

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

Reserved on: 29.10.2013

Pronounced on: 04.03.2014

+ W.P.(C) 6148/2013, C.M. APPL. 13533/2013, 13534/2013, 13535/2013, 13536/2013, 13537/2013 & 13538/2013

DEEPAK KHOSLA

.....Petitioner

Through: Petitioner in person.

Versus

HON'BLE HIGH COURT OF DELHI AND ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

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1. The present petition presents several questions concerning the authority of Courts to regulate the manner in which litigation is conducted. Broadly, the petitioner raises the following seven questions:

- a) Whether a Court has the power ("the jurisdiction") to injunct a party from filing any kind of application?
- b) Whether a Court has the power ("the jurisdiction") to injunct a party from filing an application before a 'coordinate' Court.

In parallel: when the same matter being heard by learned Single Judge 'X' is now required to be placed before a different learned Single Judge 'Y' (because of review of a 'prior' order passed by Judge 'Y'),

whether the latter Ld. Single Judge 'Y' can be construed to be a 'coordinate' Bench of the Court of Ld. Single Judge 'X'?

c) Whether a Court, purportedly acting to check vexatious or frivolous litigation, has the power to impose costs under any provision of law other than in the manner laid out in Section 35-A of the CPC?

Put differently: Whether 'inherent powers' can be claimed to usurp jurisdiction to impose costs for what is allegedly vexatious or frivolous litigation beyond the limit of Rs. 3,000 (as laid out in Section 35-A of the CPC), especially in contempt proceedings, in which the maximum fine that can be imposed is Rs. 2,000?

d) Can such costs be 'punitive' in nature i.e. other than 'compensatory' in nature?

e) Can the power to do so be usurped by following a procedure other than that laid out in Section 35-A of the CPC?

f) Can such costs be directed to be paid to a beneficiary other than the opposite party?

g) If such so-called costs be 'punitive' in nature, whether they are, in actual reality, 'costs', or in truth, a 'fine'?

2. Each of these questions concern, in one way or another, the authority of the Court to regulate the proceedings before it, and to ensure the fair administration of justice. The petition questions the breadth of those powers, and what actions precisely a Court can engage in. At the outset, it is trite to remark that these questions cannot be answered in terms of their breadth in one go by a Court exercising writ jurisdiction, as in the present case. The questions posed, though relevant, concerning the authority of the Court to

impose costs, prevent listings etc. necessarily depend on the facts and circumstances of the case before the Court, and it may not be possible to provide broad generalizations of the legal principles applicable (absent the necessary factual context) when such questions arise.

3. With this in mind, it is important here to provide a broad factual narrative of the orders passed by this Court previously against the present petitioner that have led to these questions.

4. The present petitioner was a party in a matter titled *Montreaux Resorts P. Ltd. and Ors.v. Sonia Khosla*, before this Court. The petitioner had filed an intra-Court appeal (LPA 16/2012) impugning the order dated 4th January, 2012 passed by the learned Single Judge. The impugned order in paragraph 15 gives two directions: that the appellant would not appear in any Court either in person or as an attorney of a third party, as he does not have inherent right to appear and argue; that the appellant should be medically examined whether he was suffering from any mental disorder. The SHO of the Police Station Tilak Marg was directed to get the appellant admitted in the Institute of Human Behaviour and Allied Sciences (IHBAS, for short), Shahdara, Delhi. The Medical Superintendent of IHBAS was directed to submit a report within a week. The Division Bench of this Court in LPA 16/2012, reported as *Deepak Khosla v. Montreaux Resorts Pvt. Ltd. and Ors.*, (2012) ILR 5 Delhi 117, overturned both direction in the order of the learned Single Judge, but held – on the first direction – as follows:

“...this question should be decided first and immediately before Deepak Khosla can be permitted to

appear and is given an audience. Keeping these aspects in mind, we feel that it will be appropriate that the entire aspect and issue is decided by the learned Single Judge as expeditiously as possible and till the decision is taken, there should be stay of further proceedings in different matters before the High Court and in the District Courts. This direction will not apply and prevent Deepak Khosla for filing any writ petition under Article 226 or moving an application for bail/anticipatory bail. This will also not apply to any proceedings pending before the Supreme Court or Courts outside Delhi.”

