

SECTION PIL (WRIT)

MATTER FOR: 16.08.2013

COURT NO. : 11

ITEM

NO. : 55

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)

WITH

INTERLOCUTORY APPLICATION NO. 6/2013

(Application for permission to appear & argue in person)

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

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.

It is submitted that Notice of hearing for 16.08.2013 was issued to the Petitioner-in-person on 12.07.2013 who has filed a letter dated 12.08.2013 stating that he is unable to appear before this Hon'ble Court on 16.08.2013 due to unavoidable circumstances and he has made a request for adjournment of the matter in the last week of November, 2013. (copy of letter dated 12.08.2013 is enclosed herewith)

It is further submitted that Notice of hearing for 16.08.2013 was also issued Mr. A.K. Ganguly, Sr. Advocate (A.C.) and Mr. Bharat Sangal, Advocate (A.C.) on 12.07.2013.

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

Dated this the 14th day of August, 2013.

Assistant Registrar