



\$~39

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 1953/2024****AJAY SHUKLA**

..... Petitioner

Through: Petitioner in person

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Shashank Garg, CGSC with Ms.
Nishtha Jain and Ms. Aradhya
Chaturvedi, Advocates for R-1
Mr. Arjun Natarajan and Ms. Kamana
Pradhan, Advocates for R-2/TRAI

%

Date of Decision: 12th February, 2024.**HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMOHAN, ACJ: (ORAL)**

1. The present writ petition has been filed as a Public Interest Litigation (PIL) seeking direction to Respondent Nos. 1 and 2 to take action against Respondent No. 3 i.e., Truecaller International LLP, for violating the right of privacy of citizens of India and damaging their reputation.
2. Learned counsel for Respondent No. 1- Department of Telecommunications, has raised a preliminary objection on the maintainability of the present petition. He states that an earlier writ petition i.e., W.P.(C) No. 1/2022 filed by the Petitioner, as a PIL, on the identical allegations against Respondent No. 3 with similar prayers was not entertained by the Supreme Court and the said writ petition was unconditionally withdrawn by the Petitioner as recorded in order dated 29th August, 2022. He states that the said writ petition was dismissed as



withdrawn, as the Supreme Court found no merit in the pleas raised by the Petitioner. He states in view of the dismissal and unconditional withdrawal of the earlier writ petition filed before the Supreme Court, this second petition is not maintainable.

3. He states that the Petitioner has approached this Court by concealing material facts as in the mandatory 'non-filing clause' of this petition, the Petitioner has not disclosed the filing of the W.P.(C) No. 1/2022 and its dismissal. He states that the disclosure made in paragraph 22 of this writ petition under the heading 'non-filing clause' is misleading. He states that the Petitioner has thus, blatantly violated Rule 9 (h) of the Delhi High Court (Public Interest Litigation) Rules, 2010 ('PIL Rules, 2010').

4. Similarly, learned counsel for Respondent No. 2, Telecom Regulatory Authority of India, states that the present petition is not maintainable as there has been no compliance of Rule 9 (g) of the PIL Rules, 2010, as no prior representation on the issues raised in the present petition has been made by the Petitioner before the concerned statutory authorities.

5. In reply, Petitioner, who appears in person, states that the present petition can be maintained as W.P.(C) No. 1/2022 was dismissed as withdrawn. He states that in the present petition, he has raised an additional ground for damages payable by Respondent No. 3 for causing damage to the reputation and business interest of affected parties.

6. We are of the considered opinion that the present petition filed as a PIL is in violation of the PIL Rules, 2010. The Petitioner has violated Rule 9 (h) of the PIL Rules, 2010, by failing to disclose filing of W.P.(C) No. 1/2022 and its dismissal. The Petitioner was under an absolute obligation to disclose the filing of the earlier petition seeking similar reliefs against



Respondent No. 3 and violated the PIL Rules, 2010, by withholding this material fact.

7. The contention of the Petitioner that the dismissal of the writ petition before the Supreme Court vide order dated 29th August, 2022 does not bar the filing of the present petition is without any merit. In ***K.K. Modi v. K.N. Modi and Ors***¹, the Supreme Court has held that one of the examples of abuse of process of the Court is re-litigation.

8. No liberty was reserved to the Petitioner by the Supreme Court in the order dated 29th August, 2022 and therefore, the Petitioner was estopped from filing the present petition against Respondent No. 3 on the same cause of action. The non-maintainability of a second writ petition on account of the principle of constructive res judicata after the unconditional withdrawal of the first writ petition is well settled and has been expounded in the recent judgment of the Supreme Court in ***State of Orissa v. Laxmi Narayan Das***², wherein the Supreme Court held as under:

“37. On the question, as to whether after the withdrawal of a suit claiming the same relief without having permission to institute fresh one for the same relief, a writ petition will be maintainable before the Court, the guidance is available from the judgment of this Court in M.J. Exporters Private Limited v. Union of India, (2021) 13 SCC 543, wherein the principle of constructive res judicata was applied. The case concerns a litigant who sought to file a fresh writ petition after withdrawal of the earlier writ petition filed for the same relief without permission to file fresh one. The Court held that the principles contained in Order 23, Rule 1 CPC are applicable even in writ proceedings. Para 15 thereof is extracted below:

“15. In these circumstances, we feel that when this issue was raised and abandoned in the first writ petition which was dismissed as withdrawn, the principles of constructive res judicata which are laid down under Order 23 Rule 1 of the Civil Procedure Code, 1908, and which principles are

¹ (1998) 3 SCC 573 (Para 44)

² 2023 SCC OnLine SC 825



extendable to writ proceedings as well as held by this in Sarguja Transport Service v. STAT, (1987) 1 SCC 5.

38. Having regard to the principles laid down in M.J. Exporters Private Limited (supra), in our view, applying the principles of constructive res judicata, the present writ petition filed by the respondents after withdrawal of the civil suit, was not maintainable, in the sense that it ought not to have been entertained. In case the respondents still wanted to justify filing of the writ petition, they should have at least disclosed complete facts and then justify filing of the writ petition.

39. The writ petition also ought to be dismissed on the ground of concealment of material facts regarding filing and withdrawal of the civil suit claiming the same relief. Neither in the writ petition nor in the appeal against the order passed in the writ petition, the respondents disclosed the filing of civil suit and withdrawal thereof. It only transpired only that at the time of the hearing of the appeal.

40. As to how a litigant who conceals material facts from the Court has to be dealt with, has been gone into by this Court, time and again in plethora of cases and the consistent opinion is that, he is not entitled even to be heard on merits.”

(Emphasis supplied)

9. We also do not find any merit in the submission of the Petitioner that due to the additional allegations of damage to reputation raised in the present petition a distinct cause has arisen in his favour to enable him to maintain this petition.

10. Accordingly, the present writ petition is dismissed. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 12, 2024/msh/aa

Click here to check corrigendum, if any