

Chamber of Commerce and ors. Vs. Ashok Kumar Gupta and ors.

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Court : Jammu and Kashmir

Decided On : Aug-13-2003

Reported in : AIR2004J& K30,2004(1)JKJ81

Judge : Permod Kohli, J.

Acts : High Court Rules, 1999 - Rules 39 to 42, 66(1) and 66(2); ;Code of Civil Procedure (CPC) - Sections 106, 107 and 114 - Order 41, Rule 9 - Order 43, Rules 1 and 2 - Order 47, Rule 1

Appeal No. : Review Petition No. 1/2003

Appellant : Chamber of Commerce and ors.

Respondent : Ashok Kumar Gupta and ors.

Advocate for Def. : Ashok Parihar, Adv.

Advocate for Pet/Ap. : L.K. Sharma, Adv.

Judgement :

Permod Kohli, J.

1. Validity of order dated 7-2-2003 passed in CIMA No. 151/02 has been called in question by invoking the review jurisdiction of this Court on the following grounds:

(i) Appeal has been decided without summoning and hearing all

the respondents in the appeal;

(ii) the appellate Court decided the appeal without admitting the same;

(iii) the counsel for the petitioner (respondent in the appeal) did not agree for disposal of the suit;

(iv) the appeal has been accepted on the grounds not set up in the plaint / memo of appeal;

(v) the judgment relied upon by the appellate Court as reported in AIR 1967 SC 687 cannot be applied to interpret the Bye-laws/ Constitution of an Association, which is a non-statutory body;

(vi) the amendment of the constitution, subject matter of challenge in the suit has been quashed while dealing with the question of grant of interim relief; and

(vii) The appellate Court did not comment on the order of the trial Court and allowed the appeal without setting aside the order impugned in the appeal.

2. On the above premises, it is contended that there is an error apparent on the face of the record warranting interference in exercise of the powers of review under Section 114, Order 47 Rule 1, CPC read with Rules 65 and 66 of the J&K; High Court Rules, 1999.

3. Mr. Ashok Parihar learned counsel appearing for respondent No. 1 has raised a preliminary objection regarding the maintainability of Review.

4. Before grounds of review are considered, I deem it proper to deal with the preliminary objection. The maintainability of the review petition is challenged on the ground of contravention of 66 of the J&K; High Court Rules, where-under the review petition is required to contain a certificate in the prescribed form. This mandatory requirement of the Rule has not been complied with in as much as the review petition does not contain a certificate as envisaged by the Rule. The certificate on the letter head of the learned Advocate of the petitioners is only accompanying the review petition and that certificate is also not in the language as prescribed under the Rule. The distinction is sought to be made between Rules

66(1) and 66(2). In the former word used is the review petition shall 'contain' a certificate, whereas in the latter rule the language used is the review petition shall be 'accompanied'. According to Mr. Parihar, the Rule is mandatory in nature and the certificate is necessarily to be a part of the review petition and not to accompany the same. Since the review petition itself does not contain a certificate and it is only accompanying the same this does not satisfy the mandatory requirement of the Rule. His further contention is that the language of the certificate annexed with the review petition is not the same as is provided under the Rule, He relies upon the judgment reported in Bashir Ahmed Dar v. State and Ors., 1985 SLJ 100 wherein this Court held that Rule 66 (Rule 51(old)) is mandatory and non compliance of the same renders the review petition incompetent. In the above referred case the review petition was not accompanied with any certificate. However, in the present case there is a certificate though not made part of the review petition, but attached to the same.

5. I have gone through the certificate duly signed by Mr. L.K.Sharma. The intent and purpose of the Rule is that the Advocate should formulate an opinion regarding the existence of ground for review, keeping in view the limited scope of the review proceedings under law. I am satisfied that appending the certificate with the review petition even on a separate sheet and a little variance in the text of the certificate as contained in the Rule does not render the review incompetent as it substantially complies the rule. The preliminary objection is thus rejected.

6. Now I take up the grounds of review in seriatim;-

GROUND No. 1.

