

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

R.V.W.O. No. 7 of 2024

IA No: G.A. 1 of 2024

Arising out of

W.P.O. No. 1755 of 2023

Anirban Roychoudhury and Ors.

Vs.

Ram Kumar Jha and Ors.

For the petitioners : Mr. Biswaroop Bhattacharya, Adv.,
Mr. Raja Saha, Adv.,
Mr. Amit Ghosh, Adv.,
Mr. Ranit Roy, Adv.

For the respondents : Mr. Krishnaraj Thaker, Adv.,
Mr. Soumava Mukherjee, Adv.,
Mr. Rohan Raj, Adv.,
Mr. Indranil Munshi, Adv.,
Ms. Vedika Bhotika, Adv.,
Ms. Anushka Sarkhel, Adv.

For the State : Mr. Anirban Ray, Adv.,
Md. Sk. Galib, Adv.,
Ms. Ashmita Chakraborty, Adv.

Hearing concluded on : 03.05.2024

Judgment on : 14.05.2024

Sabyasachi Bhattacharyya, J:-

1. The applicants, who are respondent nos. 3 to 5 in the writ petition, have preferred the present application for review of a judgment and order dated January 30, 2024 passed in WPO No. 1755 of 2023.
2. The writ petition had been allowed, setting aside an order of the Competent Authority (CA) under the West Bengal Apartment Ownership Act, 1972 dated October 17, 2023 along with a preceding

Show-cause Notice dated October 10, 2023 and reviving the Board of Managers (BoM) prevailing immediately prior to October 17, 2023.

3. Learned counsel for the applicants contends that the court failed to take into consideration a letter dated October 7, 2023 whereby the writ petitioner had tendered his resignation from the post of VicePresident. It is argued that as on the date of passing of the order under review, the writ petitioner Ram Kumar Jha no longer retained his status as Manager or Vice President of the concerned Association. Thus, fraud was played on the court by not disclosing that he had put in his papers on October 7, 2023 itself.
4. It is argued that the writ petitioner had asserted that he was Vice President of the Association on October 10, 2023 and had every right to represent the Board in the absence of the President.
5. It is argued that the court, while passing the order under review, had observed that there were at least five existing members of the BoM which was an error apparent on the face of the record occasioned by suppression by the writ petitioner. It is submitted that there were only four members on October 10, 2023 and three members of the BoM during the period between 11th and 17th of October, 2023.
6. The resignations of 36 out of 45 members of the BoM had been suppressed as had been the further resignations of five others respectively on October 8 and October 10, 2023 and other two resignations during pendency of the writ petition. It is sought to be contended that till after the conclusion of oral arguments on January 17, 2024, despite exercise of due diligence, the applicants were not

posted with the fact, nor were they privy to the communications received on the official e-mail addresses of the Association or the BoM or the CA.

7. Learned counsel appearing for the applicants places reliance on several judgments in support of his contention that the court is not precluded from taking note of subsequent material events if they have a bearing on the adjudication even after the hearing is concluded. The court, it is contended, can always correct its mistakes even at the stage of passing of judgment.
8. In refuting such arguments, learned counsel appearing for the respondent no. 1/writ petitioner, contends that there was no mistake apparent on the face of the record. Learned counsel for the writ petitioner submits that mere production of the e-mail dated October 7, 2023 cannot be a ground for review. It was admittedly within the knowledge of the review applicants as far back as on October 10, 2023 and was also evident from the e-mail dated October 11, 2023, which was duly disclosed by the writ petitioner, that the writ petitioner's resignation was intended initially to take effect from October 7, 2023.
9. That apart, it is argued that the court, in its order under review, had come to the conclusion that even independent of the writ petitioner's status as Vice President of the Association, he was entitled to maintain the writ petition as resident and apartment owner and therefore a member of the Association.
10. Further, whether there were five members or three members of the BoM is of no significance as none of their resignations, including that

of the writ petitioner, was complete in terms of Clause 13(2)(b) of The West Bengal Apartment Ownership Bye-Laws, 2022 (hereinafter referred to as, “the 2022 Bye-Laws”).

