

In the Court of Rajesh Garg, Addl. District Judge,
District Courts, Faridabad. (UID No. HR0120)



CNR No. HRFB01-0040822021

Regt. No. CA-108 of 2021.

Date of Institution: 05.04.2021.

Date of Decision: 19.04.2021.

1. Anil Kumar Singh son of late Shri Hriday Narayan Singh, R/o F-116, Piyush Heights, Sector-89, Faridabad-121002.
2. Arvind Mukherjee son of Shri K.L. Mukherjee, R/o D-113, Piyush Heights, Sector-89, Faridabad-121002.
3. Surender Sangwan son of Shri Sher Singh, R/o B-211, Piyush Heights, Sector-89, Faridabad-121002.
4. Parveen Bhardwaj son of Shri Harbans Lal Bhardwaj, R/o B-113, Piyush Heights, Sector-89, Faridabad-121002.
5. Neena Sikka wife of Shri Parveen Sikka, R/o B-1016, Piyush Heights, Sector-89, Faridabad-121002.
6. Rajesh Ranjan son of Shri B.S. Bhagat, R/o H-114, Piyush Heights, Sector-89, Faridabad-121002.
7. Shashikant Tomer son of Shri Manveer Singh Tomar, R/o P-913, Piyush Heights, Sector-89, Faridabad-121002.
8. Nagpal Singh @ N.P. Singh son of late Shri Girraj Singh, R/o D-115, Piyush Heights, Sector-89, Faridabad-121002.
9. Meenakshi wife of Shri Hitesh Kumar, R/o L-212, Piyush Heights, Sector-89, Faridabad-121002.
10. Mrs. P.K. Singh son of Shri T.B.Singh, R/o L-412, Piyush Heights, Sector-89, Faridabad-121002.
11. Mahesh Joshi son of Shri Beni Ram Joshi, R/o I-415, Piyush Heights, Sector-89, Faridabad-121002.

(Rajesh Garg)
Addl.District Judge,
Faridabad, 19.04.2021
(UID No. HR-0120)

12. Sandeep Chawla son of Shri Krishan Lal Chawla, R/o P-916, Piyush Heights, Sector-89, Faridabad-121002.
13. Brajesh Kumar Jha son of Shri Ram Narayan Jha, R/o L-415, Piyush Heights, Sector-89, Faridabad-121002.
14. Rahul Dhingra son of Shri Surender Kumar Dhinga, R/o B-1013, Piyush Heights, Sector-89, Faridabad-121002.
15. Kamlesh Chawla wife of Shri Subhash Chawla, R/o I-213, Piyush Heights, Sector-89, Faridabad-121002.

.... Applicants/petitioners.

VERSUS

Piyush Heights residents Welfare Association through its President, PHRWA Office, Piyush Heights, Sector-89, Faridabad-121002.

..... Respondent

Review petition under Section 114 of the Code of Civil Procedure, 1908 against the impugned order dated 10.03.2021.

Argued by: Sh. Aprahim Animesh Thakur & Prachi Hasija, Advocates for applicants/petitioners.
Shri Rishi Vohra, Advocate for respondent.

ORDER:

The petitioners have filed a review petition under Section 114 of CPC qua the order dated 10.03.2021 passed by this court in Civil Appeal No.20 of 2021.

2. The petitioners in para no.3 onwards have narrated about the background of the case, as available on file in the impugned order as Annexure R1 from page no.51 to 76 and are not being reproduced for the

sake of brevity. The said order has been assailed on various grounds that the impugned order dated 10.03.2021 infringes upon the rights of electricity granted to the petitioners under Article 21 of the Constitution of India, 1950. The petitioners are law abiding citizens of India and are the residents of “Piyush Heights, Faridabad”, a Group Housing Project. As per Buyer’s agreement, the builder was responsible for providing internal development within the aforesaid project which includes laying of roads, laying of water lines, laying of sewer lines, laying of electricity lines and further to maintain and upkeep the above facilities along with the maintenance of the common area facilities. In the year 2013, the builder appointed one of its sister/subsidiary namely M/s Piyush Facility Management Private Limited as Management Agency for Piyush Heights.