7. It is submitted that there were as many as 8 respondents in the appeal and without issuing notices to all the respondents and serving them, the learned appellate Court has decided the appeal. When the appeal was for the first time listed before the Court for consideration on 9-8-2002 the following order came to be passed:-

'Mr. Ashok Parihar, Advocate for the appellant:

Issue notice to the respondents. Mr. L.K. Sharma, Advocate accepts notice on behalf of the respondents.

Record be called.

CMP No. 423/02

Notice in CMP also.

Till next date of hearing before the Bench, the respondents shall not alienate the property of the society-respondent No. 1.'

8. From order dated 9-8-2002 passed by the learned Single Judge (Hon'ble Mr. Justice B.L. Bhat), it appears that on the very first day when the appeal was listed before the Court and after hearing the counsel for the appellant, namely, Mr. Ashok Parihar, Advocate the Court issued notice to the respondents. Mr. L.K. Sharma, Advocate who was present in the Court accepted notice on behalf of all the respondents and the record of the trial Court was summoned. There-after the case came to be listed on three occasions before it was finally disposed of and no fresh notices were issued to any of the respondents obviously for the reason that Mr. Sharma put in his appearance on behalf of all the respondents. This fact has not been disputed either in the memo of review petition or other-wise during the course of arguments. It is also pertinent to note that out of 8 respondents in the appeal only three have preferred this review petition. Other respondents in the appeal neither preferred any appeal nor chose to become party to the present review petition, they being satisfied with the order under review. Therefore, this ground for seeking review does not exist.

GROUND No. 2

9. It is argued by Mr. L.K. Sharma, learned counsel appearing for the petitioners that it was obligatory upon the appellate Court to have admitted the appeal before finally deciding the same. After notice was issued and accepted by Mr. Sharma on behalf of all the respondents the record was summoned, obviously to facilitate the hearing of the appeal. Mr. Sharma has not been able to show any law or rule which makes it obligatory for the Court to formally admit the appeal and then

decide the same. After the service is complete and record received no other formality was required to be completed for hearing a civil appeal.

10. Mr. Sharma has referred to Rules 39 to 42 of High Court Rules 1999 which lay down the procedure for dealing with appeals in the High Court. A scrutiny of these rules would show that none of the rules enjoin any duty upon the Court to formally admit the appeal. Rules only prescribed the manner in which the memorandum of appeal is to be presented, the documents that may accompany the memorandum of appeal and other formalities like affixing stamp duty, Court fee and provision for extra copies for the respondents etc. It also prescribes how the respondents are to be served. He has further relied upon the judgment of the Apex Court in case of Union of India and Ors. v. Daya Ram (reported in 1997 SLJ 155) wherein the Hon'ble Supreme Court passed the following order;

'5. It will be noted that both the orders of the learned Single and of the Division Bench, give the respondent some relief 'without admitting the petition to hearing'. It is difficult to see how enforceable orders directing the respondent to a writ petition to do certain things can be passed upon a proceeding which, in express terms, is stated to have been not admitted. We appreciate that the writ petition itself was disposed of at the admission stage by consent of parties. At that stage rule should have been issued to the present appellants and the judgment and order should have noted that service thereof was accepted on behalf of the present appellants by learned counsel who was present on their behalf. The final order would have made the rule absolute. The order passed by the learned Single Judge would thus have been passed upon a petition which was admitted and was on the file of the High Court. The order would have been enforceable.'

11. In the above case writ petition was disposed of by the High Court without formally admitting the same and even without the parties were served. It was under these circumstances that the Apex Court observed that in order to enforce the order passed by the High Court, the writ petition should have been admitted after the parties are served or recording the presence of the counsel on their behalf. The ratio of the judgment is that all the parties to lis should be present before the Court when it is decided with the consent of the parties. The procedure

to be adopted for writ petition is slightly different because the parties are required to file pleadings before the High Court. Even after admission the respondents have right to file counter affidavit or better pleadings and the writ petitioner has a further right to file a rejoinder. Perhaps it was in this context that the Apex Court observed that the writ petition is required to be admitted and then disposed of. As far as the Civil appeal is concerned, after the service of the respondents no pleadings are required to be filed. It is only the memorandum of appeal and record of the trial Court which is relevant. All these requirements were duly observed by the appellate Court. The parties having appeared through learned counsel there was no necessity of issuing notices/summons to them. The record of the trial Court was summoned and after examining the record the appeal was decided. Besides this the appeal was preferred under Order 43 (1) (r) and in terms of Order 43 Rule 2 procedure laid down under Order 41 in respect to appeals arising out of appealable decrees is applicable. There is no provision under Order 41 CPC which requires the formal admission of the appeal. It is only Rule 9 of Order 41 that requires the registration of the appeal on admission of the memorandum of appeal with the appellate Court or its officer. In the present case the memorandum of appeal having been presented to a proper officer of the court, entered in the concerned register and numbered as CIMA No. 151 of 2002, satisfies the requirement of Order 41 Rule 9 CPC. Therefore, this contention of the petitioner also fails.

