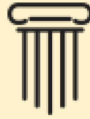

CHAMBERS OF KARTIK SETH

ADVOCATE ON RECORD, SUPREME COURT OF INDIA

Dated: 05.01.2023

To
The Secretary General,
Supreme Court of India

SUBJECT: MISCELLANEOUS APPLICATION DIARY NO. 21994 OF 2022 IN CIVIL APPEAL NO. 8625-8626 OF 2019 TITLED "JAIPUR VIDYUT VITRAN NIGAM LTD. & ORS. VS. ADANI POWER RAJASTHAN LTD. & ANR."

Dear Sir,

On behalf of and on instructions of my client, **Jaipur Vidyut Vitran Nigam Ltd. (which is wholly owned and run by State of Rajasthan)**, whose instructions are attached herewith as **ANNEXURE-A**, that is **in consonance with the instructions of Mr. Dushyant Dave, Senior Advocate, who is leading us in the matter on behalf of Jaipur Vidyut Vitran Nigam Ltd.** whose directions and instructions are attached herewith as **ANNEXURE-B**, I the undersigned, am writing this letter.

This letter raises an extraordinarily serious question going to the very root of the institutional integrity of the Registry of the Hon'ble Supreme Court of India.

The question that I am seeking to raise for your immediate application of mind is as to how Miscellaneous Application Diary No. 21994 of 2022 in Civil Appeal No. 8625-8626 of 2019 has been cleared by your Registry and listed for orders before the Hon'ble Court.

The MA seeks following prayers:

(i) Direct the Appellant No. 1 to 4/Rajasthan Discoms to make payment of the Late Payment Surcharge (LPS) of INR 1376.35 Crores outstanding as on 30.06.2022 to the Applicant herein in terms of Article 8.3.5 of the Power Purchase Agreement dt. 28.01.2010;

(ii) Direct the Appellant No. 1 to 4/Rajasthan Discoms to make payment of the LPS at the rate as per Article 8.3.5 of the PPA.

This was filed on 19.07.2022.

It arises out of judgment and order dated 31.08.2020 decided by a bench of 3 Hon'ble judges. By the said judgment, this Hon'ble Court authoritatively held as under:

> ***"67. With regard to the question of interest/late payment surcharge, we notice that the plea of change in law was initially raised by APRL in the year 2013. A***

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case was also filed by APRL in the year 2013 itself raising its claim on such basis. However, the appellants- Rajasthan Discoms did not allow the claim regarding change in law because of which APRL was deprived of raising the bills with effect from the date of change in law in the year 2013. We are thus of the opinion that considering the totality of the facts of this case and in order to do complete justice and to reduce the liability of the appellants-Rajasthan Discoms. payment of 2 per cent in excess of the applicable SBAR per annum with monthly rest would be on higher side. In our opinion, it would be appropriate to direct the appellants-Rajasthan Discoms to pay interest/late payment surcharge as per applicable SBAR for the relevant years, which should not exceed 9 per cent per annum. It is also provided that instead of monthly rest, the interest would be compounded per annum.

68. We accordingly direct that the rate of interest/late payment surcharge would be at SBAR not exceeding 9 per cent per annum to be compounded annually. and the 2 per cent above the SBAR (as provided in Article 8.3.5 of PPA) would not be charged in the present case."

…

"71. In view of the preceding discussion, the appeals are partly allowed to the extent as indicated above."

Thus, this Hon'ble Court expressly held that Adani Power Rajasthan Limited (APRL) was not entitled to the payment of Late Payment Surcharge (LPS) in terms of Article 8.3.5 of the Power Purchase Agreement (PPA) dated 28.01.2010. This Hon'ble Court expressly held that payment of surcharge thereunder ***"would be on higher side"*** and accordingly, it felt appropriate ***"to direct the appellants Rajasthan Discoms to pay interest/Late payment surcharge as per applicable SBAR for the relevant years, which should not exceed 9% p.a."***. The Court further expressly directed that ***"the 2% above SBAR (as provided in Article 8.3.5 of PPA) would not be charged in the present case"*** and accordingly allowed the appeals filed by Jaipur Vidyut Vitran Nigam Ltd. and others, ***"partly"***.

In terms of the judgment, we have paid the entire amount payable and the same has been accepted by APRL without any protest.

Therefore, the present MA is a clear attempt to review the afore-said judgment after a lapse of more than 2 years and that too without moving any application for condonation of delay. While my clients had moved applications for review which came to be dismissed by an order dated 02.03.2021, APRL did not file any Review petition.

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The Supreme Court Rules, 2013 expressly provides in Order XLVII rule 1 as under:

> ***"The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, rule 1 of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.***
>
> ***The application for review shall be accompanied by a certificate of the Advocate on Record certifying that it is the first application for review and is based on the grounds admissible under the Rules."***

Order XLVII Rule 3 provides as under:

> ***"Unless otherwise ordered by the Court an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party. An application for review shall as far as practicable be circulated to the same Judge or Bench of Judges that delivered the judgment or order sought to be reviewed."***

The Rules 1 and 3 of Order XVII of the Supreme Court Rules, 2013 are annexed herewith as **ANNEXURE-C**.