- 11.** It is argued that as long as there were three members, casual vacancy caused by the purported resignation of the other members could be filledup by holding special elections as provided in Clause 10(b) of the Bye-Laws.
- 12.** It is argued that the review applicants seek to reopen the judgment on merits which is impermissible in review.
- 13.** The State respondents argue substantially in support of the review applicants. It is contended that the writ petitioner had already submitted his resignation on October 7, 2023 from the BoM as per the list of BoM and the status of the same as on October 7, 2023 was submitted by the then President on October 9, 2023. The said fact was suppressed by the writ petitioner.
- 14.** Thus, the writ petitioner could not have held the post of Vice President nor represented the BoM on the relevant date.
- 15.** It is further argued that as on date, out of 48 Managers in the BoM, 44 have resigned and three posts are vacant, the last of them resigning on April 28, 2024, leaving behind only one member in the BoM, who does not fulfill the minimum qualification in terms of the Bye-Law 7(2) of the 2022 Bye-Laws to run the affairs of the Association.
- 16.** It is argued by the State that in the absence of any provision in the Act for acceptance of resignations by any particular authority or the

Competent Authority, the resignation of the writ petitioner is to be deemed final once submitted and cannot be allowed to be withdrawn at the whims and wishes of the writ petitioner. Those who have resigned cannot be allowed to resume as the existing BoM in violation of Bye-Law 7(2) of the 2022 Bye-Laws.

- 17.** The applicants also seek to raise several issues touching the merits of the matter which, however, cannot be taken into consideration within the limited confines of review, governed by the principles of Order XLVII of the Code of Civil Procedure.
- 18.** For example, the resignations of several other persons have been sought to be pointed out on the basis of documents, which would involve a re-argument on the merits of the matter.
- 19.** The key issue raised in the review application is the alleged suppression by the writ petitioner of the e-mail dated October 7, 2023 tendered to the CA whereby the writ petitioner was supposed to have resigned.
- 20.** However, nothing turns on the said point. In paragraph no. 8 of the judgment, it was observed by the Court that the resignation of the petitioner was never accepted by the CA and on October 14, 2023, before passing the impugned order of the CA on October 17, 2023, the writ petitioner had already withdrawn his resignation. On such premise, it was observed that non-service of show-cause notice on the concerned parties vitiated the same.
- 21.** Thus, one of the premises of the order was that the resignation, having never been accepted, did not take effect. In paragraph no. 22 of the

judgment under review, the Court discussed Clause 13(2)(b) of the 2022 Bye-Laws.

- 22.** In paragraph no. 23, the court observed that the resignation of the office bearer could not be complete unless the matter was considered at the meeting of the Board and the resignation formally accepted under Clause 13(2)(b) of the 2022 Bye-Laws.
- 23.** In paragraph no. 24 of the judgment, it was reiterated that there was no formal resignation at any point of time by the petitioner and hence, he had the right to maintain the writ petition in the capacity of a Vice President of the Association.
- 24.** Nothing has been brought on record by the review applicants to show that the purported resignation via e-mail dated October 7, 2023 was ever accepted under the provisions of Clause 13(2)(b) of the 2022 Bye-Laws. The said Clause provides that the President, Secretary or any other elected Officer may resign from his office any time by a notice to the Board addressed to the President or the Vice President if the President resigns. In the present case, the e-mail was addressed to the CA.
- 25.** Clause 13(2)(b) goes on to stipulate that on receipt of the notice, the Board shall, as early as possible, at a meeting consider the matter *and on the resignation being accepted* shall forthwith elect another officer from amongst the Managers of the Board in place of the one who has resigned.

- 26.** Hence, under the said provision, acceptance of the resignation is mandatory, which would result in forthwith election of another officer from amongst the Managers of the Board.
- 27.** A plain reading of Clause 13(2)(b) leaves no other option of interpretation but that the resignation is completed only upon acceptance by the Board, which requires a positive act of such acceptance by the Board. Such acceptance is conspicuous by its absence either in the pleadings or any material produced before the court at the time of hearing of the writ petition or even while hearing the review application.
- 28.** Thus, even if the writ petitioner had tendered his resignation via e-mail on October 7, 2023, in the absence of anything to show that the same was accepted under Clause 13(2)(b), nothing hinges on the same.
- 29.** A suppression, to vitiate an order of Court, has to be on a high footing. The minimum which is required to be shown is that the fact alleged to be suppressed was *material* to the adjudication of the case. In view of the above observations, the fact sought to be projected by the review applicants is a non-issue and immaterial for the adjudication.
- 30.** Again, in paragraph no. 25 of the judgment under review, the Court categorically held that even otherwise, the writ petitioner is admittedly a resident and apartment owner and has a right to have a say in proper administration of the Society. Such interest of the petitioner as a member of the Society was held to be direct even in such capacity. It was observed in no uncertain terms that hence, the writ

petitioner had the *locus standi* to maintain the writ petition from every perspective.