GROUND No. 3

12. Mr. L.K. Sharma has strenuously argued that the Court has wrongly recorded his consent/agreement for disposal of the suit Reference in this regard is made to following part of the impugned judgment.

'Learned counsel for the parties are agreed that the terms of the Executive Committee is over and fresh committee has to be elected. Let the elections be held and the process be initiated on or before 20-2-2003 and election process be completed. It is further directed that no subordinate Civil Court in the State of Jammu and Kashmir would stay the election process, if any challenge is made to the election process, that may be entertained, but no interim order staying the

election process would be issued by any subordinate Civil Court in the State of Jammu and Kashmir. The parties are agreed that in view of the decision given above, it would not be necessary to pursue the civil suit. The suit shall stand disposed of accordingly.'

13. To support his contention, reference is made to the averments made in para 13 of the review petition, which reads :-

'13. That the Hon'ble single Judge has also in the concluding part of the judgment, recorded agreement for the counsels for the parties which is erroneous. The counsel for the petitioners had only agreed that terms of the office bearers has expired and they are ready to hold the elections in terms of the Constitution but because of the members filing suits and getting stay orders from the Courts, the election process could not be concluded. The agreement to disposal of the suit is also erroneously recorded when the court has passed the order virtually decreeing the suit of the respondent No. 1, who got the relief without a trial on a ground never set up by him and when he stated that the suit has now become infructuous and he do not want to press the suit and the counsel for the petitioners only agreed when respondent No. 1 do not want to prosecute the suit, what objection he has but the Hon'ble Single Judge wrongly recorded that the counsels for the parties agreed for the disposal of the suit when no order for transfer of the suit from the Court of 2nd Addl District Judge, Jammu to the file of the Hon'ble Single Judge was passed which is also an error apparent on the face of the record.'

14. He has also filed his personal affidavit which is quoted as under:

'AFFIDAVIT

I, L.K. Sharma, Advocate, J&K; High Court, Jammu aged 63 years do hereby solemnly affirm and declare as under:

1. That the deponent has not given any consent for agreed order as mentioned in the judgment. However, the deponent admitted during the course of arguments that the term of elected body of the Chamber has expired and they want to hold the elections but the same could not be held because of the stay orders issued by

the Courts.

2. That with the passing of the order by the court quashing the amendment, the counsel for the appellant stated that the suit has become infructuous as he got the relief upon which the deponent stated that if plaintiff do not want to press the suit, the deponent would not have any objection if the plaintiff do not want to prosecute the suit. The deponent has not agreed that the suit be disposed with the agreement of the deponent which was not statutory warranted as the suit has to be either dismissed or decreed under CPC'

15. From the perusal of the averments made in para 13 of the review petition and the affidavit filed by Mr. Sharma (underlined portion) what emerges is that after the findings were recorded by the appellate Court on the merits of the appeal, the counsel for the respondents Mr. L.K. Sharma consented for disposal of the suit in view of the findings of the Court. As according to him after the findings were recorded by the Court nothing remained to be decided in the suit. During the course of hearing of this petition when asked Mr. Sharma fairly accepted that he agreed for the disposal of the suit in view of the findings returned by the appellate Court as after the findings of the Court holding the resolution leading to passing of the amendment as bad, nothing remained to be decided in the suit. It was in this context that he had agreed for the disposal of the suit. This consent leads to two inferences/conclusions (i) that after the order of the trial Court was set aside the parties agreed for holding of the fresh elections, which was one of the issues involved in the suit. Mr. Sharma has not disputed this part of the consent at all. He agreed for holding of fresh election. It is only the second part of the order wherein the appellate Court has disposed of the suit with the consent of the learned counsel for the parties that a dispute is sought to be raised. (ii) as observed above Mr. Sharma consented for the disposal of the suit in view of the findings of the Court. Once such a course is adopted and suit is disposed of on the agreement of the parties it also leads to the conclusion that the findings are acceptable to the petitioners. In this position how can a person be permitted to resile from the consent and then file a review petition to challenge the order which has been passed on the agreement of the parties.