5. Further, the Division Bench after considering various questions, and hearing the submissions, issued the following directions:

“(i) The High Court has inherent power distinct and separate from power of contempt to injunct/sanction vexatious or frivolous litigation, vexatious/habitual litigants, contumelious litigant and issue appropriate directions, including prohibiting the said litigant from appearing and arguing matters in person and for others and from initiating or filing proceedings, except with permission of the Court. (ii) The two directions given in the impugned order dated 4th January, 2012 are set aside.

(iii) Order dated 4th January, 2012 will be treated as a show cause notice. The learned Single Judge will examine other allegations, which have been made by the respondents and issue a supplementary show cause notice, if deemed appropriate and necessary.”

6. Subsequently, in the course of the proceeding of the matter, marked as Cont. Cas.(C) 165/2008 (currently *sub judice*), the petitioner filed CM 12430/2013 for early hearing of the matter. That

application was disposed off by an order – which is impugned in the present proceedings – dated 13.8.2013, which held as follows:

“This is another application under Section 151 CPC filed, by the respondent No. 2 Mr. Deepak Khosla for early hearing and disposal of C.M 2045/2013. The prayers have also been made for various other reliefs as enumerated in prayer clause (iv) to (viii) of the instant application.

At the outset, it may be noted that having regard to the manner in which case is being conducted by the respondent No. 2 Mr.Khosla since from the receipt of this case on transfer, the averments in the instant application attributing delay on the part of the Court are utterly false.

The proceedings speak for themselves that the case has repeatedly got adjourned only at the instance of this respondent-applicant. Further, it is also noted that the matter is already listed for hearing of the application (CM 2045/2013) as also some other applications along with the main contempt petition for 20.09.2013 and on being so informed that the previous two applications filed for early hearing within the short span were dismissed as the date for hearing was nearing and still-further, that in any case, the notice of the instant application was required to be given to the opposite side for hearing.

Mr.Khosla in his usual manner insisted for disposal of the application being CM 2045/2013. On the last date i.e. 26.07.2013, Mr.Khosla had himself sought adjournment for filing reply to the application CM 7668/2013, which was filed by his counsel for seeking discharge. Despite being informed that he was debarred for arguing for himself and for others, he insisted for disposal of the pending application/s

including CM 2045/2013. Having heard him on this aspect and seeing that there was no urgency for disposal of these applications, which could be disposed of along with the main contempt petition, the matter was adjourned for hearing on the main contempt petition along with the miscellaneous applications for 20.09.2013. Again, the same issue is sought to be raised for early hearing of the said application CM 2045/2013. The averments in the instant application seeking early hearing are not only contrary to the record, but are highly irrelevant, frivolous and vexatious. The prayers which have been made are misconceived and are nothing, but trying to divert the contempt proceedings to different dimensions. In an application of early bearing, such pleadings and prayers are uncalled for. Having seen the conduct of the applicant Mr.Khosla in filing application after application and not even letting the case to proceed on merits, this application is another tactic for delaying the hearing in the main case. In this state of affairs, I am constrained to dismiss this application with cost of Rs. 20,000/-, and also with a direction to the Registry not to register/list any application of Mr.Khosla in this case without the leave of this Court, and also until the cost is deposited with Delhi High Court Legal Services Committee.

CM stands dismissed accordingly.”

7. Given the background, the Court also notes that contempt case (165/2008) is currently pending, and recently on 21.01.2014, the learned Single Judge hearing the matter passed the following order:

“CM No.20026/2013

This is an application by petitioner Nos.2 and 3 for pre-ponement of the date of hearing. Since the date of hearing has already reached, the application has become infructuous.

The application is dismissed as infructuous.

CONT.CAS(C) 165/2008

When the matter was taken up, learned senior counsel for the petitioners pointed out to order of the Division Bench dated 24.4.2012 and more specifically paragraph 72 of the said order that records that the issue whether or not Mr.Deepak Khosla is entitled to appear as a self-representative litigant or for other has to be decided first and immediately before Mr.Deepak Khosla can be permitted to appear and has audience.

As per the direction given in paragraph 72, the Division Bench has directed that this issue should be decided as expeditiously as possible.

