

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RA No.6-LPA of 2015 in
LPA No.392 of 2013
Date of decision: 06.02.2015**

**The Haryana Officers Cooperative Group Housing Society Limited
....Appellant**

versus

**The State of Haryana and others
....Respondents**

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present:- Mr. M.S. Kang, Advocate, for the applicant-appellant.

DEEPAK SIBAL, J.

Through the present application, the applicant seeks review of the order dated 02.12.2014 passed by us in LPA No.392 of 2013 titled as 'The Haryana Officers Cooperative Group Housing Society Limited versus The State of Haryana and others.'

No error in the judgment within the framework of the provisions of Order 47 Rule 1 Code of Civil Procedure 1908 has been pointed out, either in the application or at the time of arguments.

At the time, when the main appeal was argued, learned counsel appearing on behalf of the applicant was heard at length and on the basis of arguments raised by him at the bar, the judgment under review was delivered by us.

While arguing the present application, counsel for the applicant argued that the order of the Registrar dated 15.05.2008, which has been primarily made the base to reject the case of the applicant was prospective

in operation and therefore, the same could not have been made the basis for ordering refund of the already collected transfer fee.

As observed above, this issue would not bring the present application within the ambit of provisions of Order 47 Rule 1 CPC for reviewing an order and as per the law settled by the Apex Court and also by this Court. Under the garb of a review application, the applicant cannot be allowed to re-argue his case. For this proposition of law, we may usefully refer to the following judgments of the Apex Court:-

The Hon'ble Supreme Court in the case of **Parsion Devi v. Sumitri Devi, 1997(4) RCR (Civil) 458 : (1997) 8 SCC 715,** has observed as under:-

“8. Under Order 47, Rule 1, Civil Procedure Code a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the record. 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. In exercise of the jurisdiction under Order 47, Rule 1, Civil Procedure Code it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise.”

In **N. Anantha Reddy v. Anshu Kathuria, 2013 (14) Scale 585,**

Hon'ble Supreme Court has ruled as under:-

“9. A careful look at the impugned order would show that the High Court had a fresh look at the

question whether the Appellant could be impleaded in the suit filed by respondent No.1 and, in the light of the view which it took, it recalled its earlier order dated 08.06.2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order dated 08.06.2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.”

In **Union of India v. Sandur Manganese & Iron Ores Ltd.,**

2013 (8) SCC 337: 2013(6) Scale 257, Hon'ble Supreme Court has ruled as under:-

“22. *It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not substitute a view.*

*In **Parsion Devi and others v. Sumitri Devi and others, 1997(4) R.C.R. (Civil), 458 : (1997) 8 SCC 715,** this Court held as under:-*

9. “Under Order 47 Rule 1 CPC a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. 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. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not

permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."

Again, in **Kamlesh Verma versus Mayawati and others, 2013**

(4) RCR (Civil) 75, paragraph 11 of the judgment is reproduced below:-

*"11. 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. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and correct, but lies only for patent error. This Court, in **Parsion Devi and others vs. Sumitri Devi and others., 1997(4) R.C.R. (Civil) 458 : (1997) 8 SCC 517**, held as under:*

*"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In **Thungabhadra Industries Ltd. v. Govt. of A.P.** This Court opined:*

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is distinction which is real, though it might not

always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.” (emphasis ours).

8. Again, in **Meera Bhanja v. Nirmala Kumari Choudhary** while quoting with approval a passage from **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma** this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 Civil Procedure Code.
9. Under Order 47 Rule 1 Civil Procedure Code a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. 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. In exercise of the jurisdiction under Order 47 Rule 1 Civil Procedure Code it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise.”

