

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) No. \_\_\_\_\_ OF 2020

**IN THE MATTER OF:**

ANKIT GUPTA

...PETITIONER

VERSUS

BAR COUNCIL OF DELHI AND ANR.

...RESPONDENTS

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PETITIONER THROUGH

ANKIT GUPTA  
(PETITIONER IN-PERSON)

NEW DELHI

DATED: \_\_.\_\_.2020

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

WRIT PETITION (CIVIL) No. \_\_\_\_\_ OF 2020

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...RESPONDENTS

**NOTICE OF MOTION**

To,

The Respondents / Counsel

Dear Sir,

Please find enclosed herewith a copy of the captioned Petition. The same is likely to be listed before the Hon'ble High Court of Delhi on \_\_\_\_\_ or on any day thereafter.

PETITIONER

THROUGH

ANKIT GUPTA  
(PETITIONER IN-PERSON)

NEW DELHI

DATED: \_\_\_\_.\_\_\_\_.2020

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**URGENT APPLICATION**

Sir,

Will you kindly treat the accompanying Petition and the application contained therein as urgent. The grounds of urgency are that urgent orders are prayed for.

PETITIONER

THROUGH

ANKIT GUPTA  
(PETITIONER IN-PERSON)

NEW DELHI

DATED: \_\_\_\_.\_\_\_\_.2020

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**WRIT PETITION (CIVIL) No. \_\_\_\_\_ OF 2020**

**MEMO OF PARTIES**

**Ankit Gupta**

.....**PETITIONER NO. 1**

**VERSUS**

**Bar Council of Delhi**

2/6, Siri Fort Institutional Area

Khel Gaon Marg, New Delhi - 1100049

.....**RESPONDENT NO.1**

**Bar Council of India**

Bar Council of India

21, Rouse Avenue Institutional Area,

Near Bal Bhawan,

New Delhi - 110002

.....**RESPONDENT NO. 2**

**PETITIONER**

**THROUGH**

**ANKIT GUPTA  
PETITIONER IN-PERSON**

**NEW DELHI**

**DATED: \_\_\_\_.\_\_\_\_.2020**

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**CERTIFICATE OF MAINTAINABILITY**

It is certified that the present Writ Petition is maintainable on the grounds that have been mentioned therein. The same are not being repeated here for the sake of brevity.

PETITIONER

THROUGH

ANKIT GUPTA  
PETITIONER IN-PERSON

NEW DELHI

DATED: \_\_\_\_.\_\_\_\_.2020

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

WRIT PETITION (CIVIL) No. \_\_\_\_\_ OF 2020

**IN THE MATTER OF:**

ANKIT GUPTA

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**CONSOLIDATED COURT FEES**

PETITIONER

THROUGH

ANKIT GUPTA  
PETITIONER IN-PERSON

NEW DELHI

DATED: \_\_\_\_.\_\_\_\_.2020

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

WRIT PETITION (CIVIL) No. \_\_\_\_\_ OF 2020

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**SYNOPSIS**

- The Advocates Act, 1961 is the primary legislation governing legal practitioners in India. It *inter-alia*, governs aspects pertaining to constitution of Bar Councils, admission and enrollment of advocates, their right to practice and their professional conduct.
- Section 24(1)(f) of the Advocates Act, 1961 provides that for being admitted as an advocate, a person has to pay *six hundred rupees* to the State Bar Council and *one hundred and fifty rupees* to the Bar Council of India. Further, in case of a member of the Scheduled Castes or the Scheduled Tribes, the enrolment fee payable by him to the State Bar Council is *one hundred rupees* and *twenty-five rupees* to the Bar Council of India.
- However, contrary to the aforesaid legislative mandate, the Bar Council of Delhi charges an additional fee of Rs. 8,350 (excluding Rs. 1,000 towards enrollment form). Furthermore, Bar Council of Delhi charges an additional amount of Rs. 3,000 towards circulation fee, in case, an applicant wishes to expedite the process of his enrolment. In addition to the prohibition as prescribed by the provisions of the Advocates Act, 1961, even the Bar Council of India Rules do not permit State Bar



Councils to levy such an additional fees towards enrolment and circulation. Hence, such an additional and exorbitant levy of additional enrolment and circulation fees is illegal, arbitrary and *de hors* the provisions of the Advocates Act, 1961.

