

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 14th March, 2014*
Date of Decision: 28th March, 2014

+ **C.M. No.16860/2013 & C.M. No.2392/2013 IN LPA 16/2012**

DEEPAK KHOSLA Appellant
Through: Appellant in person.

versus

MONTREAU RESORTS PVT. LTD. & ORS. Respondents
Through: Mr. Raman Kapoor, Sr. Advocate
with Mr. Anand M. Mishra,
Advocate.

CORAM:

MR. JUSTICE KAILASH GAMBHIR

MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J.

1. C.M. No.16860/2013 is an application under Section 151 of the Code of Civil Procedure, 1908 seeking “modification” of the order dated 24.04.2012 passed by a Division Bench consisting *Sanjiv Khanna, J.* and one of us (*R. V. Easwar, J.*) in LPA No.16/2012. C.M. No.2392/2013 is again an application under Section 151 CPC seeking “clarification” of the above order passed by the Division Bench. When these applications were earlier placed before this Bench, it was felt by this Bench that it would be appropriate to place these applications before the same Bench which

heard the Letters Patent Appeal; they were accordingly placed before the same Bench which decided the LPA. However, since by orders dated 10.01.2014 and 28.02.2014, *Sanjiv Khanna, J.* recused himself from hearing the applications, they were again placed before this Bench. Accordingly arguments were heard on both the applications. The submission in the “modification” application is that the opening sentence of paragraph 73(v) of the order dated 24.04.2012 be modified. The said paragraph open as follows: -

“73(v) Till the decision, there will be stay of the pending proceedings or initiation of new proceedings before the High Court and in the District Courts.”

The application for modification states that the appellant is not interested in such protection and to this limited extent the said paragraph may be modified. It is claimed that the respondents cannot possibly have any objection to this since they themselves are praying for certain matters to be proceeded with (against the appellant) and that in any case the modification is eminently warranted because of the change in circumstances, that is to say that the appellant-applicant is now a member of the Bar w. e. f. 30.07.2013 and is, therefore, statutorily entitled to appear for others and if that is so there can be no bar against appearing for himself. It is also clarified in the application for modification that the

application is without prejudice to the basic position taken by the appellant-applicant that the order dated 24.04.2012 is a nullity in law, *void ab initio* and *non est*. It is accordingly prayed that the opening sentence of para 73(v) reproduced above may be deleted.

2. In the application for clarification, the gist of the contention is that Section 41(b) and (d) of the Specific Relief Act, 1963 preclude this Court from injuncting the prosecution of proceedings other than before a subordinate Court if those proceedings are of a criminal nature and though the impugned order refers to the statutory provisions, it has nevertheless proceeded to ignore the true purport of those provisions in injuncting the applicant in the manner directed by the Division Bench. The prayer in the application is that the Court should clarify that in light of the statutory bar placed upon the Court by Section 41(b) and (d) of the Specific Relief Act, the impugned order staying all proceedings between the parties does not extend to original criminal proceedings or proceedings in a criminal matter, or proceedings arising therefrom nor is the Division Bench right in staying proceedings pending before any Co-ordinate Bench of this Court. A list of the cases which according to the applicant should not be affected by the order passed by the Division Bench is given in Annexure-2 and 3,

Annexure-2 being a list of criminal matters and Annexure-3 being a list of matters pending before the coordinate Bench of this Court.

3. In support of the application for modification, the applicant who appeared in person contended that paragraph 73(v) in the impugned order would indicate that the stay was *granted* by this Court, and not *imposed*, only to protect the interest of the Khosla group and if the Khosla group does not want such stay and is not interested in such protection, the Court ought not to have *imposed* the stay. In support of the application for clarification, it is contended by the applicant that there is no authority vested in the Division Bench, even while purporting to exercise its inherent powers, to overlook or transgress the provisions of the Specific Relief Act. It is submitted that such powers cannot be read even into the provisions of Article 142 of the Constitution of India so as to create a new stream of jurisprudence. Attention is drawn to paragraph 54 of the impugned order and it is submitted that the Division Bench misunderstood and misappreciated the true purport and ratio of the judgment of the Supreme Court in *Cotton Corporation of India vs. United Industrial Bank Ltd.*, (1983) 4 SCC 625.