Rule 4 of Part "General" of Chapter X of Supreme Court Practice and Procedure Rules expressly reads as under:

> ***"No application or miscellaneous application shall be entertained where review of a judgment or order is sought and where provisions of Order XLVII of the Rules are attracted. In such a case, application for review shall be filed."***

Copy of relevant extract of Supreme Court Practice and Procedure Rules is annexed herewith as **ANNEXURE-D**.

In the celebrated judgment in the **Delhi Administration vs. Gurdip Singh Uban and Ors. (2000) 7 SCC 296**, in para 17 & 18 it was held as under:

> ***"17. 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, 1966, 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. R3 states as follows:***

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> ***Order XL .R3: 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 arguments. 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 a view to avoid this procedure of 'no hearing', we find that sometimes applications are filed for 'clarification', 'modification' or 'recall' etc. not because any such 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 straightway inasmuch as the attempt is obviously to by-pass Order XL. Rule 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 then Registrar of this Court in Sonelal and Ors. v. State of U.P. deprecating a similar practice.)

18. 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."

Recently, in ***"Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Ors."*** **MA Application 1572 of 2021 in Civil Appeal No. 5041 of 2021** bench comprising of Hon'ble Dr. Justice D.Y. Chandrachud and Hon'ble Mrs. Justice BV Nagarathna, following the law declared by this court and interpreting the Supreme Court Rules, have held as under:

"11. The attempt in the present miscellaneous application is clearly to seek a substantive modification of the judgment of this Court. Such an attempt is not permissible in a miscellaneous application. While Mr Mukul Rohatgi, learned senior counsel has relied upon the provisions of Order LV Rule 6 of the Supreme Court Rules 2013, what is contemplated therein is a saving of the inherent powers of the Court to make such orders as may be necessary for the

ends of justice or to prevent an abuse of the process of the Court. Order LV Rule 6 cannot be inverted to bypass the provisions for review in Order XLVII in the Supreme Court Rules 2013. The Miscellaneous application is an abuse of the process.

12. The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which are subject to the vagaries of wind and weather. A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly ["Quando aliquid prohibetur ex directo, prohibetur et per obliquum"]."

Copy of the order passed by this Hon'ble Court in ***"Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Ors."*** is annexed herewith as **ANNEXURE-E**.

Under the circumstances, since the matter involves a substantial sum of INR 1,376.35 Crores as claimed being public revenue and involving public interest, **the undersigned has been advised by Mr. Dushyant Dave, Senior Advocate,** now instructed by the Appellants to appear on their behalf along with me, I request you to forthwith take appropriate action as follows:

1. **Hold an immediate inquiry to ascertain as to how this MA has been registered and listed before the Hon'ble Court contrary to Supreme Court Rules as aforesaid and the law declared by the Hon'ble SC in a catena of decisions.**
2. **Till the inquiry is made, seek appropriate directions from either Hon'ble the Chief Justice of India or from the Hon'ble Court hearing the matter not to allow further hearing in the matter.**

I sincerely request you to intervene forthwith in the interest of justice, particularly considering that justice must not only be done but must appear to be done, the motto that this Hon'ble Court has scrupulously followed.

While we are on this subject, I must say that in the past, practice has been to reject such applications by Registry straightaway without placing the same before the Hon'ble Court. Reliance is placed on a well-considered and reported order of the then Ld. Registrar Sh. R.

Subba Rao dated 19.11.1981 in ***Sonelal and Ors. v. State of U.P. (1982) 2 SCC 398*** wherein in similar circumstances, the Registrar has declined to receive the document when in his opinion the mandatory requirements of the Rules were not satisfied and since the appeal was disposed of after hearing the parties in that case, it was held that only course left to the party was to file a review petition. Copy of the judgment is annexed herewith as **ANNEXURE-F**. Therefore, it is surprising that this practice is now given a go-by.

I hereby reiterate that this letter has the stamp and complete approval of my client, Jaipur Vidyut Vitran Nigam Ltd. (JVVNL), which is a public sector undertaking under the aegis of State of Rajasthan, acting on the directions of Mr. Dushyant Dave, Senior Advocate, who is the lead counsel in the matter.

Yours Sincerely,

Kartik Seth, Advocate
For M/s. Chambers of Kartik Seth
Advocate-on-Record for Appellants

CHAMBERS OF KARTIK SETH
ADVOCATE ON RECORD
SUPREME COURT OF INDIA
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CIN No. U40104RJ2015SGC048738

राजस्थान ऊर्जा विकास निगम लिमिटेड
RAJASTHAN URJA VIKAS NIGAM LIMITED
(Govt. of Rajasthan Undertaking)
कमरा नं. 26, विद्युत भवन, जनपथ, जयपुर - 302005
Room No. 26, Vidyut Bhawan, Jan Path, Jaipur - 302005

No.RUVNL/CE/F. D. 106 Jaipur, Dt. 05/1/2023

Shri Kartik Seth
M/s Chamber of Kartik Seth
Advocate on Record
For Appellants: Jaipur Vidyut
Vitran Nigam Limited
in MA Diary No. 21994 of 2022

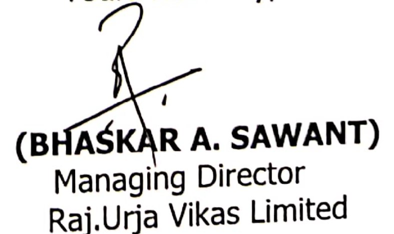
Sub.: Regarding MA. Diary No. 21994 of 2022 titled Jaipur Vidyut Vitran Nigam Limited & Ors V/s Adani Power Rajasthan Ltd.

