

SECTION PIL (WRIT)

MATTER FOR : 08.12.2014

COURT NO. : 07

ITEM NO. : 57

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

INTERLOCUTORY APPLICATION NO. 5/2013

(Application for Appeal by way of I.A. against Ld. Registrar's Order dated 23.02.2013 whereby the Application for Restoration of the Writ Petition was lodged)

WITH

INTERLOCUTORY APPLICATION NO. 6/2013

(Application for permission to appear & argue in person)

AND

INTERLOCUTORY APPLICATION NO. 7/2013

(Application for Appeal by way of I.A. against Ld. Registrar's Order dated 27.07.2013)

WITH

INTERLOCUTORY APPLICATION NO. 8/2013

(Application for permission to appear & argue in person)

IN

CONTEMPT PETITION (C) D. NO. 20400/2013

WITH

INTERLOCUTORY APPLICATION NO. 9/2014

(Application for appeal by way of I.A. against learned Registrar's Order dated 16.08.2014)

AND

INTERLOCUTORY APPLICATION NO. 10/2014

(Application for permission to appear & argue in person)

IN

CONTEMPT PETITION (C) D. NO. 22286/2014

IN

WRIT PETITION (C) NO. 204 OF 2010

(Under Article 32 of the Constitution of India)

SURAZ INDIA TRUST

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

**OFFICE REPORT**

**INTERLOCUTORY APPLICATION NOS. 5 & 6**

It is submitted that the Writ Petition (C) No. 204/2010 filed by the Petitioner-in-Person was dismissed on 07.01.2013 by the Three Judges Bench headed by the Hon'ble the then Chief Justice of India. The Order dated 07.01.2013 read as under:

“Having considered the submissions made by Mr. A.K. Ganguli, learned senior counsel, with regard to the maintainability of the writ petition and the prayers made therein, we are not inclined to entertain the writ petition, which is accordingly dismissed.”

Thereafter, the Petitioner-in-Person has on 04.02.2013 filed Applications for Restoration and permission to appear and argue in person in the Writ Petition (C) NO. 204/2010 which were placed before the Ld. Registrar's on 23.02.2013, when he was pleased to pass the following Order:-

“The instant application bearing Diary No. 13389 has, on 04.02.2013, been filed by the petitioner-in-person for restoration in Writ Petition (C) No. 204 of 2010. An application regarding permission to appear and argue in person has also been filed by the petitioner.

According to the petitioner, the Writ Petition (C) 204 of 2010 was listed for hearing before the Hon'ble Court on 7.1.2013 when the same was dismissed for non-maintainability, as the petitioner-in-person could not appear before the Hon'ble Court due to unavoidable circumstances so as to plead the case. It is stated that due to late running of Mandore Express, by which the petitioner was traveling from Jodhpur to Delhi, petitioner reached New Delhi on 07.01.2013 at 1.00 P.M. instead of scheduled time of 6.25 A.M. At about 3.00 P.M. when he reached Supreme Court it was told to him by Senior Advocate Mr. A.K. Ganguly that the matter had already been taken up. The petitioner has requested that writ petition may be restored to its original number.

In his application seeking permission to appear and argue in person, it is stated by the petitioner that he being Chairman of the Trust, may be allowed to appear and argue in person.

In fact, the instant writ petition was once earlier dismissed on 03.05.2010 for non-prosecution. Thereafter, the petitioner had filed an application for restoration which was listed for hearing on 26.11.2010. The petitioner did not appear on 26.11.2010, instead, he had sent a letter requesting that an amicus curiae may be provided to him. On 26.11.2010, the application for restoration filed by the petitioner was allowed and Mr. A.K. Ganguly, Senior Advocate and Mr. Bharat Sangal, Advocate were appointed for the petitioner. The order dated 26.11.2010 is as hereunder:-

“Application for restoration is allowed.

The petitioner has not appeared today. He has sent a letter dated 8.11.2010 requesting that he may be provided an amicus curiae to represent him in the case. We request Mr. A.K. Ganguly, learned senior counsel and Mr. Bharat Sangal, Advocate to

appear for the petitioner in this case, who have graciously accepted it. Accordingly, they are appointed as such for the petitioner.

Registry is directed to supply complete set of paper books of this case to the learned senior counsel Mr. A.K. Ganguly and Mr. Bharat Sangal, Advocate within four weeks. Matter be listed thereafter.

The petitioner may also be informed about this order.”

