

ITEM NO.40

COURT NO.3

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION(S)(CRIMINAL) NO.491/2022

BILKIS YAKUB RASOOL

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

([FOR DIRECTIONS]

IA No. 189394/2022 - EX-PARTE AD-INTERIM RELIEF

IA No. 189393/2022 - EXEMPTION FROM FILING O.T.)

WITH

W.P.(Cr1.) No. 319/2022 (PIL-W)

(IA No. 120893/2022 - CLARIFICATION/DIRECTION

IA No. 125604/2022 - INTERVENTION APPLICATION

IA No. 131457/2022 - INTERVENTION/IMPLEADMENT)

W.P.(Cr1.) No. 326/2022 (PIL-W)

(FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 121799/2022

FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 121800/2022

IA No. 121799/2022 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 121800/2022 - EXEMPTION FROM FILING AFFIDAVIT)

W.P.(Cr1.) No. 352/2022 (PIL-W)

(FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 132343/2022

IA No. 132343/2022 - APPROPRIATE ORDERS/DIRECTIONS)

W.P.(Cr1.) No. 403/2022 (PIL-W)

(IA No. 149781/2022 - EXEMPTION FROM FILING O.T.)

W.P.(Cr1.) No. 422/2022 (PIL-W)

(FOR ADMISSION)

Date : 09-05-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Ms. Shobha Gupta, AOR
Ms. Anamika, Adv.

Mr. Pratik R. Bombarde, AOR
Mr. Yogesh Yadav, Adv.

Mr. Dharama Datta Verma, Adv.

Mr. Nizam Pasha, Adv.

Ms. Rashmi Singh, Adv.

Ms. Sumita Hazarika, AOR

Ms. Vrinda Grover, Adv.

Ms. Devika Tulsiani, Adv.

Mr. Soutik Banerjee, Adv.

Ms. Mannat Tipnis, Adv.

Mr. Aakarsh Kamra, AOR

Ms. Indira Jaising, Sr. Adv.

Mr. Shadan Farasat, AOR

Mr. Paras Nath Singh, Adv.

Mr. Rohin Bhatt, Adv.

Ms. Mriganka Kukreja, Adv.

Mr. Shourya Dasgupta, Adv.

Ms. Hrishika Jain, Adv.

Mr. Aman Naqvi, Adv.

Ms. Natasha Maheshwari, Adv.

Ms. Aparna Bhat, AOR

Ms. Karishma Maria, Adv.

For Respondent(s) Mr. Tushar Mehta, Solicitor General

Mr. Kanu Agrawal, Adv.

Mr. Rajat Nair, Adv.

Ms. Swati Ghildiyal, AOR

Ms. Devyani Bhatt, Adv.

Ms. Himanshi Shakya, Adv.

Mr. Suryaprakash V Raju, A.S.G.

Ms. Shraddha Deshmukh, Adv.

Mr. Annam Venkatesh, Adv.

Mr. Siddharth Dharamadhikari, Adv.

Mr. Arvind Kumar Sharma, AOR

Mr. Rishi Malhotra, AOR

Mr. Jaydip Pati, Adv.

Mr. Vishal Arun, AOR

Mr. Siddharth Luthra, Sr. Adv.

Mr. Pashupathi Nath Razdan, AOR

Mr. Nachiketa Joshi, Adv.

Mr. Nikhil Jaiswal, Adv.

Mr. Divik Mathur, Adv.

Mr. Sheezan Hashmi, Adv.

Mr. Pankaj Singhal, Adv.

Mr. Ayush Agarwal, Adv.
Mr. Astik Gupta, Adv.
Ms. Maitreyee Jagat Joshi, Adv.
Mr. Vipul Abhishek, Adv.
Ms. Ayushi Mittal, Adv.
Mr. Kuldeep Kumar Shukla, Adv.

Mr. Yashraj Singh Bundela , AOR
Ms. Ankita Chaudhary, AOR

Mr. Praneet Pranav, Adv.
Mr. Alabhya Dhamija, Adv.
Ms. Megha Sharma, Adv.
Ms. Akanksha Gupta, Adv.
Mr. Ashish Singh, Adv.
Mr. Shoumendu Mukherji, AOR

Mr. Mrinal Gopal Elker, AOR
Mr. Sanjay Kumar Tyagi, Adv.
Ms. Mugdha Pandey, Adv.
Mr. Sushil Dubey, Adv.
Mr. Saurabh Singh, Adv.
Mr. Satya, Adv.
Ms. Shreya, Adv.
Mr. Divyansh Singh, Adv.
Ms. Aarushi Gupta, Adv.

Mr. Vishnu Kant, AOR

Mr. Vishal Arun, AOR

Mr. Sandeep Singh, AOR

Mr. Siddharth Luthra, Sr. Adv.
Mr. Pashupathi Nath Razdan, AOR
Mr. Nachiketa Joshi, Adv.
Mr. Nikhil Jaiswal, Adv.
Mr. Divik Mathur, Adv.
Mr. Sheezan Hashmi, Adv.
Mr. Pankaj Singhal, Adv.
Mr. Ayush Agarwal, Adv.
Mr. Astik Gupta, Adv.
Ms. Maitreyee Jagat Joshi, Adv.
Mr. Vipul Abhishek, Adv.
Ms. Ayushi Mittal, Adv.
Mr. Kuldeep Kumar Shukla, Adv.