Dear Sir,

With respect to mail received from you seeking approval with regard to instructions received from Mr. Dushyant Dave, Sr. Advocate who has been engaged as lead Counsel in above captioned matter, it is hereby made clear that since we have engaged services of Shri Dushsyant Dave, Sr. Advocate in this matter, we should follow strategy/ legal course of actions as advised by him. Hence please proceed with submitting letter to the Secretary General as advised & dictated by him.

Thanking you,

Yours faithfully,



(BHASKAR A. SAWANT)
Managing Director
Raj.Urja Vikas Limited

Dushyant Dave
Senior Advocate

Date : 04.01.2023

Dear Mr. Kartik Seth,

Sub: Regarding listing of MA Diary No. 21994 of 2022 titled Jaipur Vidyut Vitran Nigam Ltd. & Ors. Vs. Adani Power Rajasthan Ltd. & Ors.

This is to confirm that I have today during the conference held in my chamber at 7 PM advised to file a letter as settled by me and addressed to the Learned Secretary General of the Supreme Court of India.

Dushyant Dave, Senior Advocate

Supreme Court of India

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Tel.: +91-11-24691807, 24631477
E-mail : dushyantdave@gmail.com

37. At the conclusion of the hearing of the election petition, the Court shall make an order at once or on some future day of which due notice shall be given by the Registrar to all persons who appeared at the hearing of the petition.

38. Soon after the conclusion of the hearing of the petition, the Registrar shall submit a statement to the Court showing the Court-fees and other expenses incurred by each party to the petition and the total number of days of hearing of the petition.

39. At the time of passing the final order under rule 37, the Court shall also make an order fixing the total amount of costs payable and shall further direct by and to whom the said costs shall be paid.

40. After the order of the Court has been announced, the Registrar shall send a copy thereof to the Central Government for publication in the Official Gazette.

PART - IV

ORDER XLVII

REVIEW

1. The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, rule 1 of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.

The application for review shall be accompanied by a certificate of the Advocate on Record certifying that it is the first application for review and is based on the grounds admissible under the Rules.

2. An application for review shall be by a petition, and shall be filed within thirty days from the date of the judgment or order sought to be reviewed. It shall set out clearly the grounds for review.

3. Unless otherwise ordered by the Court an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party. An application for review shall as far as practicable be circulated to the same Judge or Bench of Judges that delivered the judgment or order sought to be reviewed.

4. Where on an application for review the Court reverses or modifies its former decision in the case on the ground of mistake of law or fact, the Court, may, if it thinks fit in the interests of justice to do so, direct the refund to the petitioner of the court-fee paid on the application in whole or in part, as it may think fit.

5. Where an application for review of any judgment and order has been made and disposed of, no further application for review shall be entertained in the same matter.

ORDER XLVIII

CURATIVE PETITION

1. Curative Petitions shall be governed by Judgment of the Court dated 10th April, 2002 delivered in the case of 'Rupa Ashok Hurrah v. Ashok Hurrah and Ors.' in Writ Petition (C) No. 509 of 1997.

2. (1) The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the Review Petition and that it was dismissed by circulation.

(2) A Curative Petition shall be accompanied by a certificate of the Senior Advocate that the petition meets the requirements delineated in the above case.

(3) A curative petition shall be accompanied by a certificate of the Advocate on Record to the effect that it is the first curative petition in the impugned matter.

3. The Curative Petition shall be filed within reasonable time from the date of Judgment or Order passed in the Review Petition.

4. (1) The curative petition shall be first circulated to a Bench of the three senior-most judges and the judges who passed the judgment complained of, if available.

(2) Unless otherwise ordered by the Court, a curative petition shall be disposed of by circulation without any oral arguments but the petitioner may supplement his petition by additional written arguments.

unless it contains an averment that a similar application relating to the same subject matter has or has not been made to the Court, and, if made, the date of filing, date of disposal and result thereof shall also be disclosed in the following manner:

S. No.	Name of the accused	Date of Application, If Known	Case Number	Date of the Order	Bench

4. Every subsequent application under Section 389 or 438 or 439 of the Code shall be accompanied by certified copies or true copies of the orders deciding earlier application(s).

GENERAL

1. No miscellaneous application for intervention, impleadment or direction by a third party shall be entertained, unless otherwise directed by the Court.

2. In the absence of a provision in any Statute or Rule for filing a main case, application for leave to file such case shall accompany the main case.

3. No case or document shall be accepted, unless prescribed court fee is paid.

4. No application or miscellaneous application shall be entertained where review of a judgment or order is sought and where provisions of Order XLVII of the Rules are attracted. In such a case, application for review shall be filed.