Since then, Mr. A.K. Ganguly, Senior Advocate has been appearing for the petitioner. The writ petition was listed for hearing on 7.1.2013 when after hearing the parties, Hon'ble Court has been pleased to dismiss the writ petition. The order dated 7.1.2013 is as hereinunder:-

“Having considered the submissions made by Mr. A.K. Ganguli, learned senior counsel, with regard to the maintainability of the writ petition and the prayers made therein, we are not inclined to entertain the writ petition, which is accordingly dismissed.”

The above order clearly reveals that the writ petition has not been dismissed for non-prosecution. It has been dismissed on merits. According to the petitioner since he could not plead his case, therefore, the restoration application may be allowed and writ petition may be restored to its original number and he may be allowed to appear and argue the case.

On an application filed by the petitioner to provide amicus curie to represent him in the case, on 26.11.2010 Hon'ble Court was pleased to appoint Mr. A.K. Ganguly, Senior Advocate and Mr. Bharat Sangal, Advocate to appear on behalf of the petitioner, in the case. On 07.01.2013, Mr. A.K. Ganguly, Sr. Advocate and Mr. Bharat Sangal appeared before the Hon'ble Court and represented the petitioner. Therefore, now the petitioner may not be permitted to plead that since he could not appear before the Hon'ble Court on 07.01.2013 and plead the case, therefore, the writ petition may be restored. Accordingly, there is no reasonable case which may justify registration of the instant applications and they deserve to be lodged under Order XVIII Rule 5, Supreme Court Rules, 1966.

The instant applications for restoration and for permission to appear and argue in person are lodged under Order XVIII Rule 5, Supreme Court Rules, 1966.

The petitioner-in-person may be informed accordingly.”

Now, the Petitioner-in-Person has on 01.04.2013 filed an Appeal against the aforesaid Order dated 23.02.2013 passed by the Ld. Registrar alongwith Application for permission to appear & argue in person. The same have been registered as Interlocutory Application Nos. 5 and 6.

### **INTERLOCUTORY APPLICATION NOS. 7 & 8**

It is submitted that the Writ Petition (C) No. 204/2010 filed by the Petitioner-in-Person was dismissed by this Hon'ble Court vide its Order dated 07.01.2013:

“Having considered the submissions made by Mr. A.K. Ganguli, learned senior counsel, with regard to the maintainability of the writ petition and the prayers made therein, we are not inclined to entertain the writ petition, which is accordingly dismissed.”

It is further submitted that Mr. Rajiv Daiya, Chairman, Suraz India Trust, Petitioner-in-Person has on 05.07.2013 filed a Contempt Petition in W.P. (C) No. 204/2010 (Disposed of) Under Section 12 of the Contempt of Courts Act, 1971 read with Article 129 of the Constitution of India alleging deliberate and willful disobedience of the Order dated 04.04.2011 and 09.11.2012 passed in W.P. (C) No. 204 of 2010, against Hon'ble Altamas Kabir, Hon'ble the then Chief Justice of India along with an Application for seeking Permission to Appear and Argue in Person was placed before the Ld. Registrar on 27.07.2013, when he was pleased to pass the following Order:-

“By virtue of this petition styled as Contempt Petition (C) in Writ Petition © No. 204 of 2010 impleading Shri Altamas Kabir Hon'ble the Chief Justice of India as an alleged contemnor, the petitioner-in-person has prayed for the following, *inter alia*, reliefs:

“(a). to direct the Contemnor to make compliance of the orders dated 04.04.2011 and 09.11.2012;

(b) to initiate proceeding for contempt of court against Contemnor for willful and deliberate disobedience and violation of orders dated 04.04.2011 and 09.11.2012 passed

by this Hon'ble Court.

(c) to punish the contemnor suitably for committing contempt of orders passed by this Hon'ble Court;"

Writ Petition (C) No. 204 of 2010 was filed by Suraz India Trust through its Chairman Rajiv Daiya for the following, *inter alia*, reliefs:

“(a) adjudicate the legal questions raised in para 3 of the writ petition;

(b) reconsider and review the law laid down by 9 Judges Bench passed in the case of Supreme Court Advocates-on-Record Association Vs. Union of India & others (reported in (1993) 4SCC 441) so also in the case of Special reference No.1 of 1998 (reported in (1998) 7 SCC 739.”

On 4<sup>th</sup> April, 2011 when the Writ Petition (C) No. 204 of 2010 was called on for hearing the Hon'ble Court passed, *inter alia*, the following order:

“13. At this juncture, Mr. Ganguli as well as Mr. Vahanvati have submitted that even at the stage of preliminary hearing for admission of the petition, the matter requires to be heard by a larger Bench as this matter has earlier been dealt with by a three Judges Bench and involves very complicated legal issues.