3. It is stated that as per the maintenance agreement, the builder and maintenance agency were under an obligation and responsible to provide the facilities and maintenance to the residents of the society which includes electricity supply and backup power supply through power generators to the facts. On 02.10.2015, the residents of Society formed the respondent Association which was duly registered with the department of Industries and Commerce, Haryana. In the year 2016, being constantly aggrieved by the gross failure of the maintenance agency and builder in providing proper maintenance services, threatening the residents to face dire consequences, non-recharging and non-issuing of the prepaid electricity coupons to the residents, the respondent Association filed a suit

seeking permanent and mandatory injunction restraining the Builder and Maintenance Agency from withdrawing the sale of electricity from generators to the member of the association and all allottees of flats within the society and to pay all the requires fees to DHBVN/HVPL to obtain/secure the permanent electricity connection. In the mean time, the Builder got sanctioned Single Point Supply connection bearing Account No.F-15-85HT-0023 under Bulk Supply Domestic Category from the distribution Licensee in its name to supply electricity to all the apartment owners, the Builder and the Maintenance Agency did not pay the dues for DHBVN qua usage of electricity for long time despite collecting the same from the residents well in advance.

4. It is stated that civil suits and criminal complaints were filed by some investors and lenders against the Builder Company along with its Directors and in pursuance of the same, the Directors of the Builders company and maintenance agency were arrested by the police in May, 2018 and at present they are in judicial custody in Neemka Jail, Faridabad. Due to nonpayment of dues qua usage of electricity, the respondent Association vide notice dated 01.05.2018 asked the residents of the Society to deposit Rs.15,000/- each to be paid to DHBVN to clear total dues of Rs.52,04,395/- to save the disconnection of power supply. The amount collected by the residents was more than Rs. One crore out of which Rs.52,03,495/- was deposited before the Hon'ble Punjab and Haryana High Court and the balance amount is in possession of the

respondent Association and has not been returned back to the residents of the society. After enjoying the money for about two and a half years, in the month of November, 2020, under the pressure of residents, the Governing Body of the respondent Association decided to refund an amount of Rs.7,000/- to residents with showing any document regarding monthly/quarterly/half yearly statement of account or document related to purchase of material or equipment with the residents.

5. It is stated that after the arrest of Directors of Building Company and Maintenance Agency, the respondents formally started looking after the maintenance work of common areas as well as other maintenance work. Some members of respondent Association started harassing the flat owners by demanding the money under different heads and in case of non-payment of the said money by the flat owners, they were denied the recharge of their pre-paid electricity coupons and on the application of the flat owners, the District Registrar of Societies, Faridabad issued notice to respondent Association to follow the procedure as per Clause 88 of the Bye Laws of the society and not to stop the pre-paid electricity recharge of the residents. The respondent no.1 does not have the power to change the meters as RWA is incharge of the common areas. All the meters of the residents are within the lock and key control of the Residents Welfare Association and not accessible to any residents and therefore, theft of electricity can only happen in connivance with the Governing body of RWA. The respondent Association was charging the electricity and back

up supply through DG @ Rs.21.25 per unit from the residents. The residents of the Society raised their grievances before the respondent Association with respect to the charges being exorbitant and the same not being in conformance of Haryana Electricity regarding single point supply issued by Haryana Electricity Regulatory Commission, hereinafter referred to as HERC. The respondent Association did not make any effort to issue flatwise monthly electricity bills with detailed breakup of heads and the unit consumed by the respective flat owners is in violation of HERC Regulations.