16. From the perusal of the affidavit of Mr. L.K.Sharma, averments made in para 13 of the review petition on the one hand and the concluding para of the impugned order of the Court there does not seem to be any variance between the two. Otherwise also sanctity has to be attached to Court order. It cannot be lightly interfered unless there is irrefutable evidence and circumstances to rebut the same. Therefore, the main thrust of the petition on which the review has been sought is of no consequence hence, this ground is also rejected.

GROUND No. 4

17. Mr. Sharma, learned counsel appearing for the petitioner has vehemently stressed and urged that the appellate Court decided the appeal on the grounds not pleaded or set up in the plaint/memorandum of appeal and thus there is an error apparent on the face of the record. With a view to bring home his point he has referred to paras 11 & 12 of the plaint and submitted that the only ground urged in the plaint was that the amendment should not have been carried out as it was rejected by 1/3rd members of the Chamber of Commerce. The appellate Court however, decided the appeal on such issues and grounds which are not pleaded in the plaint and/or in the memorandum of appeal.

18. Learned counsel for the respondent has however, contested the contention of the learned counsel for the petitioners and referred to the same paragraphs relied upon by the petitioners and submitted that the plaintiff specifically pleaded that reasonable and sufficient time for the adjourned meeting was not provided and un-convened meeting was adjourned by oral announcement and convened on the same day after some time, which has deprived the members of the Chamber of Commerce of their right of participation under the Constitution. He has further referred to paragraphs 5 and 12 of the Memorandum of appeal presented before the High Court to show that there is a specific averment with regard to convening and holding of meeting in violation to the constitution of the Chamber of Commerce. It is further urged that the appellate Court has extensively relied upon the provisions of the Constitution/ Bye-laws and the documents i.e notices and circulars issued by the respondents from time to time. The entire material referred to in the judgment was before the Court and the parties did address their

arguments on these issues, therefore, it cannot be said that the appellate Court has decided the appeal on the issues/grounds not pleaded or argued. In the memorandum of review petition also there is not even a whisper that the points decided by the appellate Court were not argued by the counsel. It is also important to note that on being enquired by the Court, the learned counsel for the parties accepted that the judgment was dictated in the open Court. It is also not the case of the petitioners that during the course of the proceedings any objection was raised that the Court is not competent to address itself to these issues in absence of specific pleadings as claimed. From the perusal of the record, it is apparent that all the material and documents referred to in the judgment under review were before the court at the time of deciding the appeal, Therefore, the petitioners cannot be heard to say that the judgment is based upon material extraneous to the record. In the absence of there being any averment that the issues addressed by the Court were not argued by the counsel, particularly when the judgment was dictated and delivered in the open Court, the plea of the petitioners that the judgment is not based upon material on record, cannot be accepted.

19. Learned counsel for the petitioners has also not been able to show that all the issues both of fact and law decided by the appellate Court are erroneous in any manner.

20. Now, the next argument that falls for consideration is whether there is an error apparent on the face of the record.

21. Mr. Sharma, learned counsel appearing for the petitioners has referred the following judgments:

22. Satyanarayan v. Mallikaerjun, AIR 1960 SC 137, where their Lordships have held :

'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. As the above discussion of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to be established by lengthy and complicated

arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.'

23. Mohd Yousuf Magray v. Haji Ghulam Hassan, 1998 SLJ 180, wherein it has been held as under:

'We have considered all the authorities of the Apex Court and of other High Courts. We have reached to a conclusion to hold as under:

(i) an error apparent on the face of the record must be such a patent error which in one glance can be detected without advancing long drawn arguments on either side;

(ii) where there are two possible views regarding the interpretation or application of laws vis--vis the particular facts of a case, taking one view, even if it is erroneous, cannot be said to be an error apparent on the face of the record;

(iii) even if a decision or order is erroneous in law or on merits, it cannot be accepted that it is an error apparent on the face of the record;

(iv) no hard and fast rule can be laid down to declare or to point out a certain error to be an error apparent on the face of the record. The exercise of power under review will depend upon the peculiar facts of each case.'

