Before Shri R.S. Virk, District Judge (RETD.)

appointed to hear objections/representations in the matter of PACL Ltd.
(as referred to in the orders dated 15/11/2017, 13/04/2018 and 02/07/2018
of the Hon'ble Supreme Court in civil appeal no. 13301/2015 Subrata Bhattacharya Vs SEBI,
and notified in SEBI Press release no. 66 dated 08/12/2017).

File no. 545 (For review of order dated 26/03/2018 File No. 241/1)

MR Nos. 17981-16, 17982-16, 17978-16, 17979-16, 17980-16, 17998-16, 17999-16, 18000-16, 18001-16, 5129-15, 5130-15, 5131-15, 5132-15, 5133-15, 5134-15, 5135-15, 5136-15,413-16, 419-16, 17985-16, 17986-16, 17987-16, 17988-16,17989-16, 17990-16,17991-16,17992-16, 17993-16, 17994-16,17995-16, 17996-16,17997-16.

Objector : Lotus Agricultural & Marketing Cooperative Society Ltd.

Argued by : Shri Rajesh Tyagi, Advocate (Enrolment No.D/240-C/91)with Shri Harsh Kumar Gautam, Advocate (Enrolment No. D-1537/2001) and Hareram Sah, CEO/Director of applicant society

Order :

1. This application was addressed by the objector above named on 08/06/2018 to Hon'ble Mr. Justice (Retd.) R.M. Lodha, in the matter of PACL Ltd seeking review of my order dated 26/03/2018 passed in File No. 241/1 (Catalogue No 200) whereby the objection petition dated 20/02/2018 earlier addressed by it to the Nodal Officer cum Secretary to Justice R.M. Lodha (Retd.) Committee in the matter of PACL was dismissed by me vide aforesaid order dated 26/03/2018.

2. Vide forwarding letter dated 17/07/2018 of the Nodal Officer cum Secretary to Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd.), the above referred review application was forwarded to me for further necessary action in the matter.

3. I have heard the learned counsel for the applicant objector. The applicant Society seeks review of the order in question dated 26/03/2018 inter-alia on the following grounds which are being dealt with simultaneously and seriatum hereunder :-

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(a) That it is submitted that the Committee had neither ordered production of any document and nor had it ever notified the applicant of any such requirement.

The above contention is untenable because it was nowhere required of the committee to advise the objector as to what all documents to produce in support of his claim.

(b) The applicant possessed all necessary documents relating to its claim and is ever ready to produce the same before the Committee.

This contention is also meritless because whatever documents were considered relevant by the objector to support his claim should have been appended to the objection petition.

(c) That the petitioner is producing all the documents as indicated and specified in the order dated 26/03/2018, once again in the indicated format alongwith this petition vide separate index of documents.

This contention again has no merit because the production of documents after decision of the objection petition vide order dated 26/03/2018 involves review on merits which legal aspect is being dealt with in detail in the forthcoming paras.

(d) That the applicant is ready to produce and undertakes to produce any document in its possession before this Committee in support of its claim as and when directed by this Committee.

Qua this ground, it suffices to mention that the production of documents after decision of the objection petition vide order dated 26/03/2018 involves review on merits which legal aspect is being dealt with in detail in the forthcoming paras.

(e) That at the outset, the applicant submits that it is a cooperative society which had purchased all the properties from different companies much before the restraint orders were passed in the case by the Hon'ble Supreme Court against transfers of the lands by PACL and that all payments have been made through valid channels like RTGS and few cash payments were also made. It was claimed inter-alia that there are registered sale deeds of the transactions, and even in two cases where sale deeds could not be executed despite payment of sale considerations, all payments are made on verifiable records.

This contention cannot be readily accepted because even as per the account statement for the period 01/04/2013 to 30/04/2013 of the applicant society maintained with Bank of Baroda vide account no.129XXXXXXXX894 never exceeded a balance of nine crores statedly collected by the applicant society from its members numbering 42,424 whereas the total sale consideration involved in the sale deeds referred to in para 3 (i to vi) of my order dated

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26/03/2018 comes to Rs.62,51,19,022/- (Sixty two crores fifty one lakhs nineteen thousand and twenty two). Such vide disparity on the financial aspect has its own implications specially in the light of observations of the Hon'ble Supreme Court in the case titled Valliammal (D) By LRs versus Subramaniam and others reported in (2004) 7 Supreme Court Cases 233 wherein the Apex Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

"(i) the source from which the purchase money came;
(ii) the nature and possession of the property, after the purchase;
(iii) motive, if any, for giving the transaction a *benami* colour;
(iv) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;
(v) the custody of title deeds after the sale; and
(vi) the conduct of the parties concerned in dealing with the property after the sale."

(f) The applicant is a bonafide purchaser of the lands for proper and sufficient consideration and without notice of any dispute existing or future.

This aspect has already been dealt with in the order dated 26/03/2018 now sought to be reviewed because it would tantamount to my sitting in appeal over my own order which is impermissible in view of the legal proposition emerging in the forthcoming paras of this order.

4. It is argued inter-alia that the total sale consideration to the tune of Rs.36,54,44,312/- (Thirty six crores fifty four lakhs forty four thousand three hundred and twelve) involved in purchase of properties in question by the applicant society comprised of funds collected from 42,424 members spread over Delhi, Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab and Rajasthan. This plea is partially incorrect on facts also because the total sale consideration involved in the sale deeds referred to in para 3 (i to vi) of my order dated 26/03/2018 comes to Rs.62,51,19,022/- (Sixty two crores fifty one lakhs nineteen thousand and twenty two). Moreover, as per the account statement for the period 01/04/2013 to 30/04/2013 of the applicant society maintained with Bank of Baroda vide account no.129XXXXXXXX894, its balanced never exceeded an amount of nine crores which was statedly collected by the applicant society from its members numbering 42,424 whereas the total sale consideration involved in the sale deeds comes to Rs.62,51,19,022/- (Sixty two crores fifty one lakhs nineteen thousand and twenty two). Such vide disparity on the financial aspect has its own implications.

5. Besides citing Bhikji Keshao Joshi and another Versus Brijlal Nandlal Biyani and others reported in AIR 1955 SC 610; Tirath Singh Versus Bachittar Singh and others reported in AIR 1955 SC 830; Balwan Singh Versus Lakshmi Narain and others

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reported in AIR 1960 SC 770 ; State of Orissa Versus Dr. (Miss) Binapani Dei and others reported in AIR 1967 SC 1269; Sahi Ram Versus Avtar Singh and others reported in (1999) 4 Supreme Court Cases 511; Sardar Harcharan Singh Brar Versus Sukh Darshan Singh and others reported in (2004) 11 Supreme Court Cases 196 and Alagaapuram R. Mohanraj and others Versus Tamil Nadu Legislative Assembly reported in (2016) 6 Supreme Court Cases 82, the learned counsel for the applicant also relies on observations of the Hon'ble Supreme Court in Grindlays Bank Ltd. Versus Central Government Industrial Tribunal and others reported in 1981 Supreme Court Cases (L&S) 309 wherein it was held inter-alia as under :-

> "Different considerations arise on review. The expression 'review' is used in two distinct senses, namely
> (i) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and
> (ii) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal."

6. Reference may at this stage be also 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 Tuleshwar 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:

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"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 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 fact 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.

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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."

(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 of which have been highlighted

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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 reproduced in para 3 of this order above reveal that there is neither any "inadvertent error" committed while passing the order in question dated 26/03/2018 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 26/03/2018 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 : 26/10/2018

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 : 26/10/2018

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