

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

BEFORE THE REGISTRAR SH. ANIL LAXMAN PANSARE

Petition(s) for Special Leave to Appeal (C) No(s). 25872/2017

NIDHU RAM

Petitioner(s)

VERSUS

KRISHNA DEVI & ORS.

Respondent(s)

Date : 21-10-2019 This petition was called on for hearing today.

For Petitioner(s)

Mr. Ajay Marwah, AOR

For Respondent(s)

Mr. Varinder Kumar Sharma, AOR

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

On previous date i.e., 18.10.2019, the following order
was passed -

"Respondent nos. 9,11,15 and 16 are granted four weeks time as last opportunity for filing counter affidavit.

Service is complete on respondent nos. 2,5 to 8,10 and 14 but none has entered appearance.

Delay in filing spare copy in respect of respondent nos.1,3,4,12 and 13 is condoned. Issue notices immediately.

However, Id. Advocate-on-record, Mr Varinder Kumar Sharma appearing for respondent nos. 9,11,15 and 16 submits that he has not received copy of pleadings. It is further submitted that as per rules and practice of Supreme Court, after the notice of service on the respondents in Special Leave Petition and after filing of vakalatnama by the Advocate-on-record, he (Advocate-on-record) is entitled to get copy of two sets of paper books from the petitioner so that he may be able to file counter affidavit. Id. Counsel is requested to point out the provisions to that effect."

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In compliance thereto, Ld. Advocate for respondent Nos. 9, 11, 15 and 16 has referred to Order XX Rule 14 to contend that each party who has entered appearance shall be entitled to two copies of the record for his own use.

To my mind, the reference made to Order XX Rule 14 of Supreme Court Rules is misconceived. Firstly, Order XX deals with Criminal Appeals and thus will not be applicable to the proceedings for Special Leave Petitions (Civil), which is processed in terms of Order XXI of Supreme Court Rules, 2013. Secondly, the term 'Record' mentioned in Rule 14 of Order XX is in connection with the record prepared in terms of orders of the Court. The provisions relating to Preparation of Record would find place in Order XX Rule 7 to Rule 13. In the present case, learned advocate could not point out that the stage has come for preparation of record in terms of Order XX. In fact, no such stage is provided in Order XXI of Supreme Court Rules, 2013. In absence thereof, there arises no question of supplying two copies of the record to respondents as argued by Ld. advocate for the respondents. Thus the provision under Order XX Rule 14 is of no help to respondents. I may now refer to some of the relevant provisions on this issue.

Order LIII, Rule 1 which relates to 'Service of Documents' provides as under:

"1. Except where otherwise provided by any Statute or prescribed by these rules, all notices, orders or other documents required to be given to or served on, any person shall be served by the Registry in the manner provided by the Code for the service of a summons."

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Thus all the notices are to be served in the manner as provided by the Civil Procedure Code. Order V of the Code relates to Service of Summons. Order V Rule 2 provides that every summons shall be accompanied by a copy of plaint or, if so permitted, by a concise statement.

Thus, copy of plaint, in the present case copy of SLP, is to be accompanied with the summons / notices.

Another important provision finds place in Chapter XIV of Handbook on Practice and Procedure and Office Procedure, 2017. Chapter XIV deals with Procedure after Listing. Clause 2(a) and 2(c) thereof provides as under:

"2. (a) As soon as notice is directed to be issued, the appellant, petitioner, applicant or plaintiff, as the case may be, shall furnish as many copies of the petition, appeal, suit or application as may be necessary for record and for service on the respondent(s) within seven days from the date of the order:.....

(b)

(c) Service of any notice, order or other document upon a person, who is not represented and who resides at a place within the territory of India, may ordinarily be effected through pre-paid envelope registered for acknowledgement or speed post or electronic mode, wherever applicable, or through District Judge concerned or through such other modes in terms of Order LIII Rule (3) of the Rules or Order V of the Code of Civil Procedure, 1908 or Chapter VI of Code of Criminal Procedure, 1973.

(d)"

The above provision would make it aptly clear that the moment notice is directed to be issued by the Hon'ble Court, the petitioner is duty bound to furnish as many copies of the petitions as are necessary for service on the respondents. Clause 2(c)

further makes it clear that service of notice can be effected through various modes which includes Order V of the Code of Civil Procedure, 1908.