Mr. Rajan K. Chourasia, AOR

Mr. Rishi Malhotra, AOR
Mr. Jaydip Pati, Adv.

Mr. Prashant Padmanabhan, AOR

Mr. Vishnu Kant, AOR

UPON hearing the counsel the Court made the following

O R D E R

When the matters came up, Ms. Shobha Gupta, learned counsel appearing on behalf of the petitioner in W.P. (Cr1.) No.491/2022 would point out that as far as the respondent No.9- *Pradip Ramanlal Modhiya*, in regard to whom it was found by the Court that he had not been served on the earlier occasion, the following developments may be noted. She points out in affidavit dated 06.05.2023 it has been, *inter alia*, stated that the Police Sub-Inspector Mali has despite efforts which have been detailed in the previous paragraphs, at paragraph 4.4 indicated that they are unable to locate and access respondent No.9.

It is further stated in the affidavit dated 06.05.2023 re-service of respondent No.9 as follows:-

"4.4. After all this efforts, PSI Mali said as we can't locate and access Mr. Pradip, I am ready to give a statement in writing that, we visited his house and it was shut hence we were not able to effect service to him. When, requested by me and made him to talk to petitioner's lawyer over phone, he agreed to send the notice through WhatsApp message on respondent's phone no. and affixing a copy of notice on the main door of the house of the respondent No.9 and photographed the same (A copy of photograph is annexed as Annexure 2). On completion of these formalities PSI M. M. Mali gave a signed and stamped receipt mentioning the efforts made by police (A copy is annexed as Annexure 3)."

Next, she drew our attention to the English translation of Annexure-3, which reads as follows:-

"Annexure-3

Above mentioned Notice was to be served to Pradeep Ramanlal Modhiya, Res. Shingwad, District Dahod. Service was supposed to be done at his house located on Chundadi Road, opposite Co-operative Society. After checking that the house was locked, the house was shut and his mobile number 977327961 was switched off, a copy of the notice was sent through message on his WhatsApp number 9773279761 and the copy of the notice was also pasted visibly on the main door of their house.

Also, on informing his brother Vijaybhai Ramanlal Modhiya and his nephew Jignesh Prakashbhai Modhiya about the notice, they did not accept the notice saying they don't know anything about their brother/uncle. Thus, in spite of making enough efforts by the police to serve the notice, the notice has not been handed over in person to the concerned party, which has been recorded through the necessary statements and station diary notings. This procedure has been done yesterday and today.

05/05/2023

Signature
M.M. Mali

Stamp of
Police Sub Inspector
Randhikpur Police Station, Singwad block,
Dahod District"

Next, She drew our attention to Section 65 of the Code of Criminal Procedure, 1973 (Cr.P.C.) which is as follows.

"65. Procedure when service cannot be effected as before provided.-If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the

summons has been duly served or order fresh service in such manner as it considers proper."

She further contends that it is also a case where the members of the family i.e. elder brother and nephew refused to accept notice on behalf of respondent No.9. She therefore contends that this is a fit case where the Court may treat the respondent No.9 in W.P. (Cr1.) No.491/2022 as served, particularly having regard to the contents of the Section 65 of Cr.P.C. In other words, in view of the fact that the Police Authority pasted the notice at the main door of the residence of respondent No.9, it must be treated as service on respondent No.9.

Respondent No.9 is represented by Mr. Vishnu Kant, Advocate-on-Record, in W.P. (Cr1.) No.319/2022. We asked the learned counsel as to whether he can enter appearance on behalf of the respondent No.9 in W.P.(Cr1.) No.491 /2022. He was unwilling, presumably in absence of instructions in this regard.

Mr. Nizam Pasha, learned counsel drew our attention to Order LV Rule 1 and Rule 6 of the Supreme Court Rules, 2013 which empowers the Court to act in the matter relaxing any of the requirements under the Rules. It is pointed out that this is again a fit case which warrants relaxation having regard to the facts. In fact, we must record that the learned Solicitor General, after having read statement of the PSI, Mali in Gujarati language submit that this may be a case where resort can be made to Section 65 of the Cr.P.C.

It is again pointed out on behalf of the petitioners in W.P.

(Cr1.) No. 326/2022 that apart from respondents No. 1 and 2 who stand served, the private respondent Nos. 3 to 13 may have to be served. In other words, other than W.P. (Cr1.) No.491/2022, there are two categories of respondents. In one category, respondents have accepted service and there are other category of respondents who have not accepted service as such. We would think that as on the next occasion when the matters come up, the matters can be heard and a contention may not be taken that the service is incomplete on the effected parties, we pass the following order.

We direct that in the writ petition(s) where service is not complete on the private respondents, the petitioners will take steps for effecting fresh service on the unserved respondents. Secondly, we also simultaneously direct publication of a Public Notice for serving all the unserved respondents. To facilitate the same, the Registry will within three days from today intimate the counsel appearing on behalf of the petitioners the details of the unserved respondents. Thereupon the petitioners will take out service of notice apart from notice as is to be taken under the Supreme Court Rules, 2013, notice by publication in two newspapers namely, Gujarat Samachar and Sandesh in vernacular Language having circulation in the area of residence of the respondents.

As far as in respect of the W.P.(Cr1.) No.491/2022 the paper publication need be confined only in respect of respondent No.9.

The notice shall indicate the date of hearing as 11th of July, 2023.

(JAGDISH KUMAR)
COURT MASTER (SH)

(RENU KAPOOR)
ASSISTANT REGISTRAR