4. Mr. Raman Kapur, learned senior counsel who opposed the applications on behalf of the respondents submitted that a review

application was previously rejected by a Division Bench consisting of *Sanjiv Khanna, J.* and one of us (*R.V. Easwar, J.*) by order passed on 20.07.2012 and, therefore, the present application for clarification cannot lie. He also drew attention to the fact that the Special Leave Petition filed by the applicant against the order of the Division Bench dated 24.04.2012 was also rejected by the Supreme Court. According to Mr. Kapoor, though a review may lie for the first time before the dismissal of the SLP, no second review is possible after the rejection of the Special Leave Petition.

5. In so far as the contention of the applicant that the Division Bench has not understood the ratio of the judgment of the Supreme Court in *Cotton Corporation of India (supra)* properly is concerned, Mr. Kapoor drew our attention to the last sentence in paragraph 9 of the judgment of the Supreme Court which has been quoted in the impugned order and submitted that the case of the applicant fell under the category of the “*unresolved controversy*” as to whether a Court can grant injunction against a person from instituting or prosecuting proceedings before itself. He submits that the Kerala High Court in the case of *Raghavan & Anr. Vs. Sankaran Ezhuthassan*, AIR (1993) Ker. 178 has taken the view in that the Court can (in the area of the unresolved controversy) which view has

been followed by the same Court in *Santha vs. Vasu Muthalamada & Ors.*, AIR (1996) Ker. 188, which view has been followed by the Division Bench of this Court in the area of the unresolved controversy as to whether a Court can injunct a person from instituting or prosecuting proceedings before itself. The contention is that when once a particular view is taken by this Court, there can be no action to seek a clarification of the view. Mr. Kapoor further points out that in the Special Leave Petition filed by the applicant there is specific reference to Section 41(d) of the Specific Relief Act and despite this, the Supreme Court did not see any reason to interfere with the directions passed by this Court while dismissing the Special Leave Petition. It is thus contended that the applications are misconceived and should be dismissed.

6. The applicant in his reply submitted that he is not rearguing the point which is decided by the Division Bench and that the thrust of his submission is that the directions of the Division Bench are a nullity at law within the scope of the judgment of the Supreme Court in *Kiran Singh vs. Chaman Paswan*, AIR 1954 SC 340. He submitted that in the earlier review petition filed before this Court which was dismissed by the order dated 27.02.2012, the point that the directions were a nullity was not taken. He, therefore, contended that there was no merger either on

account of the previous review order or on account of the order passed by the Supreme Court in the applicant's Special Leave Petition. He clarified that though in the earlier review petition filed before this Court the point that the directions of the Division Bench were a nullity was not taken, a separate writ petition has been filed before a Division Bench of this Court seeking a declaration that the order passed by the Division Bench on 24.04.2012 is a nullity. In support of these submissions the applicant was granted leave to file written submissions and relevant judgments which he has belatedly done but yet the same have been duly taken note of.

7. The first question to be decided is whether the dismissal of the SLP filed by the applicant against the order dated 24.04.2012 passed by the Division Bench precludes the filing of the present applications for "modification" and "clarification". The order passed by the Supreme Court on the SLP is as under:

"Delay condoned.

We see no reason to interfere with the directions passed by the High Court. The special leave petition is, therefore, dismissed."