14. In view of the above, we place the matter before the Hon'ble Chief Justice for appropriate directions.”

On 9<sup>th</sup> November, 2012, when the Writ Petition was listed before a three Judge Bench presided over by Hon'ble the Chief Justice of India, the following order came to be passed:

“Since by the order of 4<sup>th</sup> April, 2011, this matter has been referred to a larger Bench, let the mater be placed before the Hon'ble the Chief Justice of India, for appropriate orders.

In the meantime, notice may issue to the respondent No.1, as also to the learned Attorney General for India, who has already appeared in the matter.”

On 7<sup>th</sup> January, 2013 when the Writ Petition was called on for hearing before a three Judge Bench presided over by Hon'ble the Chief Justice of India, the following order came to be passed.

“Having considered the submissions made by Mr. A.K. Ganguli, learned senior counsel, with regard to the maintainability of the writ petition

and the prayers made therein, we are not inclined to entertain the writ petition, which is accordingly dismissed.”

The petitioner has preferred this Contempt Petition on the premise that there was deliberate disobedience of the orders dated 4<sup>th</sup> April, 2011 and 9<sup>th</sup> November, 2011 in not constituting a larger Bench. The grounds No. (A) to (C) contain the substance of the petition. They read as under:

“(A) That the contemnor has deliberately and intentionally has disobeyed, disrespected and flouted the orders dated 04.04.2011 and 09.11.2012 passed in Writ Petition (Civil) No. 204 of 2010 (Suraz India Trust Vs. Union of India & Another), and therefore, there is a clear non-compliance of the aforesaid orders making out Contempt of Court for which the Contemnor is liable to be punished.

(B) That the Contemnor himself while acting judicially comprising of the Bench for hearing the petition on 09.11.2012 has expressly observed that “Since by order of 4<sup>th</sup> April, 2011, this matter has been referred to a larger Bench, let the matter be placed before the Hon’ble the Chief Justice of India, for appropriate orders.” Therefore, when the Hon’ble Chief Justice who was forming the part of the Bench hearing the petition was well aware of the fact that this petition has been referred to the larger Bench and the Bench was thereafter to be constituted as per the orders of the Hon’ble Court dated 04.04.2011 and 09.11.2012. But non-constitution of the larger Bench is, therefore, clear non-compliance of the aforesaid orders passed by this Hon’ble Court for which the contemnor deserves to be punished.

(C) That the abovenamed Contemnor was to comply with the orders dated 04.04.2011 and 09.11.2012 and the Bench of appropriate quorum was to be constituted for adjudication of the questions framed by order dated 04.04.2011, because in the aforesaid writ petition Nine Judges Bench was under challenge, therefore, the Bench of Eleven or more Judges was required to be constituted. But the Contemnor has not passed any order to constitute the appropriate Bench in compliance of the orders dated 04.04.2011 and 09.11.2012 making out contempt of Court.”

The petitioner has further averred that he inspected the

case file but could not find any order of Hon'ble the Chief Justice of India in compliance of the aforesaid orders. Hence, a notice was served on the alleged contemnor on 30<sup>th</sup> March, 2013. Resultantly this petition.

It is imperative to note that in the order dated 4<sup>th</sup> April, 2012 the Hon'ble Court has recorded the submissions made on behalf of the learned Counsel for the petitioner and those of the learned Attorney General. Ultimately the Hon'ble Court was pleased to order that the matter be placed before the Hon'ble the Chief Justice of India *for appropriate directions*. From a plain reading of the order passed by the Hon'ble Court dated 4<sup>th</sup> April, 2011 it does not appear that the matter was referred to a Bench of larger coram.

Furthermore, the record indicates that, in pursuance of the Order dated 9<sup>th</sup> November, 2012, the matter was placed before the Hon'ble the Chief Justice of India and the following order came to be passed.

“The matter does not appear to have been referred to a three Judge Bench, though, in the order of 9<sup>th</sup> November, 2012 it has been so mentioned.

Accordingly, let the matter be placed before the Bench presided over by the Chief Justice.”

In adherence to aforesaid direction of the Hon'ble the Chief Justice of India the matter came to be listed before the Bench presided over by Hon'ble the Chief Justice of India on 7<sup>th</sup> January, 2013 and the Writ Petition came to be dismissed. In the aforesaid factual premise, the contention that the Hon'ble the Chief Justice of India did not pass any order consequent to the orders dated 4<sup>th</sup> April, 2011 and 9<sup>th</sup> November, 2012 seem to be against the weight of the record.