6. It is stated that despite many requests made by the residents of the Society, the respondent Association continued their arbitrariness against which some of the respondents approached HERC by way of petition sent on e-mail in respect of which a letter dated 02.07.2020 was sent from HERC. On 15.02.2009, residents of Society raised their grievances for redressal by way of application before the SDO (OP), DHBVN, Kheri Kalan Sub Division, but no action was taken. On 25.08.2020, the residents of the Society gave a memorandum to the Superintending Engineer against the arbitrary decision taken by the officials of the respondent Association to replace the electric meters. On 15.10.2020, CGRF, DHBVN, Hisar passed an order in the petitioner preferred by the residents directing the SDO to take all necessary measures provided as under the Regulations. In pursuance of non-compliance of order dated 15.10.2020, a contempt petition was preferred before CGRF for willful conduct. The

respondent Association appeared in a great hurry to do transactions with respect to the procurement/ purchase of SUMERU meters to change the existing meters of ELMEX for creating burden on the said society and the technology of the said meters is also out-dated, which requires replacement with the new SIMERU meters. The residents of the society objected to the said change over of the electric meters. The Association had announced that a decision was made to procure/purchase meters from SUMERU and that every resident will be charged Rs.6,127/- for the new meter and after a certain date, Rs.7,000/- will be charged from the residents. The respondent Association has threatened the residents of the Society to change the existing meters and in the event of failure to comply with the decision of the Association to change the meters, the power supply of such residents shall be disconnected. The respondent Association filed a suit for interim, permanent, mandatory injunction and declaration on 22.12.2020 along with an application under Order 39 Rules 1 and 2 CPC and vide order dated 15.02.2021, the court of learned Civil Judge granted the interim relief, which has been challenged by way of filing of appeal, in which application filed along with the appeal under Order 39 Rules 1 and 2 CPC was dismissed.

7. It is stated that the impugned order is arbitrary, unreasonable, unlawful and against the interest of justice, in which learned Addl. District Judge exceeded its jurisdiction in granting relief to the respondent Association, which is ignorant of arbitrary acts of the officials of

respondent Association. The respondent on its accord took over the maintenance of common areas of the Society and changed the electric meters, which comes solely under the ambit of the Electricity Board with consent of residents. Learned Addl. District Judge, should not have allowed the replacement of the meters and now they want to take benefit before the court that they have already changed about 687 meters. The SUMERU meter is non-tested, non-calibrated and non-certified from DHBVN and no document has been shared regarding testing and calibration of all the SUMERU meters with the residents till date. Learned Addl. District Judge failed to take into consideration that the HERC guidelines mandates the Residents Welfare Association to monitor consumption. Learned Addl. District Judge wrongly held that the electricity meter accuracy of SUMERU meters is within permissible limit. Learned Addl. District Judge failed to take into consideration the letter dated 10.12.2020 which was sent by ELMEX to the respondent Association. Learned Addl. District Judge failed to take into consideration the reasoning given by Shri Vivek Chaudhary, in its order dated 15.02.2021. The impugned order passed by the learned Addl. District Judge suffers with error apparent on face of record as neither the Builder nor the Maintenance Agency could have handed over the maintenance of the housing Society to the respondent no.1 as pre-condition setup. The Court erred in not appreciating the fact that the terms of Single Point Supply to Residential Colonies or Office-cum-Residential Complexes of

Employers, Group Housing Societies and Commercial-cum-Residential Complexes of Developers, Regulations, 2013, that electricity meter can only be replaced upon testing with accredited laboratory of the meter and with a consequent findings of fault in performance of the said meter. The impugned order suffers from error apparent on face of record, as the same has been passed in complete ignorance of material evidence placed on record. Learned court passed the order in ignorance of material evidence and failed to appreciate that there is a prima facie case in favour of the petitioners as the coercive modus operandi of respondent no.1 is apparent from FIR No.123 of 2019. Learned court failed to appreciate the act of respondent no.1 disconnecting electricity of the residents. Learned court failed to appreciate the conjoint reading of Clause 4.2 and clause 5 along with the terms of the maintenance agreement as a whole and prayed that review petition may be allowed and impugned order may be set aside.

