

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****REVP No. 69 of 2015**

Rakesh Sarawagi S/o Satyanarayan Sarawagi Aged About 42 Years  
 R/o Sarawagi House, Main Road, Shankar Nagar, Raipur, Civil &  
 Revenue District- Raipur, Chhattisgarh (Res.No.1 In F.A.No.113/07  
 Plaintiff Before The Trial Court)

**---- Applicant****Versus**

1. Smt. Anjana Sharma W/o Dr. N.K. Sharma R/o 295, Rohini Puram,  
Raipur Tah. Civil & Revenue District- Raipur, Chhattisgarh
2. Dr. Sewak Ram Pandey S/o Late Shri Gendram Grih Nirman  
Sanstha, Raipur, R/o 295, Rohini Puram, Raipur, Chhattisgarh  
(Attorney Holder For Respondent No.1) (Appellant In  
F.A.No.113/07/defendant Before The Trial Court)
3. State Of Chhattisgarh, Through : Collector Raipur, District- Raipur,  
Chhattisgarh

**---- Non-applicants**


---

For applicant : Mr. Prafulla Bharat, Advocate.  
 For non-applicant No. 1/State : Mr. Vivek Sharma, Govt. Adv.  
 For non-applicants No. 1 and 2 : Not noticed.

---

**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Order On Board by Justice Bajpai, J.****19/07/2016**

Heard on I.A. No. 1/16 for condonation of delay in filing the instant review petition as the same has been filed after 90 days of its limitation.

Application is not opposed by non-applicant No. 3.

Since the application is not opposed and further for the reasons mentioned in the I.A. No. 1/15, the application is allowed. Delay in filing the review petition is condoned.

Also heard on review petition.

Learned counsel for the applicant submits that in the order dated 12-2-2015 passed in F.A. No. 113/2007, the Division Bench of this Court has not considered the grounds taken in the instant review petition which requires a

review of the said order as the grounds not considered are material. On the basis of said grounds, it is prayed that the petition may be heard finally and the order dated 12-2-2015 may be reviewed accordingly and suitable order may be passed in the matter.

From perusal of para 7 of the impugned order, it appears that grounds taken in para 6 (a) and (b) are not material. The Divisional Bench vide detailed appreciation in para 7 of the order dated 12-2-2015 held that R-1/plaintiff/applicant failed to prove the availability of the funds and even failed to show his position to generate fund for purchase of the property. Though he was having account in Indian Bank but he had not filed any statement of account nor examined any witness to prove the availability of funds to purchase the property. Further in the said para, the Division Bench observed that as R.K. Structure Pvt. Ltd. has no indulgence in business of purchasing land, therefore, the argument advanced that the applicant would have transferred the funds from company to his personal account for purchasing the land would be contrary to the object and business of said company R.K. Structure Pvt. Ltd. Also since the applicant was merely a Director and not the owner of the said company hence unless the company permits by the decision taken by the Board of Directors, it was not possible for the applicant to transfer fund from R.K. Structure to his own account. He had also failed to prove any such resolution passed by the Board of Directors.

The argument regarding over draft with R.K. Structure Pvt. Ltd. is of no help to the applicant/plaintiff as the said over draft is with the R.K. Structure Pvt. Ltd, and not available to applicant/plaintiff as he was not the owner of said company, instead he was merely a director and unless the Board of Directors pass any resolution, it was not possible for applicant/plaintiff to transfer fund of R.K. Structure Pvt. Ltd in his own account.

So far as Point No. (c) and (d) are concerned, to be a member of Kuber Grih Nirman Samiti was an essential part for purchase of the property, the terms and conditions mentioned in Ex. D-5 cannot be effective and dominant as for the proposed purchaser it was required to be a member of the society and then only the sale deed would be executed. The facts mentioned in Para (c) and (d) and the interpretation in those para (c) and (d) is not applicable in the light of mandatory provisions for the members of

the said Samiti.

Also as the proposed purchaser never became member of the society, as provided merely on the ground that there is no bar to stranger that he cannot become a member of the society would be a hypothetical proposition only.

Further on the basis of the entire argument submitted at the time of argument, the court in a detailed appreciation as in para 7 held that factum of ready and willingness and pre-condition of purchase was not proved as required. Hence in totality of the entire facts, the court passed the impugned order dated 12-2-2015.

As per settled law, scope of review is very limited. Unless there is an error apparent on the face of the record, there cannot be a review. In the instant matter after perusal of the impugned order specifically para 7 of the order, it appears that the court passed the order after hearing both the parties considering all the arguments advanced on behalf of the parties which does not require any interference. Consequently instant review petition being sans substance is liable to be and is hereby dismissed.

Sd/-

Pritinker Diwaker  
Judge

Sd/-

Chandra Bhushan Bajpai  
Judge