said appointment is also duly mentioned in the order dated 15/11/2017 (to be read with orders dated 13/04/2018, 02/07/2018 and 07/12/2018) of the Hon'ble Supreme Court in civil appeal no. 13301/2015 Subrata Bhattacharya Vs SEBI.

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3. In the review petition in hand, it is claimed in para 10 that it had submitted documents alongwith written submissions which form part of the records before the committee. This averment is factually incorrect because no documents were filed with the objection petition nor sought to be placed on record subsequently after seeking permission. A perusal of the file of objection petition no. 576 reveals that only the under mentioned orders were passed therein :-

(i) Order dated 11/09/2018 :-

This objection petition was submitted before SEBI on 24/08/2018 where from it has been received by post today. Issue notice at its email address info@makhouse.in and also through speed post at its corporate office address: 615 P, Sector-38, Gurugram- 122001 (Haryana) for 18/09/2018.

(ii) Order dated 18/09/2018 :-

To now come up for arguments on 28/09/2018. Request for longer date declined as my tenure is only up to 01/11/2018.

(iii) Order dated 28/09/2018 :-

The above named Rajesh Kumar Mishra requests adjournment on the ground that the counsel named Harsh Kumar Gautam for the objector company could not come present today. Adjournment request stands declined because this objection petition was instituted on 18/09/2018 and was listed for arguments for today i.e. 28/09/2018 in view of the fact that my tenure is only up to 01/11/2018 as per order of the Hon'ble Supreme Court dated 02/07/2018. Thirty six other objection petitions are pending for disposal as of today and several such objection petitions stand listed for orders up to 18/10/2018. Accordingly this case to now come up for orders on 22/10/2018.

(iv) Order dated 22/10/2018 :-

Vide my separate order of even date, the objection petition in hand has been dismissed. File be consigned to records.

4. The above orders would reveal that no written submissions were filed before me by the advocate concerned or by the objector. However, some papers seem to have been submitted in the office on behalf of the objector on 18/10/2018 which was not the date fixed in this case for any purpose whatsoever. Neither is any application appended thereto seeking permission to place them in record and nor was any order passed thereon for placing them on record and for which reason there was no occasion to take the said documents into consideration.

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5. Even otherwise, the above order dated 18/09/2018 would reveal that the request for a longer date beyond 28/09/2018 was specifically declined and yet another adjournment was made by a staff member of the objector company on 28/09/2018 which was again declined for the reasons detailed therein and the case was adjourned to 22/10/2018 for pronouncement of orders and on which date, after perusing the details contained in the objection petition, the order was duly pronounced on merits despite none having argued the matter on behalf of the objector.
6. The applicant objector has appended to the application in hand, copies of various bank transactions, but the same cannot now be taken into consideration because the order sought to be reviewed cannot in fact be reviewed by reappreciating the entire record more so when it is borne in mind that there is neither any inadvertent error nor any error apparent on record to warrant a review of the order in question dated 22/10/2018. Reference in this context may be made to the observations of the Hon'ble Supreme Court in the undermentioned cases with reference to the question as to under what circumstances plea for review can be entertained :-
- (i) In *Thungabhadra Industries Ltd. v. Govt. of A.P.* (1964) 5 SCR 174, another three-Judge Bench reiterated that the power of review is not analogous to the appellate power and observed:
- “A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out.”
- (ii) In *Aribam Tuleswar Sharma v. Aibam Pishak Sharma* (1979) 4 SCC 389, this Court answered in affirmative the question whether the High Court can review an order passed under Article 226 of the Constitution and proceeded to observe:
- “But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused

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with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

- (iii) In *Meera Bhanja v. Nirmala Kumari Choudhury* (1995) 1 SCC 170, the Court considered as to what can be characterised as an error apparent on the face of the record and observed:

“.....it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* AIR 1960 SC 137 wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

- (iv) In *Parsion Devi v. Sumitri Devi* (1997) 8 SCC 715, the Court observed:

“An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC..... A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.”

- (v) In *Lily Thomas v. Union of India* (2000) 6 SCC 224, R.P. Sethi, J., who concurred with S. Saghir Ahmad, J., summarised the scope of the power of review in the following words:

“Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised.”

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- (vi) In *Haridas Das v. Usha Rani Banik* (2006) 4 SCC 78, the Court observed:
“The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing “on account of some mistake or error apparent on the face of the records or for any other sufficient reason”. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict.”
- (vii) In *State of West Bengal v. Kamal Sengupta* (2008) 8 SCC 612, the Court considered the question whether a Tribunal established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed:
“At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.
The term “mistake or error apparent” by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3) (f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment / decision.”
- (viii) *Board Of Control For Cricket, vs Netaji Cricket Club & Ors* on 10 January, 2005 wherein it was reiterated *inter-alia* as under :-
"The courts can take notice of the subsequent events and can mould the relief accordingly. But there is a rider to these well established principles. This can be done only in exceptional circumstances, some

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of which have been highlighted above. This equitable principle cannot, however, stand in the way of the court adjudicating the rights already vested by a statute. This well settled position need not detain us, when the second point urged by the appellants is focused. There can be no quarrel with the proposition as noted by the High Court that a party cannot be made to suffer on account of an act of the Court.

There is a well recognised maxim of equity, namely, actus curiae neminem gravabit which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia, i.e. the law does not compel a man to do that what he cannot possibly perform".

7. Applying the above discussed proposition of law to the facts of the case in hand, it will be evident that the grounds put forth by the applicant society as raised in para 27 of the review petition would reveal that there is neither any "inadvertent error" committed while passing the order in question dated 22/10/2018 and nor is there any "error apparent on the face of record" to warrant any interference with the said order by way of review. Infact, review of the said order dated 22/10/2018 if undertaken by me would tantamount to my sitting in appeal over my own order which is impermissible as per the principles enunciated in state of West Bengal Versus Kamalsen Gupta reported in (2008) 8 SCC 612 (Supra) and the other case law adverted to above.
8. In view of the foregoing discussion, the review petition in hand is held to be devoid of any merit and is hereby dismissed.

Date : 27/02/2019


R. S. Virk
Distt. Judge (Retd.)

Note:

Two copies of this order are being signed simultaneously, one of which shall be retained on this file whereas the other one, also duly signed, shall be delivered to the objector as and when requested /applied for. No certified copies are being issued by this office. However, the orders passed by me can be downloaded from official website of SEBI at www.sebi.gov.in/PACL.html.

Date : 27/02/2019


R. S. Virk
Distt. Judge (Retd.)