On the legal premise, it may be appropriate to have a profitable reference to the Constitution Bench Judgement of the Hon'ble Court in the case of *Central Board of Dawoodi Bohra v. State of Maharashtra & Anr. [(2005) 2 SCC 673]*, wherein the legal position was summed up in the following terms:

“(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lessor quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench

of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3)The above rules are subject to two exceptions: (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roaster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength. (ii)....”

In the case of *Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangha & Ors. [(2001) 4 SCC 488]* another Constitution Bench of this Hon’ble Court observed as under:

“2. We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a Bench of three learned Judges.”

In view of the aforesaid exposition of law reverting to the matter at hand, it becomes abundantly clear that vide Order dated 4<sup>th</sup> April, 2011 neither any reference was made for hearing of the matter by a larger Bench nor the Hon’ble Court doubted the correctness of the earlier Constitution Bench decisions of this Hon’ble Court in the case of *Advocate on Record Association v. Union of India and Others, [(1993) 4 SCC 441]* and *Special Reference 1 of 1998 [(1998) 7 SCC 739]*. The matter was simply directed to be placed before the Hon’ble the Chief Justice of India for appropriate directions. The Hon’ble the Chief Justice of India, as master of the cause list, directed that the matter be listed before 3<sup>rd</sup> the Court presided over by Hon’ble Chief Justice specifically recording that the matter does not appear to have been referred to a three Judge Bench.

In the aforesaid backdrop there is no cause, much less reasonable, for the petitioner to file a petition for Contempt of Court as there is no order of which contempt could be justifiably alleged and that too when the writ petition came to be dismissed vide order dated 7<sup>th</sup> January, 2013 after hearing.

In view of the above, I am impelled to hold that the petition for contempt is sans any cause and thus does not deserve to be received for registration.

The petition, therefore, stands lodged under the provisions of Order XVIII Rule 5 of the Supreme Court Rules, 1966.

Against this order an appeal before the Hon'ble Court under the provisions of Order XVIII Rule 5 Supreme Court Rules, 1966 is admissible.

Inform the petitioner accordingly.”

Now the Petitioner-in-Person has on 27.08.2013 filed an Appeal against the aforesaid Order dated 27.7.2013 passed by the Ld. Registrar alongwith an application to appear and argue in person. The said Applications have been registered as Interlocutory Application Nos. 7 & 8.

### **INTERLOCUTORY APPLICATION NOS. 9 & 10**

It is submitted that the Petitioner-in-person filed Contempt Petition D. No. 22286 of 2014 which was placed before the learned Registrar on 16.08.2014, when he was pleased to pass the following order:

“This Contempt Petition has been filed by the petitioner-in-person namely Mr. Rajiv Daiya, Chairman, Suraz India Trust against Shri N.J. Jamadar, former Registrar (Judl.-I), Shri T. Sivadasan, former Registrar (Judl.-I), Shri Vimal Jaitley, the then Assistant Registrar PIL (Writ) and The Registrar (Judl.), Supreme Court of India, alleging their interference in the Judicial Proceedings thus obstructing in the administration of justice in getting compliance of the Orders dated 04.04.2011 and 09.11.2012 passed in W.P.(C)No.204 of 2010 with the prayer that they be directed not to interfere with the judicial proceedings of this Hon'ble Court, not to obstruct in the administration of justice, and to initiate proceeding for contempt for their wilful and deliberate disobedience of the orders and for punishing them suitably for committing contempt of orders passed by the Hon'ble Court.

The petitioner had filed a Writ Petition (C) 204 of 2010 before the Hon'ble Court. It was listed before the Hon'ble Court on 7.01.2013, when after hearing the parties, the Hon'ble Court was pleased to pass the following order:

“Having considered the submissions made by Mr. A. K. Ganguli, learned senior counsel, with regard to the maintainability of the writ petition and the prayers made therein, we are not inclined to entertain the writ petition, which is accordingly dismissed.”

The petitioner then moved an application seeking permission to plead his case and to restore the petition. Since, there was no reasonable cause which may justify registration of that application, it was lodged by the learned Registrar vide order dated 23.02.2013 under Order XVIII, Rule 5, Supreme Court Rules, 1966.