24. In Jai Narain Lachhmi Narain v. G.I.P. Ry, Co and Anr., AIR 1930 Lahore 37, it has been held as under:

'It is contended before us by Mr. Kishan Dayal for the appellants that the learned Additional District Judge erred in law in reviewing his own order upon grounds which it is argued, are not recognized by Order 47 Rule 1 Civil Procedure Code. There had, however, been no clear decision by the learned Additional District Judge concerning the correctness or otherwise of the trial Court's finding that theft from the running train had occurred and that the railway company had thereby been absolved from liability. Thus there was a mistake or error apparent on the face of the record or at any rate a sufficient reason for review analogous to such

an error in that the decree of the trial court has been reversed without that finding of the trial Court being displayed. The argument against the legality of the review order is not, in my opinion, a strong one.'

25. Mr. Parihar, learned counsel appearing for the respondents has on the other hand relied upon the following judgments to contest the proposition :-

Smt Meera Bhanja v. Nirmala Kumari, AIR 1995 SC 455, wherein their Lordships of the Supreme Court held as under:

'It is well settled that the 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 CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma, AIR 1979 SC 1047, speaking through Chinnappa Reddy, J, has made the following pertinent observations (para 3): 'It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. 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. This would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.'

26. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and

not on any other ground. So far as that aspect is concerned, 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 SC 137, wherein K.C. Dass 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.'

27. The scope of the powers of review came to be considered by the Apex Court under similar circumstances in *Avijit Tea Co Pvt. Ltd. v. Terai Tea Co. and Ors.*, (1996) 10 SCC 174, where while considering an appeal against an order refusing interim injunction, the appellate Court decided the suit with the consent of the parties and passed a decree. On review being filed the order under review was reversed. In Special Leave Petition before the Hon'ble Supreme Court the order of the High Court reviewing the earlier decision was set aside. Hon'ble Supreme Court observed -

' x x x . The appellant filed Suit No. 89 of 1991 for specific performance of the said agreement. In that suit, an application for ad interim injunction under Order 39 Rule 1 CPC was filed but the same was dismissed. On appeal by consent of the parties, the suit itself was taken up. While dismissing the suit for specific performance, the Division Bench, by judgment dated 25-4-1994 directed refund of a sum of Rs. 19, 33, 873.74 which was with the Court Receiver with interest thereon to the account of the suit maintained by the Court Receiver. Thereafter an

application for review came to be filed. In the impugned order the learned Single Judge held that the direction for refund of the amount was bad in law, . Calling that order in question, this appeal has come to be filed.

It is contended by Dr. Shanker Ghosh, the learned Senior Counsel for the appellants, that the view of the learned Single Judge is clearly erroneous for the reason that it is not an error apparent on the face of the record warranting review under order 47 R 1 CPC. At best, it would be a case for an appeal against the judgment of the Division Bench, but admittedly, no appeal came to be filed. We find force in the contention advanced for the appellant. It is an admitted position that in respect of the management of the estate of Dharanipur Tea Estate a contract came to be executed between Terai Tea Estate which was said to be in its management at the relevant time, and the appellant for sale of tender green leaves of the tea grown in the said estate. The suit for specific performance of that agreement came to be dismissed. One of the covenants in the agreement was that he was entitled to the specific performance. Since the specific performance was not granted alternative relief sought for refund of the amount was granted. Therefore, when the decree for refund was granted, whatever, may be the demerits in the grant of decree that will be only correctable in an appeal. The ground given by the learned Single Judge to review the order was that since the amount came to be deposited in another suit but not in relation to the suit for specific performance, the decree for refund was not valid in law. The view of the learned Single Judge is wholly illegal. So long as the amount came to be deposited with the Court Receiver in pursuance of the contract of the agreement when the contract was found to be not specifically enforced, the decree for refund was rightly granted. The appellant is entitled to follow and keep track of the estate wherever the amount lies and entitled to recover the same in pursuance of the decree. It would be immaterial in which suit the amount came to be credited by the Receiver. Under those circumstances, the learned Judge has committed grievous error of law in reviewing the order.:

28. Scope of Order 47 Rule 1 and the para-meters where-under the Court can exercise its power of review also came to be considered by the Apex Court in the following judgments:-

In *Thungabhadra Industries v. The Govt of Andhra Pradesh*, AIR 1964 SC 1372 it has been observed as under:

'What, however, we are now concerned with is whether the statement in the order of Sept 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 a distinction which is real, though it might not always be capable of exposition, between a mere 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.'

