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

+ **CONT.CAS(C) 28/2018**

DR R K JAIN

..... Petitioner

Through: In person.

versus

R P PANDEY

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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23.02.2018

REV. Pet. 79/2018

This Review Petition has been filed by the petitioner seeking review of order dated January 12, 2018. The prayers made in the review petition are as under:

“In view of above mentioned facts & circumstances, it is most respectfully prayed for reviewing the order passed dated 12/1/2018, and amending modifying the same:

- a) by deleing the words ‘not maintainable’ from the order passed, to preserve and not infringe the legal right of the petitioner to file Contempt Petition where material warrants / justifies, in terms of the law passed by Parliament, in the alternative dispose the Contempt Petition on merits vide a speaking / reasoned order, to enable petitioner to know why the decision made against him, and also to enable appellate court to*

effectively adjudge the validity of the order passed, since 'not maintainable' without any reasons given has the effect of a blanket ban on filing Contempt petition against public servants indulging in illegal acts by misuse of office, even arrogantly / arbitrarily & contemptuously disregarding orders / judgments passed by superior courts, un-checked, causing incalculable damage and wasting precious 'years' of petitioner besides his personal and social life, and the attendant monetary & livelihood losses caused without any fear of accountability whatsoever, also depriving of happiness and also prematurely consuming the beloved parents of petitioner, none of which be ignored, if fairness is contemplated.

Further also necessary, to ensure that the same does not have the effect of acting as another tool in the hands of the 'Registry' by way of denying the very filing of petition filed under the Contempt of Courts Act, 1871 against sub-ordinate public servant, which shall embolden the already – arrogant contemnors of superior courts, more so since the image of the judiciary would further shine only when it takes action against the sub-ordinate public servants acting contemptuously / illegally / corruptly / ignoring their obligation to act fairly, instead of selectively protecting a particular class.

- b) by kindly also modifying the order passed in the petition decided on 12/1/2018, by deleting the word 'dismissed', and instead directing as 'disposed', unless dismissed giving reasons for dismissal, which are missing in the order passed.*
- c) by awarding 'Costs' and 'Contemptuous' to the applicant as per Annexure P/4, completely 'omitted' in the order passed 12/1/2018, Rupees Fifty-Nine Thousand only, compelled to be actually expended over the past six months vide three petitions compelled to be filed already for the same grievance, and fourth one [CMM] also to cost the petitioner, for no fault of his."*

In substance, the petitioner's plea is that the word 'not maintainable'

in the order dated January 12, 2018 infringe's the legal right of the petitioner to file to a Contempt Petition where the material warrants / justifies in terms of the law laid down by the Parliament. In the alternative dispose of the Contempt Petition on merits by a speaking order. According to the petitioner, the word 'not maintainable' without reasons has the effect of a blanket ban on filing the contempt petition against public servants indulging in illegal acts by misuse of office, even arrogantly / arbitrarily and contemptuously disregarding the orders / judgments passed by a Superior Court. According to him, order shall have the effect of having a tool in the hands of Registry by denying the very filing of the petition under the Contempt of Courts Act. He also states, the word 'dismiss' should be substituted by the word 'disposed of' and he seeks compensation.

The petitioner who appears in person has relied upon the following judgements in support of his contentions on award of costs:

- (i) ***(2011) 8 SCC 249 Ramrameshwari Devi & ors v. Nirmala Devi & ors;***
- (ii) ***180 (2011) DLT 328 (DB) Ct. Nardev v. U.O.I;***
- (iii) ***AIR 2010 SC 3676 Amarjeet Singh v. Devi Ratan & anr;***
- (iv) ***2010 (1) RCR (Civil) 491 Satyapal Singh v. U.O.I;***
- (v) ***(2012) 5 SCC 370 Maria Margarida S. Fernandez v. Erasmo Jack de Sequeria;***

- (vi) *AIR 2010 SC 3745 Kalabharti Advertising v. Hemant Vimal;*
- (vii) *(2010) 8 SCC 383 Meghamala & ors. V. G.N. Reddy & Ors.;*
- (viii) *AIR 19725 SC 2466 Shri Baradakanta Mishra v. Shri Bhimsen Dixit.*

On the issue of maintainability of the petition under the Contempt of Courts Act, he would rely upon the judgment in the case of *Ex-Ct. Nardev Vs. Union of India & Ors. 180 (2011) DLT 328 DB*. He also relies upon the judgment of the Supreme Court in the case of *Jagtamba Devi Vs. Hem Ram 2008 (1) LRC 303 (SC)* to contend, the failure to give reasons amounts to denial of justice. He also relied upon the judgment in the case of *Shri Baradakanta Mishra v. Shri Bhimsen Dixit AIR 1972 SC 2466* to contend that if a lower judicial forum violates a decision by giving wrong and illegitimate reasons, the conduct being mala fide amounts to contempt of Court.

Suffice to state, in the aforesaid judgments, the ratio laid down by the Courts are the following.

Insofar as the case of *Ramrameshwari Devi & ors (supra)* is concerned, the Supreme Court has held that the wrong doer should not get the benefit out of frivolous litigation and directed steps like penal costs; and prosecution for perjury. The Supreme Court further directed, the principle

of restitution be fully applied to restore/compensate entire losses, imposition of exemplary costs for wasting time with frivolous and dishonest litigation.

In *Ct. Nardev (supra)*, this Court observed, failure to abide by principles laid down by Apex Court would render authorities liable for proceedings under Contempt of Courts Act. It further observed, disobedience of law shall amount to Contempt of Court.

In *Amarjeet Singh (supra)*, the Supreme Court held the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court.

In *Kalabharti Advertising (supra)*, it was held that the Court should pass order expressly neutralising the effect of interim order.

In *Satyapal Singh (supra)*, this Court held, exemplary costs are to be levied where a claim is found to be false, vexatious, or where a party is found to be guilty of misrepresentation, fraud or suppression of facts.

In *Maria Margarida S. Fernandez (supra)*, the Supreme Court held, heavy costs and prosecution should be ordered in cases of false claims and

defences.

In *Meghamala & ors. (supra)*, the Supreme Court observed, fraud is said to be proved when a false representation has been made knowingly and also when material document/information is concealed. It further held, once fraud is proved, all advantages/reliefs/benefits gained must be taken away and the fraudster must be proceeded against for perjury, besides compensating the victim.

In *Shri Baradakanta Mishra (supra)*, the Supreme Court observed, in contempt of court proceedings, the absence of a precedent should not preclude an act being held to be contemptuous, provided it is comprehended by the principles underlying the law of contempt of Court. The Supreme Court held, a Subordinate Court or Tribunal refusing to follow a High Court decision where a petition for leave to appeal to Supreme Court against that High Court decision was pending, amounts to deliberate disobedience and wilful disregard of the High Court and is contempt of Court.

Having considered the judgments as referred to above by the petitioner, which are distinguishable on facts, suffice to state, the order passed by this Court on January 12, 2018 is clear that the same has been passed in the facts of the case, keeping in view paras 7 and 8 of order dated

August 11, 2017, in CM(M) 1190/2015 as the remedy for the petitioner is to file a fresh CM(M). In fact, I have been informed by the petitioner that pursuant to the order dated January 12, 2018, the petitioner has filed a CM(M) in the Registry of this Court, which has not been listed. There is no error apparent in the face of the order dated January 12, 2018. The review petition is dismissed.

V. KAMESWAR RAO, J

FEBRUARY 23, 2018/jg