The Petitioner-in-Person on 05.07.2013 preferred a Contempt Petition against the then Hon'ble the Chief Justice of India (Hon'ble Mr. Justice Altamas Kabir) for initiating proceedings for contempt of court for wilful and deliberate disobedience and violation of orders dated 4.4.2011 and 9.11.12 passed by this Hon'ble Court. The grounds mentioned in the said petition are as under:

- (A) That the contemnor has deliberately and intentionally has disobeyed, disrespected and flouted the orders dated 04.04.2011 and 09.11.2012 passed in Writ Petition (Civil) No.204 of 2010 (Suraz India Trust Vs. Union of India & Another), and, therefore, there is a clear non-compliance of the aforesaid orders making out Contempt of Court for which the Contemnor is liable to be punished.
- (B) That the Contemnor himself while acting judicially comprising of the Bench for hearing the petition on 09.11.2012 has expressly observed that "Since by order of 4<sup>th</sup> April, 2011, this matter has been referred to a larger Bench, let the matter be placed before the Hon'ble the Chief Justice of India, for appropriate orders." Therefore, when the Hon'ble Chief Justice who was forming the part of the Bench hearing the petition was well aware of the fact that this petition has been referred to the larger Bench and the Bench was thereafter to be constituted as per the orders of the Hon'ble Court dated 04.04.2011 and 09.11.2012. But non-constitution of the larger Bench is, therefore, clear non-compliance of the aforesaid orders passed by this Hon'ble Court for which the contemnor deserves to be punished.

(C) That the abovenamed Contemnor was to comply with the orders dated 04.04.2011 and 09.11.2012 and the Bench of appropriate quorum was to be constituted for adjudication of the questions framed by order dated 04.04.2011, because in the aforesaid writ petition Nine Judges Bench was under challenge, therefore, the Bench of Eleven or more Judges was required to be constituted. But the Contemnor has not passed any order to constitute the appropriate Bench in compliance of the orders dated 04.04.2011 and 09.11.2012 making out contempt of Court.”

It is also relevant to quote the order dated 4<sup>th</sup> April, 2011 and dated 9<sup>th</sup> November, 2012 passed by the Hon’ble Court in Writ Petition (C) No.204 of 2010 which is the subject matter of this Contempt Petition.

**Order dated 4<sup>th</sup> April, 2011**

“At this juncture, Mr. Ganguli as well as Mr. Vahanvati have submitted that even at the stage of preliminary hearing for admission of the petition, the matter requires to be heard by a larger Bench as this matter has earlier been dealt with by a three Judges Bench and involves very complicated legal issues.

In view of the above, we place the matter before the Hon’ble Chief Justice for appropriate directions.”

**Order dated 9<sup>th</sup> November , 2012**

“Since by the order of 4<sup>th</sup> April, 2011, this matter has been referred to a larger Bench, let the matter be placed before the Hon’ble the Chief Justice of India, for appropriate orders. In the meantime, notice may issue to the respondent No.1, as also to the learned Attorney General for India, who has already appeared in the matter.”

The said petition was directed to be lodged under Order XVIII Rule 5 of the Supreme Court Rules, 1966 being sans of any cause vide Order of Ld. Registrar dated 27.07.2013. In its Order, Ld. Registrar has thread barely dealt with all the allegations contained in the Contempt Petition supported by the settled proposition of law and the records of the case.

Appeal against the Order of Ld. Registrar dated 27.07.2013 was preferred by the Petitioner-in-Person and the same was registered as I.A.No. 7-8. It is pending consideration before the Hon'ble Court.

Record reveals that the Petitioner-in-Person has been filing the petitions without any reasonable cause. The petitions have been dealt with by the persons charged as per the Rules/Guidelines and under the powers and authority conferred upon them by the said Rules/Guidelines.

The instant Contempt Petition is also without any reasonable cause. It does not deserve to be received for registration.

This contempt petition accordingly stands lodged under the provisions of Order XVIII, Rule 5 of the Supreme Court Rules, 1966.

Inform the petitioner-in-person accordingly.”

It is submitted that, the Petitioner-in-person has on 27.09.2014 filed an appeal against the aforesaid order alongwith an application for permission to appear and argue in person which have been registered as Interlocutory Application Nos. 9 and 10 respectively. The same are placed with the Paper Books.

It is further submitted that the appeals by way of Interlocutory Application Nos. 5-6, 7-8 and 9-10, were listed before the Hon'ble Court on 03.11.2014, when the Court was pleased to pass the following Order:-

“At the request of Mr. Rajiv Daiya, petitioner (applicant)-in-person, he is permitted to inspect the relevant record from the Registry on completion of formalities of the court.

List after four weeks.”

It is lastly submitted that Notice of hearing for 08.12.2014 has been sent to the Petitioner-in-person on 17.11.2014 through Registered Post. Subsequently, he has also noted the date of hearing on 20.11.2014.

The Interlocutory Applications in Writ Petition above-mentioned are listed before the Hon'ble Court with this Office Report for Orders.

Dated this the 6<sup>th</sup> day of December, 2014.

Sd/-  
Assistant Registrar