5. No miscellaneous application for restoration or recall shall be entertained in a main case dismissed peremptorily on account of failure to take steps within the specified period, unless the defects, so notified, have been cured.

6. A petition for special leave to appeal may be preferred against an interlocutory order made in a case under Section 21 of Consumer Protection Act, 1986.

7. An application for condonation of delay under Section 20 of the

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Miscellaneous Application No 1572 of 2021

In

Civil Appeal No 5041 of 2021

Supertech Limited **Appellant(s)**

Versus

Emerald Court Owner Resident Welfare Association and Others **Respondent(s)**

O R D E R

1 A miscellaneous application has been filed by Supertech Limited seeking modification of the judgment and order of this Court dated 31 August 2021. The reliefs which are sought in the Miscellaneous Application read thus:

> "(a) Modify the Judgment dated 31.08.2021…to the extent that the Applicant may demolish a part of tower T-17 as stipulated in paragraph 6 hereinabove;
>
> (b) Pass an order of status quo in respect of Towers 16 & 17 in Emerald Court, Plot No. 4, Sector 93A, NOIDA till final orders are passed in the present application."

2 A Division Bench of the High Court of Judicature at Allahabad directed the demolition of Towers 16 and 17 by the third respondent, New Okhla Industrial Development Authority, in Emerald Court constructed by the applicant and situated on Plot No 4, Sector 93A, NOIDA. While affirming the judgment of the Division Bench, this Court has recorded the following conclusions in its judgment, which is reported as ***Supertech Limited vs Emerald Court Owner Resident Welfare Association and Others***[1]:

> “185. To summarize our findings, the documentary materials referred to and analyzed in this judgment indicate that:
>
> (i) The land allotted to appellant under the original lease agreement and the supplementary lease deed constitute one plot;
>
> (ii) The land which was allotted through the supplementary lease deed forms a part of original Plot No 4, and would be governed by the same terms and conditions as the original lease deed;
>
> (iii) The sanction given by NOIDA on 26 November 2009 and 2 March 2012 for the construction of T-16 and T-17 is violative of the minimum distance requirement under the NBR 2006, NBR 2010 and NBC 2005;
>
> (iv) An effort was made to get around the violation of the minimum distance requirement by representing that T-1 together with T-16 and T-17 form one cluster of buildings in the same block. This representation was sought to be bolstered by providing a space frame between T-1 and T-17. The case that T-1, T-16 and T-17 are part of one block is directly contrary to the appellant's stated position in its representations to the flat buyers as well as in the counter affidavit before the High Court. The suggestion that T-1, T-16 and T-17 are part of one block is an after-thought and contrary to the record;
>
> (v) After realizing that the building block argument would not pass muster, another false case was sought to be set up

1 2021 SCC OnLline SC 648

with the argument that T-1 and T-17 are dead end sides, thereby obviating the need to comply with the minimum distance requirements. This argument is belied by the comprehensive report submitted by NBCC. The sides of T-1 and T-17 facing each other are not dead end sides since both the sides have vents/egresses facing the other building;

(vi) By constructing T-16 and T-17 without complying with the Building Regulations, the fire safety norms have also been violated;

(vii) The first revised plan of 29 December 2006 contained a clear provision for a garden area adjacent to T-1. In the second revised plan of 26 November 2009, the provision for garden area was obliterated to make way for the construction of Apex and Ceyane (T-16 and T-17). The common garden area in front of T-1 was eliminated by the construction of T-16 and T-17. This is violative of the UP Apartments Act 2010 since the consent of the flat owners was not sought before modifying the plan promised to the flat owners; and

(viii) T-16 and T-17 are not part of a separate and distinct phase (Phase-II) with separate amenities and infrastructure. The supplementary lease deed stipulates that the they are part of the original project. Hence, the consent of the individual flat owners of the original fifteen towers, individually or through the RWA, was a necessary requirement under the UP Apartments Act 2010 and UP 1975 Act before T-16 and T-17 could have been constructed, since they necessarily reduced the undivided interest of the individual flat owners in the common area by adding new flats and increasing the number from 650 to 1500; and

(ix) The illegal construction of T-16 and T-17 has been achieved through acts of collusion between the officers of NOIDA and the appellant and its management.

186. For the reasons which we have indicated above, we have come to the conclusion that:

(i) The order passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed;

(ii) The work of demolition shall be carried out within a period of three months from the date of this judgment;

(iii) The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of NOIDA. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing pleadings, NOIDA shall consult its own experts and experts from Central Building Research Institute Roorkee;

(iv) The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by NOIDA;

(v) The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant;

(vi) The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T-17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment; and

(vii) The appellant shall pay to the RWA costs quantified at Rs. 2 crore, to be paid in one month from the receipt of this judgment."

3 Mr Mukul Rohatgi, learned senior counsel appearing on behalf of the applicant submitted that:

(I) The applicant does not seek a review of the judgment of this Court, which is the reason for filing an application for modification;

(ii) The basis of the judgment of this Court is that:

(a) The minimum distance required under the relevant Building Regulations has not been complied with; and

(b) There is a violation of the requirement of maintaining a green area under the relevant Building Regulations; and

(iii) The applicant would seek to meet the above two findings which have been arrived at in the judgment of this Court by slicing a portion of Tower 17, while retaining Tower 16 so as to ensure compliance with the minimum distance requirement and the green area requirement under the relevant Building Regulations.