In this view of the matter, list for hearing on 29th January, 2014.”

7. The petitioner had urged with the aid of authority with some vehemence that the order of the learned Single Judge, challenged by him in the present case, is a nullity, and that this Court has the jurisdiction and the right to so declare it. He particularly relied on *Kiran Singh and Ors. v.Chaman Paswan and Ors.*, AIR 1954 SC 340, especially the observation that:

“6.....A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very

authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

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It was argued that the order to pay costs, made by the learned Single Judge, while dismissing the petitioner’s application is a nullity, because firstly the quantum of costs is beyond the limit permissible in law, by virtue of the Supreme Court judgment mandating that costs should not be burdensome and should not exceed ₹ 3000/- (the reference here being to *Vinod Seth v. Devinder Bajaj and Anr.*, 2010 (8) SCC 1). It was submitted essentially that a direction to deposit costs as a precondition for consideration of an application, and in violation of the Supreme Court decision is a nullity which can be cured in any proceeding, including a writ petition, and not necessarily in an appeal. It was also urged that the direction to deposit costs limits if not entirely extinguish the petitioner’s right to access justice, and is liable to be set aside.

8. It is in this context, specifically the order of the learned Single Judge dated 13.08.2013, that the present writ petition has been filed. It is important to note that a writ petition is *not* a means to challenge an order or judgment a litigant believes to be incorrect, or is aggrieved by. If a litigant seeks to undo the effects of any adverse order or judgment against him or her, then the correct remedy is to approach the appellate Court. Indeed, in opposing the order of the learned Single Judge dated 4th January, 2012, the present petitioner – and correctly so – approached a Division Bench of this Court by means of

a Letters Patent Appeal, which overturned the adverse order even whilst imposing certain terms upon him. Similarly, the proper remedy in this case would be an appeal against the order of the learned Single Judge dated 13.08.2013 were the petitioner aggrieved by it - in the proper appellate Court, rather than to question the validity of the order through limited writ jurisdiction under Article 226, which cannot extend to bypass appellate procedures, nor to reverse decisions of Courts passed in civil proceedings on an assessment of the merits of the reasoning. Whether decisions are correct or incorrect as a matter of their appreciation of the law, and the application to the facts of the case, is not an exercise that can ordinarily be reviewed in writ proceedings, but only in a proper appellate setting. This is not to say that a judicial order can never be the subject of proceedings under Article 226, but the limits of that power are to be strictly construed. The order of 13.08.2013, which was passed during the course of disposing off an application for early hearing, during the pendency of a contempt case against the present petitioner is in a matter which is *sub judice*. No appellate remedy has been availed by the petitioner in this case, but a direct approach under Article 226 has been made. The Court, while passing the impugned order, granted an appropriate oral hearing to the parties and a reasoned decision was pronounced by the Court subsequently. The reasons provided by the order may be correct or incorrect, but so long as the Court is properly seized of the matter, and it falls within its jurisdiction, the assessment of the merits of the impugned order is to be conducted in appropriate appeal/review proceedings, and cannot be interfered with through the writ

jurisdiction of this Court, within the limited power of judicial review. These principles, and limitations on the writ jurisdiction of this Court under Article 226, have also been recognized by various judgments of the Supreme Court (se, *Radhey Shyam and Anr. v. Chhabi Nath and Ors.*, (2009) 5 SCC 616; *Surya Dev Rai v. Ram Chander Rai and Ors.*, (2003) 6 SCC 675).

9. This Court is also conscious that the jurisdiction to issue writs or directions, or grant other reliefs under Article 226 of the Constitution of India, is available against administrative/executive/statutory authorities or those falling within the description “State”, or those performing specific functions spelt out by statute. However, barring the remedy under Article 227 of the Constitution and the writ of certiorari, which are available against inferior Courts and Tribunals, this remedy cannot be exercised in respect of judicial orders made by the High Court. This Court is supported by its reasoning by the judgment of the seven Bench decision of the Supreme Court in *A.R. Antulay v. R.S. Nayak and Anr.*, AIR 1988 SC 1531.

10. Accordingly, for the above reasons, this writ petition and pending applications are dismissed.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

MARCH 04, 2014