

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. 593 (For review of order dated 05/01/2018 File No. 146/4) MR No. 5551-15

Applicant objector : Dinesh Kumar

File no. 594 (For review of order dated 05/01/2018 File No. 146/5) MR No. 5549-15

Applicant objector : Krishna

File no. 595 (For review of order dated 05/01/2018 File No. 146/6) MR No. 5549-15

Applicant objector : Rajwanti

All three review applications argued by : Sri Prateek Yadav, Advocate, Delhi
(Enrol No. D/3492/2010)

Order :

1. This common order will dispose off the three review applications detailed above.
2. (a) Application no. 593 has been filed by Dinesh Kumar above named on 28/09/2018 seeking recall of my order dated 05/01/2018 passed in File No. 146/4 (uploaded as catalogue no. 16) whereby the said objection petition dated 04/11/2017, addressed to the Nodal Officer cum Secretary to Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd was dismissed by me.

(b) Review of the above referred order dated 05/01/2018 is sought on the ground that the previous advocate of the applicant objector did not produce on record the original documents viz, copy of registered sale deed no. 2715 dated 18/02/2015, certified bank statements pertaining to transactions towards payment of sale consideration for the property in question and certified copy of mutation/Jamabandi based on the aforesaid sale deed in favour of the objector which may now be looked into.
3. (a) Application no. 594 has been filed by Krishna above named on 28/09/2018 seeking recall of my order dated 05/01/2018 passed in File No. 146/5 (uploaded as catalogue no. 17) whereby the said objection petition dated 04/11/2017, addressed to the Nodal Officer cum Secretary to Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd was also dismissed by me.

R.S. Virk
15/10/18

(b) Review of the above referred order dated 05/01/2018 is sought on the ground that the previous advocate of the applicant objector did not produce on record the original documents viz, copy of registered sale deed no. 2720 dated 18/02/2015, certified bank statements pertaining to transactions towards payment of sale consideration for the property in question and certified copy of mutation/Jamabandi based on the aforesaid sale deed in favour of the objector which may now be looked into.

4. (a) Application no. 595 has been filed by Rajwanti above named on 28/09/2018 seeking recall of my order dated 05/01/2018 passed in File No. 146/6 (uploaded as catalogue no. 18) whereby the said objection petition dated 04/11/2017, addressed to the Nodal Officer cum Secretary to Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd was similarly dismissed by me.

(b) Review of the above referred order dated 05/01/2018 is sought on the ground that the previous advocate of the applicant objector did not produce on record the original documents viz, copy of registered sale deed no. 2718 dated 18/02/2015, certified bank statements pertaining to transactions towards payment of sale consideration for the property in question and certified copy of mutation/Jamabandi based on the aforesaid sale deed in favour of the objector which may now be looked into.

5. I have heard the learned counsel for the objector applicants.

6. (a) It may be noticed at the outset that in all the three objection petitions detailed above, the reasons given for dismissal of the said objection petitions regarding the purported vendor viz Worldwide Township Projects Ltd, (previously known as Worldwide Township Projects Pvt. Ltd) having been a subsidiary of PACL as per entry at Sr. No. 595 of the list of subsidiaries/associates of PACL forwarded by PACL itself vide its letter dated 20/08/2016 in response to letter dated 08/08/2016 of the then Nodal Officer cum Secretary, Justice (Retd.) R.M. Lodha Committee, in the matter of PACL Ltd is nowhere shown to be incorrect.

(b) Similarly, my further observation in the said order that no document has been placed on record to establish that Worldwide Township Projects Ltd. was recorded in any revenue record to be the owner of the land sold by it to the objector is nowhere claimed or shown to be factually against documents on record of objection petition nos. 146/4 to 146/6.

Rajwanti
15/10/18

7. The documents now produced on record with the review petition cannot be acted upon with retrospective effect by reading the same into the objection petition nos. 146/4 to 146/6 because that would tantamount to admitting them by way of additional evidence which plea, after the passing of the order in question dated 05/01/2018, cannot be entertained by me.
8. Reference may in this context be made to the undermentioned cases and the observations of the Hon'ble Supreme Court therein 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 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

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15/10/18

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.”

(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


R.A. Amb
15/10/18

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.”

9. Coming to the facts of the case as referred to in paras 5 & 6 above, it needs to be pointed out that keeping in view the documents on record as on the date of passing of the order in question dated 05/01/2018, there is neither any inadvertent error in the said orders nor any error apparent on the face of record to warrant a review thereof on merits. Infact, review of the said order 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).
10. In view of the foregoing discussion, all the three applications in hand seeking review of my earlier order dated 05/01/2018 passed in objection petition nos. 146/4, 146/5 and 146/6 are hereby dismissed.


Date : 15/10/2018


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 : 15/10/2018


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