The record shows that petitioner has on 27th October, 2017 filed 16 copies of petitions. The notices were issued to all the respondents through Registered Post Acknowledgment Due on 31st October, 2017. Acknowledgment cards, duly signed by answering respondents, are also annexed with the record. It shows that notice was served upon answering respondents on or about 6th November, 2017. Further I am informed by the Registry that R&I Branch does not accept notice if it is not accompanied with copy of petition. Thus, R&I Branch does not send notice through RPAD unless it is accompanied by copy of petition.

It could, thus, be safely concluded that copy of petition was annexed with the notice issued by the Registry and is served upon all respondents. The aforesaid conclusion would find support from the conduct of answering respondents as well. The advocate appearing for respondents has not made any grievance about not receipt of copy of SLP on previous appearances. As stated earlier, the answering respondents were served on or about 6th November, 2017, learned advocate filed vakalatnama on behalf of said respondents on 28th November, 2017. Order XXI Rule 14(1) of Supreme Court Rules, 2013 provides that respondent is at liberty to file his objection within 30 days from the date of receipt of notice or not less than 2 weeks before the date appointed for hearing,

whichever be earlier. The respondent did not file objections. Ld. Advocate for the respondents appeared before the Registrar's Court on 12th July, 2019. However, he has not made any grievance on the said date about non-receipt of copy of SLP / pleadings. It is only when the aforesaid respondents failed to file counter affidavit in time, the above plea is taken on previous date. Had the copy of SLP been indeed not served upon the answering respondent, the advocate ought to have mentioned so on the first day of his appearance. He did not do so. In the circumstances, the plea of non-receipt of copy of SLP appears to be an after thought. Thus the only conclusion follows is that copy of SLP is/was served upon answering respondents. In turn, it is the duty of said respondents to furnish copy of petition to their advocates. Such respondents can not insist for additional copy of petition to be served upon their advocates.

Learned advocate for the respondents has also referred to Order LV Rule 1 and 6 of Supreme Court Rules, 2013 which provides as under :

"1. The Court may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these rules, and may give such directions in matters of practice and procedure as it may consider just and expedient.

6. Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

Learned advocate for the respondents would argue that the Court may give any direction in matters of Practice and Procedure as it may consider just and expedient and that in a given case inherent powers could also be invoked. I do not find any substance in the aforesaid arguments. The Registrar's Court functions in terms of Order V Rule 1 of Supreme Court Rules, 2013. Perusal of said provision would show that the main function of Registrar's Court is to make the cases ready for listing before the Court. Thus limited powers are delegated to Registrar's Court. Keeping in mind the scope of Registrar's Court, inherent powers or power to dispense with the requirements of rules may not be available to Registrar's Court. In any case such powers could be exercised for sufficient cause shown by the party or to meet ends of justice or to prevent abuse of process of the Court. I do not find any cause much less sufficient cause to invoke such jurisdiction, which in my humble opinion may not even be available to Registrar's Court.

Put altogether the insistence of learned advocate for the answering respondents that advocates on record are entitled for complete set of pleadings after having tendered their appearance is devoid of merit.

Learned advocate would repeatedly submit that practice prevailing in Supreme Court is that after entering appearance for respondents, advocate appearing for the petitioner would serve copy of entire set of pleadings upon the respondents to enable them to file counter affidavit.

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If such practice is indeed prevailing in Supreme Court, nothing prevent learned advocate for the parties to continue with the said practice, however, orders cannot be sought from the Court, as of right, to direct petitioner to serve copy of pleadings upon the advocate appearing for the respondents, unless it is pointed out, through cogent material that the respondents have not received entire set of pleadings. Hence, request made by answering respondent to direct petitioner to supply copy of pleadings is rejected.

In the circumstances, last opportunity is granted to respondent Nos. 9, 11, 15 and 16 for filing counter affidavit within four weeks. For other respondents, matter be processed in terms of order dated 18.10.2019.

List again on 29.1.2020.

ANIL LAXMAN PANSARE
Registrar