4 Learned senior counsel submitted that the proposal may be examined by the planning authority, if the Court so directs.

5 Mr Jayant Bhushan, learned senior counsel appearing on behalf of the first respondent has raised a preliminary objection to the maintainability of such a miscellaneous application, based on the decisions of this Court in ***Delhi Administration vs Gurdip Singh Uban and Others***[2] ("***Gurdip Singh Uban***"), ***Ram Chandra Singh vs Savitri Devi and Others***[3] ("***Ram Chandra Singh***") and ***Rashid Khan Pathan (Applicant) – In Re: Vijay Kurle and Others***[4] ("***Rashid Khan Pathan (Applicant) – In Re: Vijay Kurle***"). Apart from this, it has been submitted on behalf of the first respondent that the miscellaneous application proceeds on the misconceived basis that the only two objections which were noticed in the judgment of this

2 (2000) 7 SCC 296
3 (2004) 12 SCC 713
4 2020 SCC OnLine SC 711

Court to the legality of the two structures are the ones which have been submitted on behalf of the applicant (minimum distance and green area). In addition to the violation of the distance requirement and the requirement of a green area, it has been urged that this Court has, as a matter of fact, adverted to various other violations, including: *(i)* the non-compliance with the provision of the UP Apartments Act 2010 Act[5]; and *(ii)* a reduction of the undivided interest of the flat purchasers in the common areas without their consent. On the non-compliance with the provisions of the 2010 Act, Mr Bhushan placed reliance on the following findings contained in paragraphs 153 and 154 of the judgment of this Court, namely:

> "153. Sub-Section (4) of Section 4 contains the following stipulations:
>
> > "(4) After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the intending purchaser and a written agreement of sale is entered into and registered with the office of concerned registering authorities. The promoter may make such minor additions or alterations as may be required by the owner or owners, or such minor changes or alterations as may be necessary due to architectural and structural reason's duly recommended and verified by authorized Architect or Engineer after proper declaration and intimation to the owner:
> >
> > Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without the previous consent of the intending purchaser, project Architect, project Engineer and obtaining the required permission of the prescribed sanctioning authority, and in no case he shall make such alterations as an not permissible in the building bye-laws."

5 the "**2010 Act**"

> 154. Under clause (c) of sub-Section (1) of Section 4, a promoter who intends to sell an apartment is required to make a full disclosure in writing to an intending purchaser and to the competent authority of the plans and specifications approved or submitted for approval to the local authority, of the building of which the apartment is a part. Similarly, under clause (d), a disclosure has to be made in regard to the common areas and facilities in accordance with the approved lay-out plan or building plan. Once such a disclosure has been made, sub-Section (4) stipulates that upon the execution of a written agreement to sell, the promoter may make minor additions or alterations as may be required or necessary due to architectural and structural reasons duly authorized and verified by authorized Architects or Engineers. Apart from these minor additions or alterations which are contemplated by sub-Section (4), the proviso stipulates that the promoter shall not make any alterations in the plans, specifications and other particulars "without the previous consent of the intending purchaser". Mr. Vikas Singh's submission, that this provision will apply to intending purchasers of Apex and Ceyane and not to the persons who had purchased apartments in the existing fifteen towers, cannot be accepted. The above proviso is evidently intended to protect persons to whom the plans and specifications were disclosed when they were the "intending purchasers". Further, a construction to the contrary will run against the grain of the intent and purpose of the statute as well its express provisions."

6 Similarly, in respect of the reduction of the undivided interest in the common areas without the consent of the residents, reliance has been placed on the following findings of this Court:

> "145. However, the application of clause II(h) cannot be brushed away on this basis, particularly since the sentence imposing the application of the UP 1975 Act on the lessee/sub-lessee must bear some meaning and content. In this context, during the course of his submissions, Mr. Jayant Bhushan, learned Senior Counsel appearing on behalf of the RWA, has placed on the record a copy of the registered sub-lease executed on a tripartite basis by NOIDA, with the appellant as the lessee and the flat buyer as the sub-lessee. Some important provisions of this deed of sublease are:
>
> (i) Clause 16 contemplates that the occupant of the

ground floor would be entitled to use a "sit-out area but the right of user shall be subject to the provisions of the UP Ownership Flat Act 1975";

(ii) Clause 17 recognizes the right to user of the occupant of the dwelling unit on the top floor, subject to the provisions of the same enactment; and

(iii) Clause 27 envisages that all clauses of the lease executed by NOIDA in favour of the appellant on 16 March 2005 shall be applicable to the sub-lease deed as well.

146. In the backdrop of this provision, "more particularly, clause II(h) of the lease deed which was executed by NOIDA in favour of the appellant on 16 March 2005, the appellant was duty bound to comply with the provisions of the UP 1975 Act. By submitting before this Court that it is not bound by the terms of its agreement or the Act for want of a declaration under Section 2, the appellant is evidently attempting to take advantage of its own wrong.