It is a settled proposition that mere dismissal of an SLP without assigning any reason does not tantamount to affirmation of the impugned judgment on merits. The question here however is if an SLP is rejected

by a speaking or reasoned order, what would be its effect. This aspect has been dealt with by the Supreme Court in *Kunhayanned v. State of Kerala*, AIR 2000 SC 2587, a judgment of a three Judge Bench. At page 2597 of the report it was observed as under: -

“A petition for leave to appeal to this court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the court would attract applicability of article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this court being the apex court of the contrary. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this court. The order of the Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may

be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.”

(underlining ours)

It is evident from the above observations that in the present case though the doctrine of merger is not attracted, still the statement contained in the order passed by the Supreme Court on the SLP to the effect that it does not see any reason to interfere with the directions passed by this Court is binding on the parties as well as this Court whose order was under challenge, on the principle of judicial discipline. The parties would, therefore, have no liberty of taking or canvassing any view contrary to the one taken by the Supreme Court. It follows that the applicant does not have the liberty of seeking any clarification or modification of the order dated 24.04.2012 which would result in propounding a view contrary to the view expressed by the Supreme Court that there was no reason to interfere with the directions issued by this Court. Moreover, the applicant has not taken the leave of the Supreme Court to file a review petition before this Court nor has he sought the leave of the Supreme Court to file “clarification” or “modification” petition before this Court. In this view

of the matter, we are of the opinion that the present applications which have disguised him different nomenclature of “clarification” or “modification” cannot be entertained by this Court.

8. The above discussion is sufficient to dispose of the present applications but in deference to the arguments addressed before us we proceed to examine the matter further.

9. Taking up the CM No. 16860/2013 first – the “modification” application – we are of the view that no such modification as is prayed for can be granted. The applicant wants the first sentence in paragraph 73(v) of the order dated 24.04.2012 deleted. This sentence is: *“Till the decision, there will be stay of the pending proceedings or initiation of new proceedings before the High Court and in the District Courts”*. The applicant argues that the stay was *granted* only to protect the applicant and since he does not want such protection, the sentence should be deleted. The argument is based on the erroneous and unwarranted assumption that the stay has been granted for his protection alone. A reading of the entire order of the Division Bench would show that the decision to stay the pending or new proceedings was prompted by several considerations, not the least of which was the protection of the court itself from the abrasive conduct of the applicant while appearing in person

before it. That apart, the court has merely stated that “*there will be stay.....*”; whether it is *granted* or *imposed* is in our opinion an irrelevant enquiry. A judgment cannot be modified on the basis of a figment of imagination or on the basis of one’s own erroneous and unwarranted assumption. That the applicant would also be liable to face proceedings initiated by the respondents once the stay is lifted (by deleting the sentence) is, in our opinion, no ground to modify the order in the manner prayed for. In our opinion, no ground has been made out for modification of the judgment dated 24.04.2012.

10. Turning now to CM No.2392/2013 – the “clarification” application – we have no doubt that it should also meet the same fate. It was repeatedly stressed before us by the applicant that the Division Bench of this court in its order dated 24.04.2012 has ignored the mandate of section 41(b) and (d) of the Specific Relief Act. Nothing can be more off the mark. The Division Bench has devoted 5 paragraphs (paras 53-57) to the issue – i.e., the argument based on the aforesaid statutory provisions. The relevant judgments have been noticed. Contrary to what was submitted before us by the applicant, the judgment of the Supreme Court in *Cotton Corporation of India (supra)* the observations in which have been quoted in the order show – as rightly pointed out on behalf of the respondents –