31. Even if the Vice Presidency of the writ petitioner could be assailed by the review applicants, the fact remains that the *locus standi* of the writ petitioner to present the writ petition was not obliterated. In the absence of any challenge to the order under review before an appellate forum, the said finding remains intact. Thus, the fact now sought to be brought before the Court was not a material fact, the suppression of which could vitiate the order itself.
32. Moreover, in the communication dated October 11, 2023, which was considered by the Court, it was indicated that the resignation would take effect from October 7, 2023. Hence, it cannot be said that there was any *suppression* on the part of the writ petitioner. Surprisingly, the CA, which apparently opened its portal for the review applicants to scrutinize the e-mail sent to it, which is the genesis of the present review application, has been taking contradictory stands, the reason for which is not quite clear.
33. In paragraph no. 15 of the judgment and order under review, learned counsel for the CA was recorded to have candidly submitted that no copy of the complaint petition was given with the Show-cause Notice and that in view of the fact that the Board Members were reduced to only *five* upon mass resignation being tendered by around 40 members of the Board, all office bearers, in the interest of proper functioning of the Association, the impugned order was passed. Thus, the CA cannot now take a contradictory stand that there were less

than five Board Members at the relevant juncture. The recording of the finding and what transpired in court on that date has not been disputed by the CA by any independent application, which precludes it from taking a contradictory stand than that recorded in paragraph no.15 of the order under review.

- 34.** The review applicants have vociferously argued that the present number of Board Members is one, after all the resignations were submitted. The said argument, apart from being new arguments on facts which cannot be entertained in a review application, are also not factually corroborated. First, there is nothing on record to show that any of such resignations of the Board Members was ever accepted under Clause 13(2)(b) of the 2022 Bye-Laws. Secondly, the said subsequent developments cannot be grounds for challenging the veracity of the order under review. The relevant facts are those which were available on the date of passing of the order. With the advancement of time, facts change. If subsequent events, which were not germane at the relevant point of time, were to be taken into consideration, no order would ever attain finality.
- 35.** Learned counsel for the review applicants has repeatedly harped on the point that the review applicants had sought to bring on record the e-mail dated October 7, 2023 before the judgment was passed. Unfortunately, the said attempt was belated. The arguments in the writ petition had been concluded on January 17, 2024. Much thereafter, after having argued at length to their heart's content, the review applicants came up with the prayer for leave to file such

supplementary affidavit incorporating the said document, taking advantage of the fact that the judgment under review was delivered some days after conclusion of arguments.

36. The review applicants have cited judgments to support their contention that even at that juncture, the said document ought to have been permitted to be brought on record. Let us now consider the judgments cited by the review applicants.
37. The first judgment cited is *Union of India and others v. Gopal Chandra Misra and others*, reported at (1978) 2 SCC 301. The court, in the said case, was dealing with the resignation of a Judge. Article 217 of the Constitution was discussed, when the Supreme Court observed that there is no question of the resignation of a Judge being effective only on its acceptance by the President because it operates *ex proprio vigore*. By application of the said doctrine, it was held that there is no provision which confers on a Judge any power to withdraw or revoke his resignation once it has been submitted to the President. Where express provisions are made by a statute, it was held, the doctrine of implied powers cannot be invoked to supply the provisions which had been deliberately embedded. The Supreme Court, apart from considering Article 217 of the Constitution, also adumbrated on the onerous duties and the sacrosanct functions which a Judge of a High Court has to discharge, befitting the high office.
38. The said judgment or the ratio laid down therein has nothing whatsoever to do with the present case. The Vice Presidency of an Association of a Housing Complex can definitely not be equated with

the high office of a Judge, nor can the provisions of Article 217 of the Constitution be invoked. The relevant provision is Clause 13(2)(b) of the 2022 Bye-Laws which governs such resignations as the present one, which has been discussed *ad nauseum* above.

39. Learned counsel for the review applicants also relies on *Bangalore Development Authority, rep. by its Commissioner, Bangalore and others v. P. Anjanappa and others*, reported at *ILR 2003 KAR 1471*, on a Division Bench judgment of the Delhi High Court reported at *2007 (94) DRJ 338(DB) [Kuldip Gandotra v. Union of India and Ors.]* and the judgment of *Board of Control for Cricket in India and another v. Netaji Cricket Club and others*, reported at *(2005) 4 SCC 741*. In all the said judgments, the principle laid down was that where fraud and suppression come to light, a court can modify or recall its order.
40. However, in the present case, in view of the above discussions, the element of fraud and suppression is missing. There could not have been any valid reason for the writ petitioner to suppress the e-mail dated October 7, 2023, since it was not germane, nor was it suppressed in the sense that the e-mail dated October 11, 2023, discussed in the writ petition, referred to the date of resignation being operative from October 7, 2023.
41. Learned counsel for the review applicants in the instant case has failed to establish, as held by the Supreme Court in *Board of Control for Cricket in India (supra)*, that the earlier judgment suffered from any

mistake or erroneous assumption which in fact did not exist, the perpetration of which shall result in a miscarriage of justice.