[…]

157. In terms of the third revised plan which was sanctioned on 2 March 2012, the height of T-16 and T-17 was sought to be increased from twenty-four to forty (or thirty-nine, as the case may be) floors. As a result, the total number of flat purchasers would increase from 650 to 1500. The clear implication of this would be a reduction of the undivided interest of the existing purchasers in the common areas. As a matter of fad, it has also been submitted on behalf of the first respondent that the additional lease rent paid to NOIDA was also sought to be collected from the existing flat purchasers at the rate of Rs.190 per sq. foot. A statement to that effect was also contained in an affidavit filed before the High Court on behalf of the first respondent. The purchase of additional FAR by the appellant cannot be used to trample over the rights of the existing purchasers."
Hence it has been urged that in any event, the proposal will not ensure compliance with the judgment of this court.

7 The judgment of this Court dated 31 August 2021 has affirmed the direction which was issued by the Division Bench of the Allahabad High Court for the demolition of Tower 16 and Tower 17. This is evident from the ultimate

conclusions and directions contained in paragraph 186(i) to (v) of the judgment. In essence, what the applicant seeks in the present application is that the direction for the demolition of Tower 16 and Tower 17 should be substituted by the retention of Tower 16 in its entirety and slicing of a portion of Tower 17. Clearly, the grant of such a relief is in the nature of a review of the judgment of this Court.

8 In successive decisions, this Court has held that the filing of applications styled as "miscellaneous applications" or "applications for clarification/modification" in the guise of a review cannot be countenanced. In ***Gurdip Singh Uban*** (supra), Justice M Jagannadha Rao, speaking for a two-Judge Bench of this Court observed:

> "17. 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, 1966 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 Rule 3 states as follows*:
>
> "3. Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. 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 the Court and to preclude frivolous review petitions being filed and heard in open court. However, with a view to avoid this procedure of "no hearing", we find that sometimes applications are filed for "clarification", "modification" or "recall" etc. not because any such 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 straight away inasmuch as the attempt is obviously to bypass Order XL Rule 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 bypass 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 *Sone Lal* v. *State of U.P.* [(1982) 2 SCC 398] deprecating a similar practice.)
>
> 18. 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 straight away with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers.”

9 The same view has been expressed in a subsequent decision in ***Ram Chandra Singh*** (supra) wherein another two-Judge Bench of this Court observed as follows:

> “15. In *Gurdip Singh Uban* [(2000) 7 SCC 296] the law has been laid down in the following terms:
>
> > “*17*. … This procedure is meant to save the time of the Court and to preclude frivolous review petitions being filed and heard in open court. However, with a view to avoid this procedure of ‘no hearing’, we find that sometimes applications are filed for ‘clarification’, ‘modification’ or ‘recall’ etc. not because any such 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 straight away inasmuch as the attempt is obviously to bypass

Order 40 Rule 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 bypass the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly."

16. In *Common Cause* [(2004) 5 SCC 222] Lahoti, J. (as the learned Chief Justice then was) speaking for a Division Bench observed:

"*2*. … We are satisfied that the application does not seek any clarifications. It is an application seeking in substance a review of the judgment. By disguising the application as one for 'clarification', the attempt is to seek a hearing in the open court avoiding the procedure governing the review petitions which, as per the rules of this Court, are to be dealt with in chambers. Such an attempt on the part of the applicant has to be deprecated."

17. Recently in *Zahira Habibullah Sheikh* v. *State of Gujarat* [(2004) 5 SCC 353 : 2004 SCC (Cri) 1613] referring to Order 40 Rule 3, this Court opined:

"*6*. As noted by a Constitution Bench of this Court in *P.N. Eswara Iyer* v. *Registrar, Supreme Court of India* [(1980) 4 SCC 680], *Suthendraraja* v. *State* [(1999) 9 SCC 323 : 2000 SCC (Cri) 463], *Ramdeo Chauhan* v. *State of Assam* [(2001) 5 SCC 714 : 2001 SCC (Cri) 915] and *Devender Pal Singh* v. *State, NCT of Delhi* [(2003) 2 SCC 501 : 2003 SCC (Cri) 572] notwithstanding the wider set of grounds for review in civil proceedings, it is limited to 'errors apparent on the face of the record' in criminal proceedings. Such applications are not to be filed for the pleasure of the parties or even as a device for ventilating remorselessness, but ought to be resorted to with a great sense of responsibility as well.

7. In *Delhi Admn.* v. *Gurdip Singh Uban* [(2000) 7 SCC 296] it was held that 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 bypass the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly. The court should not permit hearing of such an application for 'clarification', 'modification' or 'recall' if the application is in substance a clever move for review."

10 More recently, another two-Judge Bench in ***Rashid Khan Pathan (Applicant) – In Re: Vijay Kurle*** (supra) held as follows:

> "9. In a country governed by the rule of law, finality of the judgment is absolutely imperative and great sanctity is attached to the finality of the judgment. Permitting the parties to reopen the concluded judgments of this Court by filing repeated interlocutory applications is clearly an abuse of the process of law and would have far-reaching adverse impact on the administration of justice."