that there is an “*area of unresolved controversy*”, which is whether a court can injunct a person from initiating or continuing proceedings before itself. This issue was expressly left open by the Supreme Court in the case cited supra, as is clear from the last sentence of paragraph 9, which has been quoted in the impugned order. The impugned order proceeds to cite two judgments of the Kerala High Court (supra) which have decided the “unresolved controversy”, following the earlier judgments of the Patna High Court in *Radha Madhab Jiu Thakur vs. Rajendra Prasad Bose*, AIR 1933 Pat. 250 and Calcutta High Court in *Ram Sadan Biswas vs. Mathura Mohan Hazra*, AIR 1925 Cal. 233, and to hold that a court has the power to injunct a person from initiating or prosecuting proceedings before itself. The Division Bench has expressed its agreement with the view taken by the two judgments of the Kerala High Court (supra). This view may not be to the liking of the applicant who is entitled to strain every nerve to get it reversed in appeal; he did make an attempt which failed, the Supreme Court having found no reason to interfere with the directions of this court. It is pertinent to note that in the SLP filed before the Supreme Court , specific reference has been made to this court’s view on section 41(b) and (d) of the Specific Relief Act. The relevant part of the special leave petition has been quoted in the

reply filed by the respondent to C.M. No.2392/2013 and we quote from the reply: -

“3. Aggrieved by the order dated 24.04.2012 and the order dated 20.07.2012 passed in Review Petition, the Appellant filed Special Leave Petition being C.C. No.15004/2012 wherein the following questions of law were raised by the Appellant:

“J. Whether the impugned judgment misreads and wrongly applies Cotton Corporation of India r/w other case law, by treating various Benches of the Delhi High Court as ONE Court, or the ‘same Court’, in order to avoid the prohibition of Section 41(b). Whether the Court actually disregarded the fact that the Delhi High Court actually comprises different coordinate and superior Benches, by way of Single and Division Benches, and whether it could have merged all of Delhi High Court into one category called ‘same court’, and the ‘stayed’ various matters pending before benches that are coordinate to it.

K. Whether the Division Bench could have directed a Single Judge Bench, to decide whether or not stayed matters pending before other benches coordinate to it and superior to it, must continue or not.

L. Whether injunctions u/s 41(b) of the Specific Relief Act, are maintainable when no injunction has been apparent on the record despite their having been brought to its notice by way of Review Petition RP 414/2012.”

Apart from the above questions of law the following two grounds were also raised in the Special Leave Petition;

“K. Because S 41 (b) of the Specific Relief Act, applies when an injunction is sought. No such injunction was sought with regard to the said matter u/s 41 (b) of the Specific Relief Act.

L. Because S 41 (d) bars injunctions/ restraints on any person from instituting or prosecuting any criminal matter, yet the impugned judgment includes a prohibition on these as well.”

There is therefore nothing to be clarified; it is a view taken by this court on the provisions of section 41(b) and (d) of the Specific Relief Act, unambiguously expressed. The applicant’s contention that the order passed on 24.04.2012 is a nullity in law, void *ab initio* and *non est* in our view, cannot be re-agitated in these proceedings after the dismissal of Review Petition and the SLP.

11. The applicant, as was brought to our notice by the respondents in the course of the arguments, had already filed a review petition (Review Petition No.414/2012) before the Division Bench consisting of *Sanjeev Khanna, J.*, and one of us (*R.V. Easwar, J.*) which was dismissed by order dated 20.07.2012. That was before the SLP was dismissed on 19.09.2012. The relevant part of the order dismissing the earlier review petition is as follows:

“C.M. No.12266/2012 and R.P. 414/2012

There is delay of 56 days in filing of the review application.

Before issuing notice on the application for condonation of delay, we have heard Ms. Indira Unninnayar, learned counsel for the applicant on merits. Having considered her contentions, we do not find any ground for review as postulated under Order 47 of the Code of Civil Procedure, 1973, is made out. Accordingly, we are not inclined to issue notice on the application for condonation of delay and the review application. The application for condonation of delay and review application are dismissed.”

