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

**RA-CW-210-2017 (O&M) IN
CWP-1039-2017
Date of decision : 08.08.2017**

The Shivalik Environ Cooperative

... Applicant(s)

Versus

The Additional Chief Secretary and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sudarshan Goel, Advocate with
Mr. R.N. Singal, Advocate
for the review applicant/private respondent No.3.

AMIT RAWAL, J. (ORAL)
CM-10670-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the accompanying affidavit is taken on record, subject to all just exceptions.

RA-CW-210-2017

The application has been filed for review of the order dated 23.01.2017, whereby this Court had set aside the order dated 18.11.2016 (Annexure P-6) rendered in Application No.16 of 2016 in Revision Petition No.26 of 2010 seeking restoration of the revision petition and directed the Additional Chief Secretary to Government, Haryana, Cooperation Department, Chandigarh, to dispose of the revision petition on merits as expeditiously as possible, on the premise that there has been concealment of

certain facts.

Mr. Sudarshan Goel, Advocate with Mr. R.N. Singal, learned counsel appearing on behalf of the review applicant/private respondent No.3 submits that the Assistant Registrar vide order dated 09.04.2009 had allowed the appeal of the review applicant/private respondent No.3, against the order of the Society, whereby a direction was issued to the Society to induct his client as a Member of the Society. The aforementioned order was assailed by filing the aforementioned revision petition and despite, there was an interim order dated 20.07.2010, the aforementioned revision petition was dismissed in default on 28.05.2013. The aforementioned fact has not been disclosed to this Court and also an order dated 31.12.2014 passed by the Executing Court, directing the Society to implement the order dated 09.04.2009 within a period of two months. Owing to non-adherence to the aforementioned order, the applicant was constrained to file a contempt petition bearing No.688 of 2016, in which, notice was issued for 21.07.2016. An application for restoration was moved on 15.06.2016. If the aforementioned fact had been disclosed, perhaps this Court would not have set aside the order, under challenge. The review applicant, who is respondent No.3, had not been heard as the writ petition was allowed on the first day. All these factors if read cumulatively would lead to an irresistible conclusion that the Society is delaying the matter with regard to the according of the membership to the review applicant/private respondent No.3, thus, urges this Court for recalling of the order, under challenge as there is an error apparent on record.

I have heard the learned counsel for the review

applicant/private respondent No.3 and appraised the paper book and of the view that there is no error apparent on record, for, the impugned order dated 18.11.2016 (Annexure P-6) disclosed the factum of the order dated 31.12.2014 and as well as the filing of the contempt petition. For the sake of brevity, the relevant paragraph of the same reads as under:-

"Further, it has been mentioned that the case was called several times, but none appeared on behalf of the petitioner till the Court time was over. He submitted that the present application has been filed after a lapse of more than three years and sole motive of the Society is to delay the matter on one pretext or the other. The Counsel for the petitioner Society Sh. Amit Shivrain appeared before the then Financial Commissioner, Cooperation Department on 06.09.2011 and the case was fixed for arguments for 18.10.2011 in the presence of both parties. He submitted that it is relevant to mention here that Sh. Amit Shivrain appeared on 18.10.2011, thereafter, he never appeared on nine dates in the case and the case was ultimately dismissed in default on 28.05.2013. He further submitted that the Society was also directed on 03.07.2011 to produce the record, but none appeared nor the record produced. This shows the conduct of the Society and the present application has been filed by concealing the material facts. He submitted that the application under Order 9 Rule 9 CPC is not maintainable as these provisions of CPC are not made applicable to the Haryana Cooperative Societies Act, 1984. He submitted that although the application is not maintainable, but still if it could be filed, it would be filed within one month from the date of order. He referred the case law AIR 2008 Andhra Pradesh 233, CLJ 1973, 837 (P&H), 2001 (4) RCR (Civil) 757. He submitted that the execution application was filed in the Court of ARCS, Panchkula for executing the order of the Assistant Registrar which have

become final after dismissal of the revision petition vide order dated 28.05.2013. The petitioners appeared before the Assistant Registrar, Panchkula on 21.04.2014, 09.06.2014, 10.07.2014, 04.08.2014. A copy of the execution petition was also supplied to them, but the Society did not make any protest for initiating action on the execution. Hence, final order was passed on 31.12.2014 directing the society to implement the order of the ARCS Ambala dated 09.04.2009 in toto within 2 months. The Society did not implement this order hence registered notice was sent to them on 20.02.2015. But still they did not implement the order. Again 2nd regd. Notice was issued on 18.05.2015, but still they did not implement the order of the ARCS. Hence, contempt petition No.688 of 2016 has been filed in the Hon'ble High Court against Administrators of the Society on 17.03.2016 in which notice has been issued to the administrators of the Society. To avoid the contempt proceedings, this application has been filed malafidely and the above stated facts have been concealed by the Society from this Court to obtain favourable orders by playing fraud. In the end he prayed that the present application may be dismissed with heavy costs.

On conclusion of the arguments by both the parties, the case was reserved for orders. Now, I have gone through the case file. I have also considered the arguments advanced by the parties. The present application for setting aside the order dated 28.05.2013 and restoration of the case has been filed after a lapse of more than three years. During the course of hearing, no cogent reason has been given for the delay. It is also evident from the case proceedings that between 18.10.2011 and 28.05.2013, during which nine dates are given, however, none appeared on behalf of the society. The status of pendency of the case is very much in the knowledge of the society. It has been specifically mentioned in the order dated

31.12.2014 passed by ARCS, Panchkula under Section 110 of the Haryana Cooperative Societies Act, 1984 regarding execution, that the copy of execution petition was also supplied to the Society, but the Society did not make any protest for not initiating action on the execution. It shows that the Society has deliberately chosen not to appear in the main case. Hence, the Society has not come to the Court with clean hands while filing the present application for restoration of the revision petition. Keeping in view the facts and circumstances mentioned above, the present application is dismissed being devoid of merits. Announced today. The parties be informed and the file be consigned to record room."

The operative part of the order under review reads as under:-

"Resultantly, the order dated 18.11.2016 (Annexure P-6) is set aside and the Misc.Application 16 of 2016 filed in Revision Petition No.26 of 2010 is allowed and the revision petition is restored to its original number. The Additional Chief Secretary to Government, Haryana, Cooperation Department, Chandigarh is directed to dispose of the revision petition on merits as expeditiously as possible.

With the aforementioned observation, the writ petition stands allowed."

Mr. Sudarshan Goel, learned counsel appearing on behalf of the review applicant/private respondent No.3, during the course of the argument, apprised this Court that the Additional Chief Secretary to Government, Haryana, has not so far conducted any proceedings in the pending revision petition, which has seen to be restored, but, no record or zimini orders have been placed on record. Be that as it may, the fact remains

that once the aforementioned facts are disclosed in the order, it could not be presumed that this Court was prevented from noticing the aforementioned facts in the order sought to be reviewed. In my view, there cannot be an attempt of concealment giving a rise to a review of the order by bringing the matter under the expressions 'Error Apparent on Record'.

For the foregoing reasons, no ground is made out for interference and accordingly, the review application stands dismissed.

08.08.2017 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No