29. In *Parsion Devi and Ors. v. Sumitri Devi and Ors.*, (1997) 8 SCC 715, their Lordships of the Supreme Court observed as under:

'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'.'

30. As per settled proposition of law existence of error apparent on the face of the record is sine qua non for exercising the review jurisdiction. From the ratio of the various judgments, referred to above what emerges is that the review Court can interfere with the judgment only if there is an error apparent on the face of the

record and the error apparent on the face of the record as interpreted by the Apex Court means what is evident on plain reading of the judgment and for which no further reasoning or marshalling of facts is required.

31. I have examined the judgment impugned and there does not appear to be any such error which can be noticed from the reading of the judgment, nor any such error has been pointed out. Even from the memo of review and lengthy arguments addressed by the learned counsel for the petitioner what transpires is that the Court has been called upon to look for detailed reasoning and facts apart from the judgment to find out the defects in the judgment. In view of the settled proposition of law that a judgment may be erroneous on facts or on law, but that does not ipso facto gives any power to the review court to set right such an erroneous finding of fact and law. It is only if there is an error apparent on the face of the record that the review court gets jurisdiction to interfere and rectify such an error. For all other erroneous findings/decision the remedy available to a person is to challenge the same before an appellate forum available under law. In this view of the matter, I am of the considered opinion that there is no error apparent on the face of the record warranting interference in exercise of the power of review.

GROUND No. 5:

32. It is further urged that placing reliance upon a judgment of the Apex Court where the provisions of a statute were interpreted, the appellate court was not justified in applying the said ratio to interpret the provision of the Constitution/Bye-laws of an Association which is a non-statutory body. I am unable to appreciate this argument. When-ever, the court is called upon to interpret a statute or any other rule or norm either statutory or non-statutory, the fundamental principles of interpretation have to be kept in mind. In the present case the Court was required to interpret certain clauses of the constitution/ Bye-laws of the Chamber of Commerce viz. Bye-laws 9 & 10, wherein the Special General meeting of the General Council could be called at seven days notice to the members. In absence of there being any clarification provided under the Constitution of the Chamber of commerce how these seven days notice is to be reckoned, the court was justified in interpreting-the said bye-laws by relying upon the observations of the Apex

Court wherein the court interpreted a statute how the period is to be reckoned. I do not find any fault with the interpretation of the Court that seven days notice means that seven days must intervene between the date of the notice and the holding of the meeting. Similarly the Court by interpreting bye-law 10 which provides holding of adjourned meeting 'till further notice', if the quorum is not complete within half an hour of the time fixed, cannot be said to have committed any illegality or irregularity. The intention of the framers of Bye-laws appears to be clear. The convening of adjourned meeting till further notice means on some future date and time and not on the same day. This intention is further evident from the last para of the same rule which provides that every adjourned meeting (Special Council Meeting and General Council Meeting) shall be summoned within one month after the adjournment. The limitation imposed on the holding of adjourned meeting is maximum period of one month, but in any case it is to be on a future date. The words, 'till further notice' obviously means a notice as provided under the Constitution of Chamber of Commerce/Bye-laws. It is admitted position that a notice for holding the Special General Council meeting was issued on 18-2-2002 and meeting was fixed on 24-2-2002. Under bye-law 9, seven days notice was required and if the date on which the notice was issued and the date when the meeting was fixed are excluded, it leaves only 5 days and not seven days as envisaged by Rule 9. Assuming said meeting was in order as argued, the meeting could not be held for want of quorum and under bye-law 10, in absence of a Quorum a meeting is to be adjourned till further notice and in any case within one month after the adjournment. The meeting was fixed at 10.20 AM on 24-2-2002, but could not be held for want of Quorum. The President adjourned the meeting not to any future date by giving again seven days' notice, but fixed it at 11.40 AM on the same day for which oral notice was given to the members, who were present in the meeting. Such an action not only contravenes the provisions of the bye-laws/constitution of the Chamber under which the President was exercising his powers but also defies even common sense, logic and rationale. The word further notice obviously means a further notice to all members of the Association or at least those who were not present.. Even when minimum quorum of 1/3rd members was not present at the meeting at 10.30 AM a notice of adjourned meeting was required to be given to at least those members who were not present