8. Learned counsel for the petitioner mainly contended that the project of Piyush Heights is not complete. Occupation certificate and completion certificate have not been issued. He urged that the maintenance agreement is with the Piyush Facility Management Private Limited and could not be handed over by virtue of Section 3 and 17 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the RERA). He also relied upon the provisions of Section 2 of Haryana Apartment Ownership Act, 1983, hereinafter referred to as Apartment Act. He urged that the maintenance of the Society could not have been handed over to

the respondent Piyush Residents Welfare Association. He also drew my attention towards Clause 35, para 4.2(v), 4.3, para no.5 of the Maintenance agreement. He urged that the existence of RWA itself is illegal. He further drew my attention towards para no.7 (e), (f), (g), (h), 8, 10, 13 and 14 of the Maintenance Agreement and claimed that the said Maintenance Agreement dated 05.01.2018 is still binding on the RWA.

9. He further submitted that as per the Haryana Electricity Regulatory Notification dated 22nd April, 2020 and referred para no.4.3(c), 4.5, 6.1(c), (d) and urged that proper procedure has not been followed. He further submitted that there is no allegation of any theft report ever to DHBVN, who is the Nodal Authority to deal with the case. The electricity can be disconnected on the ground of non-payment of charges, as per clause 10 and 13. He submitted that as per notification, the electricity has been provided under the Single Power Supply scheme. There is no allegation in the reply that the petitioners have not paid the charges. He further submitted that there are total 1080 flats are to be constructed out of which 200 flats are not yet to be constructed and thus, project is not complete and could not be handed over to RWA. He submitted that they have not preferred any appeal against the impugned order. The petitioners are ready to deposit Rs.7,000/- in the court. He further contended that by disconnecting the electricity supply, the respondents have effected their fundamental rights, as envisaged under Article 21 of the Constitution. In support of his contention, he placed reliance on the ratio of law laid down

in case **Madan Lal Versus State of Himachal Pradesh and others**
2018 SCC OnLine HP 1495.

10. He urged that the order may be reviewed and the petitioners may be permitted to continue to use ELMEX meter and the same may be recharged so that the petitioners may be able to enjoy the electricity to live a decent life in the society.

11. On the other hand, learned counsel for the respondent submitted that the learned counsel for the petitioners has argued on merits. He urged that it is a new trend whereby after adverse order is passed, then new counsel is engaged, who filed review petition with new arguments on merits. He urged that the learned counsel for the petitioner has not uttered a single word on the defect of the order. He urged that Maintenance Agreement, HERC guidelines and BIS standard report dated 26.09.2016, 2018, 2019 and further the calibration report were duly considered by the court while dealing with the appeal and detailed order has been passed. He urged that new grounds, particularly in para No.(i), (m), (o), (p), (r), (s), (t), (u), (v), (w), (y), (z), (aa), (bb) and (cc) are being raised to widen the scope of the review petition. He urged that all the pleas raised by the learned counsel for the petitioner before the court at the time of advancing arguments in the appeal filed by him were duly considered and detailed order with reasons has been passed. He urged that no ground is made out to review the impugned order and prayed that the review petition may be dismissed with costs.

12. I have heard and considered the respective contentions advanced by learned counsel for the petitioners as well as respondents.

13. The learned counsel for the petitioner mainly claimed that till the occupation certificate/completion certificate are issued, the maintenance of the society could not have been handed over to the Resident Welfare Society and the acts carried out by the respondent, are illegal and in support of his contention, he relied upon Sections 3 and 17 of RERA and Section 2 of Apartment Act. He also relied upon the clauses of Maintenance Agreement. However, it is pertinent that the maintenance of the society was being carried out by Piyush Facility Management Pvt. Ltd., by virtue of Maintenance Agreement dated 05.01.2018. It is admitted that Piyush Management Facility is sister concern of Piyush Buildwell (I) Limited. It is also admitted that the officials of the company were arrested and there was no one to take care of the maintenance of the society. Consequently, the maintenance of the society was never handed over, rather it was taken over by the residents themselves. It is pertinent that petitioner no.1 A.K. Singh was the President of the said RWA. The maintenance activities of the society was taken over due to the circumstances, as discussed above and as exigencies of circumstances so demanded. In case, it is assumed that the present RWA is committing illegality, then it was initiated by none other, then the petitioner no.1, who was the President of the society at that time.

