

LISTED ON : 22.01.2015
COURT NO. : 08
ITEM NO. : 01

SECTION-XII A
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION NOS. 8-9
(Applications for Appeal under order V Rule 3 of the SCR, 2013
against the order dated 16.07.2014)
AND
INTERLOCUTORY APPLICATION NOS. 10-11
(Applications for condonation of delay in filing said applications)
IN
CIVIL APPEAL NOS.5729-5730 OF 2009

PRINCE SHAHAMAT ALI KHAN & ANR. ..APPELLANT

- VERSUS -

SULTAN-UL-ULOOM EDUCATION SOCIETY & ORS. ..RESPONDENTS

OFFICE REPORT

The I.A. Nos. 6-7/2014 (Applications for withdrawal of Civil Appeals) in the Appeals above-mentioned was listed before the Hon'ble Judge-in-chambers on 29th April, 2014, when the Hon'ble Court was pleased to pass the following order:

“Heard Mr. Altaf Ahmed, learned senior counsel for appellant no.1, Mr. Sunil Fernandes, learned counsel who seeks to represent appellant no.2, stated to be the general power of attorney holder of appellant no.1.

Learned counsel for the appellant no.2 fairly brought to my notice the order of this Court dated 15.04.2014 by which the requirement of 'No Objection Certificate' from appellant no.2 was revoked. Learned counsel for the second appellant would contend that revocation sought for by the first appellant was stayed.

In the light of the order dated 15.04.2014 passed by this Court, there is no scope to hear the second appellant any more. Mr. Altaf Ahmed, learned senior counsel seeks to withdraw these appeals. In the light of the said statement, the appeals are dismissed as withdrawn.”

Subsequently, the Application for recall/modification in appeals

above-mentioned was placed before Ld. Registrar on 16th July, 2014, when he was pleased to pass the following Order:-

“On 29.4.2014 IA Nos. 6-7 in the aforementioned civil appeals were listed before Hon'ble Chamber Judge when after hearing Ld. Counsel for the parties the Court inter alia passed the following order:-

“In the light of the order dated 15.04.2014 passed by this Court, there is no scope to hear the second appellant any more. Mr. Altaf Ahmed, learned senior counsel seeks to withdraw these appeals. In the Light of the said statement, the appeals are dismissed as withdrawn.”

The instant IA for recall/modification of the orders dated 15.04.2014 and 29.04.2014, has been filed by Mr. Sunil Fernandes, Ld. Counsel for Appellant No. 2, who is General Power of Attorney holder of Appellant No. 1 and it is prayed as under:-

- a) Recall/Modify the orders dated 15.04.2014 and 29.04.2014 passed by the Ld. Chamber Judge to the extent that the alleged mutual settlement arrived at between the Appellant No.1 (Prince) and Respondent No. 1 (Education Society) leading to the withdrawal of the civil appeals shall not be operative qua 6 Acres of land of the entire suit property which was alienated with consent and knowledge of Appellant No. 1 Prince herein to various third parties will remain unaffected.
- b) Direct that the discharge of AOR Mrs. D. Bharathi Reddy is only qua Appellant No. 1 and that Applicant/Appellant No. 2 is permitted to contest the instant civil appeals in their present forms.
- c) Take on record the order dated 15.07.2011 passed by the Ld. Court of IV Senior Civil Judge, City Civil Court, Hyderabad in IA NO. 317 of 2011 in OS No. 942 of 2011, staying the cancellation of the GPA in favour of the Applicant herein.

Order dated 29.04.2014 dismissing the appeals as withdrawn was passed after hearing Mr. Sunil Fernandes, Counsel also.

A perusal of the IA for recall/modification reveals that the applicant virtually wants a review of the Court's Orders dated 15.4.2014 and 29.4.2014 which is not permissible through this IA. The applicant may take recourse to provisions relating to review under the Supreme Court Rules, 1966.

In this connection, it is significant to refer to the decision rendered by this Hon'ble Court in **APSRTC and others v. Abdul Karim** (2007) (3) SCJ 168, wherein this Hon'ble Court has held that “by describing an application as one for clarification or modification, though it is one for review, a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open court. The Hon'ble Court has further held that what cannot be done directly cannot be permitted to be done indirectly and that an application for “clarification”, “modification” or “recall” cannot be entertained where, in sum and substance, the

same is a clever move for the review”.

While dismissing an IA in the case of **All India Judges Association & ors. vs. Union of India & Ors.** (I.A. No. 11 of 2010 in Writ Petition (C) No. 1022 of 1989) on 8th April, 2011, the Hon'ble Court has observed that:-

“The petition, though titled as an Interlocutory application, actually seeks review of the aforesaid order. The label of I.A. is given to the petition for the purpose. A review petition, under the Rules of this Court, would be considered by circulation. An Interlocutory application on the other hand, gets listed for oral hearing. We are surprised that the office failed to notice the wrong labeling of the petition and accepted it and put it on record for oral hearing.”

In view of the foregoing, the I.A. for recall/modification as mentioned above does not disclose any reasonable cause for acceptance and the same is lodged under Order XVIII, Rule 5 of the Supreme Court Rules, 1966. ”

It is submitted to the Hon'ble Court that Mr. Sunil Fernandes, Advocate has on 10th October, 2014 filed appeal alongwith application for condonation of delay in filing the appeal and the same are registered as I. A. Nos. 8-9 & 10-11.

The afore-said applications in the Appeals above-mentioned are listed before the Hon'ble Court with this Office Report.

Dated this, the 20th day of January, 2015.

ASSISTANT REGISTRAR

Copy to:-

1. Ms. Charu Mathur, Advocate,
2. Mr. Ejaz Maqbool, Advocate, 319, C.K. Dafatary Chamber
3. Mr. Braj K. Mishra, Advocate, Ch. No. 232, M. C. Setalvad Chambers
4. M/s. Lawyer's Knit & Co., Advocates, 20, Old Lawyer's Chamber
5. Mr. Sunil Fernandes, Advocate, A-178, LGF Defence Colony.

ASSISTANT REGISTRAR