11 The attempt in the present miscellaneous application is clearly to seek a substantive modification of the judgment of this Court. Such an attempt is not permissible in a miscellaneous application. While Mr Mukul Rohatgi, learned senior counsel has relied upon the provisions of Order *LV* Rule 6 of the Supreme Court Rules 2013, what is contemplated therein is a saving of the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of the Court. Order *LV* Rule 6 cannot be inverted to bypass the provisions for review in Order *XLVII* in the Supreme Court Rules 2013. The Miscellaneous application is an abuse of the process.

12 The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which are subject to the vagaries of wind

and weather[6]. A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly [“*Quando aliquid prohibetur ex directo, prohibetur et per obliquum*”].

13 Further, there is another legal principle which is applicable in the present case. It is that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden[7]. Hence, when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and other methods of performance are necessarily forbidden[8]. This Court too, has adopted this maxim[9]. This rule provides that an expressly laid down mode of doing something necessarily implies a prohibition on doing it in any other way.

6 See ***Meghmala v G Narasimha Reddy, (2010) 8 SCC 383***

7 ***Taylor vs Taylor***, 1875 (1) Ch D 426

8 ***Nazir Ahmed vs King Emperor***, (1936) L.R. 63 IndAp 372

9 ***Parbhani Transport Co-operative Society Ltd. vs The Regional Transport Authority, Aurangabad & Others***, AIR 1960 SC 801

14 For the above reasons, there is no substance in the miscellaneous application.

15 The Miscellaneous Application is accordingly dismissed.

…………………………………………J.
[Dr Dhananjaya Y Chandrachud]

…………………………………………J.
[B V Nagarathna]

New Delhi;
October 4, 2021
CKB

ITEM NO.15 Court 4 (Video Conferencing) SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application No.1572/2021 in C.A. No.5041/2021

(Arising out of impugned final judgment and order dated 31-08-2021 in C.A. No.5041/2021 passed by the Supreme Court of India)

SUPERTECH LTD. Petitioner(s)

VERSUS

EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION & ORS. Respondent(s)

(With appln.(s) for IA No.122595/2021-MODIFICATION)

Date : 04-10-2021 This petition was called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s)
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Anshuman Srivastava, Adv.
Mr. Rishabh Parikh, Adv.
Mr. E.C. Agrawala, AOR

For Respondent(s)
Mr. Jayant Bhushan, Sr. Adv.
Mr. Anish Agarwal, AOR
Ms. Vanshika Gupta, Adv.
Ms. Meenakshi Garg, Adv.
Mr. Ketan Paul, Adv.
Mr. Tushar Bhushan, Adv.
Mr. Amartya Bhushan, Adv.

Mr. Bhakti Vardhan Singh, AOR

Mr. Ravindra Kumar, AOR

Mr. Ravi Prakash Mehrotra, AOR

Mr. Ravindra Raizada, Sr. Adv.
Mr. Rajeev Kumar Dubey, Adv.
Mr. Ashiwan Mishra, Adv.
Mr. Kamlendra Mishra, AOR

Mr. Tarun Gupta, AOR

Ms. Prachi Mishra, Adv.
Mr. Chaitanya Bansal, Adv.
Mr. Tushar Bathija, Adv.
Mr. Arjun Garg, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1 The Miscellaneous Application is dismissed in terms of the signed order.

2 Pending applications, if any, stand disposed of.

(CHETAN KUMAR) **(SAROJ KUMARI GAUR)**
A.R.-cum-P.S. **Court Master**
(Signed Reportable Order is placed on the file)

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their objections to the findings reached by the Central Government and this they have done within the time allowed therefor.

3. It, however, appears during the course of hearing that the parties want to be heard on the findings reached by the Central Government. This cannot be done unless the persons affected are given notice and reasonable opportunity of placing their respective case is given to them. The Central Government have recorded a considered opinion and come to certain definite conclusions. The Andhra Pradesh Administrative Tribunal did not have the benefit of the report submitted by the Central Government. In the circumstances, it will be eminently just and proper to set aside the judgment and to remand the case to the Andhra Pradesh Administrative Tribunal for a decision afresh, without expressing any opinion as to the correctness or otherwise of the findings reached by the Central Government or on the merits of the case or on the judgment under appeal. It is ordered accordingly.

4. This Order of ours should not be construed to mean that we either approve or disapprove of the findings reached by the Central Government. It would be for the Andhra Pradesh Administrative Tribunal to examine the correctness or otherwise of the findings given by the Central Government in their report dated July 10, 1981. It shall afford to all the parties the opportunity to place their respective claims and contentions on merits in the form of additional pleadings with respect to the latest decision of the Central Government. The Andhra Pradesh Administrative Tribunal shall reach a decision afresh after hearing the parties as expeditiously as possible, and in any event, not later than six months from today. These appeals and special leave petitions stand disposed of accordingly. There shall be no order as to costs.

(1982) 2 Supreme Court Cases 398

[Before Shri R. Subba Rao, Registrar (Judicial)]

SONE LAL AND OTHERS .. Appellants/Petitioners;

Versus

STATE OF UTTAR PRADESH .. Respondent.

