

LISTED ON : 13.05.2016
COURT NO. :
ITEM NO. :

SECTION XIIA
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION Nos. 25-27 of 2016

(Appeal against Registrar's order dated 15th March, 2016 under order XV, Rule 5 of the Supreme Court Rules, 2013)

IN

INTERLOCUTORY APPLICATION NO...../2016 (D.No.17835 OF 2016)

(Application for clarification and modification of Hon'ble Court's Order dated 29th January, 2016)

AND

INTERLOCUTORY APPLICAITON NOS. 28-30

(Application for impleadment)

AND

INTERLOCUTORY APPLICAITON NOS. 31-33

(Application for directions)

IN

CIVIL APPEAL NOS. 618-620 OF 2016

SENIOR DIVISIONAL COMMERCIAL MANAGER & ORS....PETITIONERS

- VERSUS -

S.C.R. CATERERS, DRY FRUITS, FRUIT JUICE
STALLS WELFARE ASSOCIATION & ANR.

...RESPONDENTS

OFFICE REPORT

It is submitted to the Hon'ble Court that the Civil Appeals above-mentioned was allowed by the Hon'ble Court on 29th January, 2016.

It is further submitted that Dr. Rajeev Sharma, Advocate for the intervenor has on 29th February, 2016 filed application for clarification and modification of Hon'ble Court's Order dated 29th January, 2016 on behalf of intervenor. The said application was placed before the Ld. Registrar on 15th March, 2016 for Orders, when he was pleased to pass the following Order:-

“Perused office note and relevant record on file and it is revealed that Hon'ble Court vide Judgment dated 29th January, 2016 dismissed Civil Appeal Nos.618-620/2016 with the following findings:-

“28. For the reasons stated supra, this Court cannot

interfere with the impugned Judgment and order of the High Court. The Civil Appeals are dismissed. The Order dated 11.04.2014 granting stay of the impugned order shall stand vacated. We, however, make it clear that only those licensees may be eligible for renewal of their licenses who can declare on affidavit that they do not have the license of more than one shop or kiosk in their name or benami license at the railway stations with periodical reasonable increase of license fee. All pending applications are disposed of. ”

The applicant herein is intervenor in the said appeals and through the medium of instant application he seeks modification of paragraph 28 of the judgment as reproduced above to the extent that all the existing license holders holding 2 minor catering units at a station or upto 10 units per zonal railway station are also to be entitled for renewal of their licenses. He further seeks clarification as under:-

- i) That the order that Catering Policy, 2010 shall be implemented in letter and spirit by the railway;
- ii) That the existing vendors belonging to Vendor Co-operative Society shall be permitted to continue.
- iii) That trolley holders providing amenities on platforms to be continued; and
- iv) That all those stalls which have been removed/demolished during the pendency of these petitions in this Hon'ble Court and allotted to others on tender are restored back to the original licensees of said stall.

From the perusal of record, it is manifestly clear that the appeals came to be dismissed on merits in the presence of applicant herein, as such, the only remedy available to the applicant against the said order is to file review petition and rather as per office note, review petition has already been filed by one of the other intervenors and, therefore, in the given circumstances, the application in hand is not entertainable in view of the judgment of this Hon'ble Court in case of Delhi Admn. v. Gurdip Singh Urban & Ors. Etc. [(2000) 7 SCC 296] and the relevant paragraphs are reproduced herein:-

“... We next come to applications described as applications for 'clarification', 'modification' or 'recall' of judgments or orders finally passed. We may point out that under the relevant rule XL of the Supreme Court Rules, 1996, a review application has first to go before the learned Judges in circulation and it will be for the Court to

consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued.”

Order XL, R.3 states as follows:

“: O.XLR.3: Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any arguments, but the petitioner may supplement his petition by additional written argument, the Court may either dismiss the petition or direct notice to the opposite party....”

In case notice is issued, the review petition will be listed for hearing, after notice is served. This procedure is meant to save the time of Court and to preclude frivolous review petitions being filed and heard in open Court. However, with review a view to avoid this procedure of 'no hearing', we find that sometimes applications are filed for 'clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in Chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straightaway inasmuch as the attempt is obviously to by-pass O.XL, R.3 relating to circulation of the application in Chambers for consideration without oral hearing. By describing an application as one for 'clarification' or 'modification', - though it is really one of review- a party cannot be permitted to Circumvent or by pass the circulation procedure and indirectly obtain a hearing in the open Court. What cannot be done directly cannot be permitted to be done indirectly. (See in this connection a detailed order of the then Registrar of this Court in *Sonelal and ors. V. State of U.R.* [(1982) 2 SCC 2.98 deprecating a similar practice]

We, therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for 'clarification', 'modification' or 'recall' if the application is in substance one for review. In that event, the Court could either reject the application straightaway with or without costs or permit withdrawal with leave to file a review application to be listed initially in Chambers.”

The same legal position has been reiterated by this Hon'ble Court in subsequent judgment in *APSRTC & Ors. V. Abdul Karim* [(2007) (3) SC 168]

Therefore, for the reasons given hereinabove, the application is refused to be received invoking jurisdiction under

Order XV, Rule 5 of SCR, 2013. ”

It is also submitted that Dr. Rajeev Sharma, Advocate has on 29th March, 2016 filed appeal against Registrar order dated 15th March, 2016 under order XV Rule, 5 of the Supreme Court Rules, 2013. The said appeal/applications have been registered as I.A. Nos. 25-27 of 2016 & placed before the Hon'ble Court for its kind perusal.

It is lastly submitted that Mr. Udit Singh, Advocate has on 9th May, 2016 filed an application for impleadment to implead the applicants as party Respondents alongwith Vakalatnama/Appearance on behalf of all the applicants and application for directions which were mentioned before the Hon'ble Court on 10th May, 2016, when the Hon'ble Court was pleased to pass the following Order :-

“Post I.A. No.... on Friday i.e. 13.05.2016 before a Bench presided over by Hon'ble Mr. Justice V.Gopala Gowda.”

In view of the above order, application above-mentioned are listed before the Hon'ble Court with this Report for Orders.

Dated this, the 12th day of May, 2016.

ASSISTANT REGISTRAR

Copy to:

Dr. Rajeev Sharma, Advocate,
218, M. C. Setalvad Block, Supreme Court
Mr. Udit Singh, Advocate

ASSISTANT REGISTRAR