The present applications for “modification” and “clarification” represent one more attempt by the applicant to revive his challenge which had met with a fatal end with the dismissal of his Review Petition by this Court and SLP by the Supreme Court. He has thus indulged in multiplicity of proceedings on the same issue, a luxury to which no litigant is entitled. Several hours of judicial time have been spent in these attempts. One is tempted to think that these are nothing but attempts to brow-beat the court into submission. The Division Bench in its order dated 24.04.2012, in paragraph 73(v) has observed that “*in case immediate orders are required, the parties (including the respondents) can approach the learned single Judge for appropriate directions or permission to continue with the pending proceedings or initiate new proceedings*”. A window has thus been left open to the applicant in case of any difficulty and in case immediate orders are required. The avenues available to the

applicant to seek redressal from this Court are, therefore, not closed once and for all for him; viewed in this light, it appears that the present applications are needless. The applicant has also been unfair to the court by not disclosing that an earlier review petition filed by him had been dismissed before he approached the Supreme Court with an SLP; this fact was not known to this court till it was pointed out on behalf of the respondents, who also filed a copy of the order dated 20.07.2012. In these circumstances, we are inclined to believe that the applications for “clarification” and “modification” are nothing but an attempt to ask for another review, disguised as applications for “clarification” and “modification”. The present applications have given rise to several connected miscellaneous applications, thus burgeoning the court’s docket with no productive purpose. Constitutional means of challenging an adverse order or judgment rendered by a court are permitted, but the conduct of the applicant in filing repetitive applications even after the order adverse to him had attained finality amounts to obsessive cantankerousness which has to be seriously viewed. We therefore dismiss the applications with costs of Rs.25,000/- which shall be paid to the Delhi Legal Services Authority within 15 days and compliance reported to this court.

12. Both the applications are dismissed.

Suo motu contempt proceedings:

13. On 11.10.2013 this Bench was hearing certain miscellaneous applications filed by the applicant Mr. Deepak Khosla seeking, inter alia, early hearing of CM No.2392/2013 (application for “clarification”). While hearing arguments in that behalf, he made a reference to “dedh Bench” (i.e., Hindi equivalent of one-and-a-half Bench) while describing the Division Bench consisting of Sanjeev Khanna, J., and one of us (R.V. Easwar, J.). In the order passed by this Bench on that day, it was noted as follows: -

“Addressing arguments on these applications, Mr. Deepak Khosla, who appears in person, submits that the order dated 24th April, 2012 passed by the Division Bench comprising of Hon’ble Mr. Justice Sanjeev Khanna and Hon’ble Mr. Justice R. V. Easwar can be described as Dedh Bench order (One and half) and this is quite apparent from the fact that in the order dated 24th April, 2012 Justice R. V. Easwar has not given his own comments. Mr. Deepak Khosla also submits that the judgment has been authored by Justice Sanjeev Khanna and the same has been just co-signed by Justice R.V. Easwar but Justice R.V. Easwar has not responded since May, 2013 to certain aspects of the law which had crept into the order dated 24th September, 2012 and this leads him to believe that Justice R.V. Easwar has not subscribed to some of the views in the said order. Mr. Deepak Khosla further submits that in his previous applications, he has already spelled out grievance to this effect.

The present Special Bench has assembled today for hearing these applications. While addressing arguments on these applications, Mr. Deepak Khosla has raised the aforesaid contentions.

This Court will take a view on the said plea raised by Mr. Deepak Khosla of describing the Division Bench as 'Dedh Bench' at the time of final disposal of CM APPL. No.2392/2013 and other applications which are listed for hearing on 22nd November, 2013."

Since in our view the applicant has committed contempt of court in describing the Division Bench consisting of *Sanjeev Khanna, J.*, and one of us (*R.V. Easwar, J.*) as "Dedh Bench" – a *prima facie* contemptuous remark calculated to denigrate the dignity of this court – we issue show-cause notice to Mr. Deepak Khosla, the applicant herein, as to why proceedings should not be initiated against him for committing contempt of court.

14. Mr. Deepak Khosla shall file his reply to the show-cause notice of contempt within 15 days. Relist the contempt proceedings as "Court of its own motion" on 25.04.2014.

(R.V. EASWAR)
JUDGE

(KAILASH GAMBHIR)
JUDGE

MARCH 28, 2014/hs