Criminal Miscellaneous Petition in Criminal Appeal No. 220 of 1974, decided on November 19, 1981

Supreme Court Rules, 1966 — Order XL; Order X, Rule 6(3) & (4); Order XVIII, Rule 5 and Order XLVII — Where appeal finally disposed of by the Court after hearing the parties, application of the appellant praying for rescission of the appeal and rehearing the parties not maintainable and must be rejected — Only course open to the appellant is to comply with the mandatory requirements of Order XL and file a review petition, failing which Registrar competent to refuse to receive the application under Order X, Rule 6(3) and Order XVIII, Rule 5 — Inherent power of the Court

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under Order XLVI to "excuse the parties from compliance with any of the requirements" is exercisable only after the mandatory provisions, such as Order XL here, are complied with — Constitution of India, Articles 137 and 140 — Practice and Procedure

Petition rejected R-M/5833/CS

Advocates who appeared in this case:
V.J. Francis, Advocate, for the Appellants/Petitioners.

ORDER

1. Notice under Order X, Rule 6(3) and (4) of the Supreme Court Rules, 1966, has been issued to the Advocate returnable on November 24, 1981. Counsel for the petitioners Mr V.J. Francis has prayed that the matter may be taken up today itself. Hence the matter has been taken up today.

2. The appeal above mentioned was heard by the Court and after hearing the counsel for the appellants and counsel for the respondent the Court delivered judgment on April 3, 1981 dismissing the appeal. The appellant has filed on April 28, 1981 an application for rehearing of the appeal in which he inter alia prayed that the judgment of this Court may be rescinded and the parties may be permitted to make submissions through counsel. Counsel has been informed that since the appeal has been disposed of after hearing the counsel for the parties, no application for rehearing lies in the matter and he may, if so, be advised to file a review petition under the Rules of the Court. He has not cured the defect but he has filed a letter stating that the application may be listed before the Court and that the Registry may leave the matter to the Court to decide whether the circumstances mentioned by him in the petition are enough to give to appellants a fair opportunity to place the case on merits. He has further stated in the letter that the Registry will please not dispose of the application without affording an opportunity to the appellants to place their case before the Court by oral arguments which is not available to them in a review petition.

3. Under Order X, Rules 6(3) where a document is found to be defective, it shall be placed before the Registrar after notice to the party filing the same. The Registrar may by an order decline to receive the document if, in his opinion, the mandatory requirements of the Rules are not satisfied. Under Order XVIII, Rule 5 of the Supreme Court Rules, the Registrar may refuse to receive a petition other than a petition under Article 32 of the Constitution on the ground that it discloses no reasonable cause.

4. In the instant case since the appeal has been disposed of after hearing the parties, the only course left to the party is to file a review petition under Order XL of the Supreme Court Rules. It is seen from the letter of counsel that since oral arguments are not available in a review petition, he has filed this petition. This clearly shows that counsel knowing fully well that only a review petition lies in the matter, has filed this application to bypass the

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Rules. Learned counsel refers to Order XLVII of the Supreme Court Rules. This Order refers to the inherent powers of the Court but those powers come into play when some mandatory provisions are complied with. In this case counsel has not complied with the mandatory provisions of the Supreme Court Rules. Secondly the petition does not disclose any reasonable cause of action since his appeal has been disposed of finally after hearing counsel for the appellants.

5. In view of the above, I decline to register the application for rehearing filed by the appellant on April 28, 1981.

(1982) 2 Supreme Court Cases 400

(BEFORE D.A. DESAI AND V. BALAKRISHNA ERADI, JJ.)

GHANSHYAM AND OTHERS .. Appellants;

Versus

STATE OF UTTAR PRADESH .. Respondent.

Criminal Appeal No. 102 of 1982†, decided on February 17, 1982

Penal Code, 1860 — Sections 34 and 302 & 323 — Participation — Parties meeting accidentally at the place of occurrence without the accused party knowing in advance the deceased party's movement through that place — Accused-appellant, a boy of 15 years, may possibly be present along with other family members at the time of occurrence but that by itself in the circumstances, not indicative of his sharing common intention of his family members — His participation in the assault on the deceased, held on facts, not proved and hence his conviction under Sections 302/34 and 323/34 set aside

Appeal allowed R-M/5783/CSR

ORDER

1. Special leave is granted only to the appellant Kehar Singh son of Ghanshyam. In respect of others the special leave petition is rejected.

2. The appellant Kehar Singh with his brother Dhir Singh and father Ghanshyam and acquitted accused Hukam Singh were tried by the learned IIIrd Additional District & Sessions Judge, Saharanpur, for having committed offences under Sections 302/34 and Sections 323/34 of the Indian Penal Code. Hukam Singh was acquitted. The remaining three accused including Kehar Singh were convicted for both the offences and with respect to the first offence each one of them was sentenced to suffer imprisonment for life and in respect of the second offence, rigorous imprisonment for six months. Substantive sentences were directed to run concurrently.

3. The appellant, his father Ghanshyam and brother Dhir Singh preferred Criminal Appeal No. 2170 of 1976 in the High Court of Judicature

†Arising out of S.L.P. (Cri) No. 3100 of 1981