42. The review applicants also cite *Nuri Mian v. Ambica Singh*, reported at (1916) 24 CLJ 140 which merely propounds that to shorten litigation or to do complete justice between the parties in cases where the original relief has, by reason of subsequent change in circumstances, become inappropriate, the court can recall such order. In the present case, there is no subsequent change of circumstances which has rendered the relief inappropriate.
43. The review applicants place reliance on *Jai Prakash Gupta (dead) through LRs v. Riyaz Ahamad and another*, reported at (2009) 10 SCC197. The court, in the said case, was considering its powers to amend issues within the contemplation of Order XIV Rules 5 and 1 of Code of Civil Procedure regarding events subsequent to institution of the suit. The ratio laid down therein has no application in the present case at all, since the e-mail dated October 7, 2023 was available at all points of time and was not a subsequent event and in the present case, the writ petition has already been disposed of, thus it is no longer open to recast issues.
44. Both *Arjun Singh v. Mohindra Kumar and others*, reported at AIR 1964 SC 993 and *Ajit Kumar Saha v. Ashit Kumar Saha*, reported at AIR 2003 Cal 148 are besides the issue involved herein. The courts were dealing with situations of subsequent events and applicability of Order IX Rule 7 of the Code of Civil Procedure. The present case is not one covered by the said provisions.

45. Importantly, the review applicants have failed to substantiate that they were not in the know of the relevant e-mail at the time of hearing of the writ petition despite due diligence.
46. In any event, the e-mail dated October 7, 2023 is not a subsequent event at all.
47. The review applicants have also cited *Rasiklal Manikchand Dhariwal and another v. M.S.S. Food Products*, reported at (2012) 2 SCC 196, for the proposition that the hearing of a suit is not confined to oral hearing and if there is an abuse of process of court or if interests of justice so require the court can take note of something. It is argued that the convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is not a straitjacket formula and there can be exceptions thereto, is circumscribed by the rider given by the Supreme Court that such a course of action can be taken only in exceptional or extraordinary circumstances, to meet the ends of justice and prevent the abuse of court. There is no case made out by the review applicants in the present matter to satisfy the court that there would be an exceptional circumstance or abuse of the process of court since the document-in-question, if taken into consideration, would not make a difference in the outcome of the writ petition at all.
48. The reliance on *K.K. Velusamy v. N. Palanisamy*, reported at (2011) 11 SCC 275, is misplaced. Paragraph no. 15 of the said judgment records that learned counsel for the respondent in the said case had contended that once arguments are commenced, there could be no

reopening of evidence or recalling of any witness. In the said context, the Supreme Court interpreted Order XVIII rule 17 of the Code of Civil Procedure in a liberal context. However, the said proposition is not germane in the present case at all. Whereas in the said case, arguments were still continuing, in the case at hand, both parties including the review applicants had already concluded their elaborate arguments. There is a stark distinction between situations where evidence is completed and arguments have commenced and cases where the entire arguments are already concluded and judgment is reserved.

- 49.** The review applicants also rely on *Rasiklal Manikchand's* case. Let us see what the Supreme Court observed in the said case.
- 50.** There, learned senior counsel appearing for the appellants had contended that proceeding *ex parte* under Order IX Rule 7 of the Civil Procedure Code did not take away the defendants' right to participate further in the proceedings of the suit which contention, in paragraph no. 41, was held to be attractive at the first blush but having no substance at all. The Supreme Court found that once the hearing of the suit is concluded and the suit is closed for judgment, Order IX Rule 7 of the Code has no application at all. It was propounded in paragraph 42 of the judgment that once the suit is closed for pronouncement of judgment, there is no question of further proceedings in the suit. It was further observed by the Supreme Court that merely because the defendant continued to make application after application and the trial court heard those, it cannot be said that

such appearance by the defendants is covered by the expression “appeared on the day fixed for his appearance” occurring in Order IX Rule 7 of the Code and thereby entitling them to address the court on the merits of the case.