Further, the record reveals that the issue with regard to prospectivity of the order of the Registrar has not been raised by the applicant either before the learned Single Judge or even in the grounds of appeal. The relevant findings returned by the learned Single Judge have

already been reproduced by us in the judgment, the review of which is sought. The grounds of the Letters Patent Appeal are reproduced below:-

- “(i) Because the impugned order is wholly illegal being against the well known and well settled principles of law.*
- (ii) Because it is settled that before writ of mandamus or a direction can be issued the writ petitioners are required to establish that they have a legal right to the claim made and the respondent has the legal duty to allow the claim. The writ petitioners having failed to establish any legal right or duty the learned Single Judge has erred in law in allowing the writ petition and issuing direction to the society to refund.*
- (iii) Because order impugned in the writ petition does not suffer from any error of law leave alone patent error of law apparent on its face.*
- (iv) Because the learned Single Judge has erred in law in allowing the writ petition on the basis of directions issued and orders passed by the Registrar Cooperative Societies, Delhi under Rule 77 of the Delhi Cooperative Societies Rules which are not applicable to the societies registered under the Act. Registrar Cooperative Societies Haryana has no jurisdiction to rescind resolution passed by the GB of the society and has no jurisdiction to issue any direction to the society therefore it cannot be even remotely said that order of the Registrar was illegal because he did not issue direction to the appellant society to refund the amount received as transfer fee. The Registrar could not issue any direction unless he was empowered by law and he rightly did not issue any direction to refund.*
- (v) Because no reference regarding terms and conditions of sale agreement-purely a civil dispute- to which society is not a party is competent.*

(vi) *Because the learned Singly Judge gravely erred in law in not dismissing the writ petition in view of the misstatements and concealments made by the writ petitioners. They were not entitled to any relief because they did not approach this Hon'ble Court with clean hands. They deliberately concealed the all important fact of their having agreed to pay the transfer fee in place of the vendor as per terms and conditions of their agreement to sell and having voluntarily paid the same. They have deliberately misstated that the amount in dispute was demanded from them by the appellant society whereas the appellant had no need to demand it from the purchaser because the vendor member had agreed by passing aforesaid GB resolution to pay it himself. They concealed this fact deliberately in order to keep the writ court in the dark and also because they could not assert any right after disclosing terms and conditions of their agreement to sell and affidavit of liability. They deliberately made a false verification in support of the facts stated in the writ petitions. It has been settled by a catena of pronouncements of the High Courts and Supreme Court that any party misstating and concealing/suppressing true facts is no entitled to any relief and the writ petition filed is liable to be dismissed with exemplary costs. The writ petitioners are IAS/Govt. Officers. They are well aware of what they were concealing, misstating and verifying."*

Even otherwise, a perusal of the order of the Registrar dated 15.05.2008 (Annexure P-1) clearly shows that it does not include any directions holding the order to be prospective in nature.

Before parting with the order, we would like to show our

displeasure at the tone and tenor of the pleadings in the present application.

In this regard, para Nos.1 and 14 of the review application are reproduced below :-

“1. That a perusal of the order passed by this Hon'ble Court shows that main arguments, which go to the root of the matter, addressed on behalf of the appellant have not been even referred to by this Court. This has caused great prejudice to the appellant resulting in grave miscarriage of justice. Ends of justice demand that arguments addressed may kindly be noticed and order may kindly be passed after considering the same. It is well settled that justice must not only be done but it must also seem to have been done- justice would not seem to have been done without noticing and considering arguments addressed.

2 to 13. XX XX XX XX

14. That it is abundantly clear from reading of order passed by this Court that the same is grounded on misreading of the order of the Registrar (P-1) similarly order under appeal passed by the ld. Single Judge was grounded on misreading of evidence. The Registrar never held charging of transfer fee of Rs. One lac prior to 09.05.2008 to be illegal because there was no order or any provision of law in view of which it could be held to be illegal- it was held to be illegal only in view of order P-3. Misreading of order P-1 has resulted in gross injustice to the appellant. In view of the matters stated above the applicant appellant respectfully prays that order passed by this Hon'ble Court dated 02.12.2014 may kindly be reviewed on grounds stated above.”

(Emphasis by us)

In view of the above, we find the present application to be frivolous and an abuse of the process of law.

Resultantly, the same is dismissed with costs quantified at ₹ 10,000/- to be deposited with the Haryana State Legal Services Authority.

(SATISH KUMAR MITTAL)
JUDGE

(DEEPAK SIBAL)
JUDGE

06.02.2015
Jyoti 1