

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

I.A.No.61

(Appln. for clarification of order dated 30.7.2012 and office report)

IN

I.A.No. .... /2012

(Appln. for vacation of Interim stay granted by order dated 16.7.2012)

IN

CIVIL APPEAL NO. 6962 OF 2005

R.K. MITTAL & ORS. .. APPELLANT(S)

vs.

STATE OF U.P. & ORS. .. RESPONDENT(S)

AND

GHANSHYAM CHAUHAN .. APPLICANT

WITH Con.Pet. (C)No. 400/2012 In CA No. 6962/2005  
(With appln. for exem. from filing O.T. and office report)  
(For prel.hearing)

WITH Con.Pet. (C)No. 406/2012 In CA No. 10535/2011  
(With office report)

Date: 23/11/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR  
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For appearing parties:

Mr. M.C.Dhingra,Adv.  
Mr. Pijush Kant Ray,Adv.  
Mr. Vikas Bakshi,Adv.  
Mr. Vishal Bakshi,Adv.

Mr. R.K.Rathore,Adv.  
Mr. Keshav Thakur,Adv.

Mr. A.Chaturvedi,Adv.  
Mr. A. Somuel,Adv.  
Mr. Praveen Chaturvedi,Adv.

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Mr. Jitendra Mohan Sharma,Adv.

Mr. Ravindra Kumar,Adv.

Mr. K.L. Taneja ,Adv.

Mr. Lakshmi Raman Singh ,Adv.

M/S. Mitter & Mitter Co.

Mr. P. Parmeswaran ,Adv.

Mr. Ram Swarup Sharma ,Adv

Mr. S.R. Setia ,Adv.  
Mr. Shrish Kumar Misra,Adv.  
Mr. M.T. George ,Adv.  
Mrs. Shiel Sethi ,Adv.  
Mr. O.P. Gaggar ,Adv.  
Mrs.Rachana Joshi Issar ,Adv.  
Mr. Vinay Kumar Garg ,Adv.  
Mr. Himanshu Munshi ,Adv.  
Mr. Naresh Kumar ,Adv  
Mr. T. Mahipal ,Adv.  
Mr. Arun Kumar Beriwal ,Adv.  
Mr. Rajesh Goyal ,Adv.  
M/S. Dua Associates ,Adv.  
Ms. Garima Prasad ,Adv.  
Mr. Pahlad Singh Sharma ,Adv.  
Mr. Chandan Kumar Rai ,Adv.  
Mr. Rahul Kaushik ,Adv.

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Mr. Arjun Garg ,Adv.  
Mr. Sanjay Kapur,Adv.  
Mr. Gopal Prasad,Adv.  
Mr. Navin Chawla,Adv.  
M/s. AP & J Chambers.  
Mr. Sonal Jain,Adv.

UPON perusing letter circulated the Court made the following  
O R D E R

I.A.No...../2012-Application for vacation of interim stay granted by order 16.7.2012 is taken on record and be numbered.

I.A. No...../2012-application for vacation of interim stay granted by order dated 16.7.2012 and I.A. No.61 - application for clarification of order dated 30.7.2012 are disposed of in terms of the signed order placed on the file.

Contempt Petition No. 400/2012 In CA No. 6962/2005 and Contempt Petition No. 406/2012 in C.A.No. 10535/2011 be listed on 3.12.2012 at 1.05

p.m. in Court.

[SUMAN WADHWA]  
COURT MASTER

[S.S.R. KRISHNA]  
COURT MASTER

Signed order in I.A.No.61 and I.A.No..../2012 is placed on the file.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A.No.61

(Appln. for clarification of order dated 30.7.2012)

IN

I.A.No. .... /2012

(Appln. for vacation of Interim stay granted by order dated 16.7.2012)

IN

CIVIL APPEAL NO. 6962 OF 2005

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STATE OF U.P. & ORS. .. RESPONDENT(S)

AND

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O R D E R

I.A.No...../2012 -Application for vacation of interim stay granted by order dated 16.7.2012 is taken on record and be numbered.

We have heard learned counsel for the parties.

It is not necessary for us to notice the facts stated in the application in great detail. Suffice it to notice that the applicant is carrying on the activity of a tailor in the EWS Janta Flat in Sector 12 which had been allotted to him for residential purpose. The contention is that though as per uses stated in the brochure customary activity is

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permissible, the applicant is using a part of the premises for tailoring purpose. It is brought to our notice that it is a two rooms flat.

On the other hand, the contention on behalf of the NOIDA Authority is that it is a case of commercial use simplicitor and not customary use. The term customary use must take its colour from the concept of the traditional use by professionals like Doctors, Chartered Accountants, Lawyers, etc. It is also the contention that if such activity is permitted, the very purpose of the judgment shall stand defeated as every house will open to commercial activity under the garb of customary activity like repairing of the A.C., tailor shop, grocery and other such activity. The direction contained in the judgment in paragraph 56 directs that the banking or nursing home or any other commercial activity is not permitted in the sector. However, it will not be appropriate for this Court to deal with the contentions raised in the suit between the parties and all the contentions of the parties should be kept open in the interest of justice.

We make it clear that any observations made in this order and the directions contained will

not operate prejudicial to the interest of any of the parties and they will be free to raise such contentions as may be available to them before the Trial Court. In view of the above, we issue the following directions:

1. The interim order passed by the Trial Court dated 29.5.2012 shall stand vacated;
2. The appeal before the First Appellate Court shall stand disposed of as we have vacated the order of the Trial Court itself;
3. The applicant herein (plaintiff in the suit) will be at liberty to pursue his suit in accordance with law. The Trial Court shall decide the said suit expeditiously and preferably within six months from today.

With the above directions I.A. No...../2012 -application for vacation of interim stay granted by order dated 16.7.2012 and I.A. No.61 - application for clarification of order dated 30.7.2012 are disposed of.

.....J.  
(SWATANTER KUMAR)

.....J.  
(RANJANA PRAKASH DESAI)

New Delhi,  
November 23, 2012.