14. The decision to change the existing electric meter from ELMEX to SUMERO was raised in annual general meeting, whereby initially the responsibility was given to two members and thereafter they involved other 5 members of RWA and report was submitted whereby ultimately considering all the parameters, it was decided that the existing meters be replaced with electric meter of SUMERU, which have all the requisite permission, calibration etc. Thus, it cannot be said that the residents are being forced to change the electric meters.

15. The learned counsel for the petitioner also raised a plea that there is no electricity supply to the petitioners and their fundamental rights are effected. In support of his contention, he placed reliance on the ratio of law laid down in case **Madan Lal (supra)**. However, it is pertinent that in order to have electricity, one has to apply and complete the formalities i.e. deposit the security etc, though, in the case in hand petitioners were required only to get the new meter changed and for that purpose to pay Rs.7,000/- for each meter. Asking of change of meter for the smooth management of electricity supply in the society, cannot be said to be harsh, by any amount of reasoning and their fundamental rights are not being effected, rather, the petitioners themselves are creating hurdle, for the reasons best known to them. Moreover, the guidelines of HERC have been duly dealt with in the impugned order passed by this court. Moreover, various new issues have been raised by the learned counsel for the petitioners, while advancing arguments as well as in their pleadings

particularly, the grounds of petition mention in the para (e), (m), (n), (o), (p) and (r), which cannot be considered in the review petition, though, those grounds have also been touched while passing impugned order.

16. It is well settled that review is not an appeal in disguise. The jurisdiction to review its own judgment/order is limited and it must be exercised within the frame work of Section 114 read with Order 47 of CPC. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases. Reference can be made to case **Jain Studio Ltd. Vs. Shiv Satelite Public Copmany Limited, AIR 2006 SC 2686.**

17. In the case in hand, while learned counsel for the petitioners advanced arguments, tried to build up a case, but did not utter a single arguments that there is patent defect in the impugned order. Moreover, during arguments, it has also come that 741 residents out of 768 residents have switched over to new electric meters. It appear that the present petition has been filed with a sole aim to harass the respondents. The RWA are formed for the welfare of their residents, but here it appears that the dispute is between the previous office bearers and the present office bearers of RWA. The petitioners are creating obstacle in the decision being taken by the present RWA, for the reasons best known to them.

18. The impugned order is passed after having heard the learned counsel of both the parties and on perusal of the record available on file. All the issues raised by the appellants during the arguments, were dealt

with and few arguments, as mentioned above, are raised, which are new and are not part of pleadings. The petitioner cannot travel beyond pleadings, therefore, the court is of the view that there is no merit in the review petition and the same is hereby dismissed with costs of Rs.5,000/- to be deposited with District Legal Services Authority, Faridabad within a period of one month. In case, the petitioners failed to deposit the costs, then District Legal Services Authority shall file appropriate proceedings to recover the costs by way of filing appropriate application in accordance with law before the concerned Civil Court. Copy of order be sent to District Legal Services Authority, Faridabad for information and necessary action. File be consigned to the record-room.

Pronounced in open court.
Gautam Lal.

(Rajesh Garg)
Addl. District Judge,
Faridabad, 19.04.2021.
(UID No. HR-0120)

Note: All the pages of this order have been checked & signed by me.

(Rajesh Garg)
Addl. District Judge,
Faridabad, 19.04.2021
(UID No. HR-0120)