51. In paragraph no. 54 of the said judgment, the Supreme Court held that certain observations made in *Arjun Singh (supra)*, were apposite. The quoted portion included the ratio that once the hearing starts, the Code contemplates only two stages of trial of the suit: 1) where the hearing is adjourned or 2) where the hearing is completed. Where the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the court that Order XX Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It would therefore follow that after the stage contemplated by Order IX Rule 7 is passed, the next stage is only the passing of a decree which on the terms of Order IX Rule 6 the Court is competent to pass, and then follows the remedy of the party to have the decree set aside by application under Order IX Rule 13. There is no hiatus between the two stages of reservation of judgment and pronouncement of the same so as to make it necessary for the court to afford to the party the remedy of getting orders passed on the lines of Order IX Rule 7.

52. The same logic is apposite in the present context. The law contemplates no hiatus between the reservation of judgment and the pronouncement of the judgment, to enable a party to bring further facts on record, after having advanced full-fledged arguments at the

final hearing stage. Hence, the proposition sought to be mooted by the review applicants is completely belied by the judgments cited by them.

53. *Vinod Kumar Singh v. Banaras Hindu University and others*, reported at AIR 1988 SC 371 merely stipulates that a Judge is entitled to change his mind even after she has pronounced an order in open court but has not signed it. The review applicants go on to interpret such proposition to justify their belated effort to bring on record evidence which is in any event not germane. The discretion given to a Judge is only for the Judge to exercise, upon being satisfied *suo motu* or otherwise that substantial justice requires a fresh consideration. Such proposition, however, does not confer any right to a litigant to compel the court to invoke such power in frivolous cases as the present one. The e-mail sought to be brought on record is a non-issue as discussed above and cannot confer a right on the review applicants to seek the remedy of recall/review of the original order after disposal of the writ petition on merits.
54. Lastly, the review applicants have relied on *Vinod Kumar Toppo v. State of West Bengal*, reported at (2011) 3 CHN 299. The Full Bench of this Court, in the said case, was considering whether it was open to a Judge, *in exceptional circumstances*, upon putting the parties on notice and recording reasons, to correct an inadvertent mistake which he realizes he had committed while dictating an order in open court by recalling the order so dictated.

- 55.** It is quite basic that a Judge always retains such power. However, such power can be exercised only within the parameters as laid down by the Full Bench. For starters, the case must be exceptional, when the court discovers new facts from the records which have a relevant bearing on the adjudication. In the said case, the learned Single Judge had of his own used such discretion. Even in circumstances when the Judge is of the opinion that the missed-out facts would be germane, a recall can only be upon recorded reasons and upon putting the parties on notice. I do not find any inadvertent mistake in the present case, or any omission germane to the adjudication, to justify the applicability of the said ratio here.
- 56.** The issue before the Full Bench was completely different from the present case, where one of the losing parties seeks a reopening of the entire case on facts which were not germane in the context at all. Hence, I do not find any reason to exercise my power to review the order passed previously in the garb of a recall due to “inadvertent mistake”, particularly on a review application filed at the behest of parties to the litigation who had advanced full arguments on all issues at the hearing of the writ petition itself.
- 57.** Another aspect of the matter cannot be lost sight of. No reasonable explanation has been given by the review applicants as to what prevented them, by application of due diligence, to obtain the e-mail dated October 7, 2023, before the final hearing of the writ petition. I do not find any change of circumstances on such count, since the effort taken by the review applicants post-hearing could very well be

undertaken by them throughout the pendency of the writ petition. Having not done so, despite being aware that a reference had been made by the writ petitioner in his e-mail dated October 11, 2023 to the resignation being effective from October 7, 2023 and in view of the CA having taken a stand now that such material was available for the public to peruse, the review applicants cannot take the plea of discovery of new matter to justify review.

- 58.** Hence, I do not find either any error apparent on the face of record or discovery of new matter or any similar cause to review/recall the judgment and order dated January 30, 2024 passed in WPO No. 1755 of 2023.
- 59.** Accordingly, R.V.W.O. No. 7 of 2024 is dismissed on contest without any order as to costs. IA No: GA 1 of 2024 is disposed of accordingly in the light of the above observations.
- 60.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

Later

After the above judgment is passed, learned counsel for the petitioners seeks stay of operation of the above order. Such prayer is vehemently opposed by learned counsel for the respondents. However, in view of the review application having been dismissed and

no positive direction having been passed, no useful purpose would be served by passing an order of stay of operation of the above judgment.

Accordingly, such prayer is refused.

(Sabyasachi Bhattacharyya, J.)