at the relevant time. Giving notice to those persons, who were already present and fixing the meeting after about one hour shows the intention of the persons convening the adjourned meeting. It frustrates the very purpose for which the meeting is to be adjourned i.e. giving notice to such members, who were not present. Therefore, the adjourned meeting at 11.30 AM on 24-2-2002 by no stretch of imagination can be said to be legal and valid much-less in consonance with the Bye-laws/Constitution.

33. Though I have dealt with the arguments addressed by the learned counsel for the parties in detail, but this does not mean that the review Court is exercising the appellate jurisdiction. The fact remains that there is no error apparent on the face of the record, hence, no interference is warranted in exercise of the review jurisdiction.

GROUND No. 6

34. It is next urged that the appellate Court while considering the appeal arising out of an interim order was not justified in quashing the amendment made in the constitution without trial of the suit. From the impugned judgment, it is not evident that the amendments have been quashed by the appellate Court, though it has been observed that looking from any point of view so far as the resolution of amending the constitution is concerned, is held to be bad. With a view to find out a prima facie case it is necessary for the Court to examine the merits of the case for limited purpose of granting or refusing the interim relief. It is in this context that the court has recorded these observations. The Court has not quashed the amendment. It only observed that the resolution adopted for amending the constitution was bad as the procedure prescribed for passing such a resolution was observed in breach. This finding was necessitated to find out the prima-facie case for the purposes of granting or refusing the injunction, this finding followed by disposal of suit by an agreed order also does not constitute an error apparent on the face of the record. Therefore, there is no merit in this contention. The same is also rejected.

GROUND No. 7:

35. It is lastly urged that the appellate Court did not comment upon the judgment of the trial Court and without setting aside the same has passed the impugned order. The powers of the appellate Court are defined under sections 107 and 108 CPC which reads as under:

'107. Powers of Appellate Court- (1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power-

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

108. Procedure in appeals from appellate decrees and orders- The provisions of this Part relating to appeals from original decrees shall, so far as may be apply to appeals-

(a) from appellate decree; and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided.'

36. From the reading of these sections, it is abundantly clear that the appellate Court has not only the power to determine a case finally but also has the same power as are available with the Court of original jurisdiction. These sections fall under the caption 'General provisions relating to appeal'. Therefore, this Chapter has application not only to appeals from original decrees but also to appeals from appealable orders.

37. Be that as it may merely because the appellate Court has not specifically referred to any particular aspect of the order of the trial Court under appeal does not render the judgment a nullity nor does it constitute an error apparent on the face of the record. The conclusions of the order dated 7-2-2002 are clear enough to establish that the appellate court did not find favour with the order under appeal. It is immaterial whether the judgment under appeal has been reversed by saying so in so many words or not.

38. In view of the above this review petition fails and is accordingly rejected. Order impugned in the review petition is maintained.

39. From the record, it is evident that the term of the office bearers (including the petitioners) of Chambers of Commerce and Industries expired on 14.1.2002 and the office bears have over stayed in office for more than 11/2 year. It was under these circumstances, the appellate Court directed that no subordinate Court shall grant any interim injunction staying the election. Elections to any democratically run institution be it a Constitutional, statutory or non-statutory body is life line of the democracy. Therefore, timely holding of elections is must.

40. During the pendency of this petition, petitioners initiated process for holding elections to various posts of office bearers of Chamber of Commerce and Industries on 23rd July, 2003 for which notification dated 16.6.2003 was issued. Vide interim order dated 19.7.2003 proposed election was stayed. As a consequence of rejection of review, petitioners shall hold fresh elections for which process shall be initiated within 15 days from today as directions contained in the impugned order in this regard have become redundant.