- Moreover, the aforesaid additional enrolment fee is *inter-alia* levied towards various funds constituted by the Bar Council of Delhi viz., Indigent and Disabled Lawyer's Account, Library Account, Building Fund and Welfare Fund (as per BCI Rule 40). However, as per Section 6(2) of the Advocates Act, 1961, the State Bar Council is only empowered to constitute one or more such funds only for the purposes of giving legal aid, giving financial assistance to welfare schemes for the indigent, disabled and other advocates and establishing law libraries. Therefore, all the funds that have been established contrary to the mandate of Section 6(2) are illegal, arbitrary and *de hors* the provisions of the Advocates Act, 1961.
- Additionally, an applicant cannot be compelled to contribute even for the funds duly constituted as per Section 6(2) of the Advocates Act, 1961, since no provision of the said Act empowers the State Bar Council to seek contribution towards these funds from an applicant and more so by making it a condition precedent for enrolment. Therefore, such a levy coupled with making it a condition precedent to enrolment is illegal, arbitrary and *de hors* the provisions of the Advocates Act, 1961.
- Furthermore, Section 18 of the Advocates Act, 1961 provides for transfer of name from one state roll to another state roll. On a bare perusal of the said Section, it is amply clear that the Advocates Act, 1961 does not envisage levy of any fee for such transfer. However, contrary to the provisions of the Advocates Act, 1961, the Bar Council

of India charges an amount of Rs. 2,000 for such transfer. Moreover, the Bar Council of Delhi charges a sum of Rs. 1,000 for granting NOC for applying to Bar Council of India for such transfer. Therefore, an applicant enrolled with Bar Council of Delhi has to pay a total of Rs. 3,000 for transfer of name from one state roll to another. It is therefore, submitted that such a levy for transfer of name by the Bar Council of India along with the levy of NOC fee by the Bar Council of Delhi is illegal, arbitrary and *de hors* the provisions of the Advocates Act, 1961

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**WRIT PETITION UNDER ARTICLES 226 OF THE  
CONSTITUTION OF INDIA**

To

The Hon'ble Chief Justice and

His companion Justices of the High Court of Delhi

**Respectfully Showeth:**

By way of the present writ petition, the petitioner challenges:

- a) The fee payable to the Bar Council of Delhi for enrollment as an advocate.

- 1) It is respectfully submitted that the Advocates Act, 1961 (“**the Act**”) is the primary statute governing the law relating to the legal practitioners in India. It *inter-alia*, governs aspects pertaining to constitution of Bar Councils, admission and enrollment of advocates, their right to practice and their professional conduct.

- 2) Section 2(1)(a) the Act defines an “**advocate**” to mean an advocate entered in any roll under the provisions of the Act. Section 2(1)(h) defines a “**law graduate**” to mean a person

who has obtained a bachelor's degree in law from any University established by law in India. Further, Section 2(1)(i) of the Act defines “**legal practitioner**” to mean an advocate, vakil of any High Court, a pleader, mukhtar or revenue agent. Section 2(1)(k) defines “**roll**” to mean a roll of advocates prepared and maintained under the Act and “**State roll**” as per Section 2(1)(n) means a roll of advocates prepared and maintained by a State Bar Council under Section 17 of the Act. Also, Section 2(1)(m) defines “**State Bar Council**” to mean a Bar Council constituted under section 3.

3) It is submitted that on a conjoint reading of aforesaid Sections 2(1)(h), 2(1)(a) and 2(1)(i), it is clear that in order for a law graduate to become an advocate, his name must be entered in a roll prepared and maintained under the Act.

4) In this regard, Chapter III of the Advocates Act, 1961 deals with the admission and enrollment of advocates. Section 24(1)(f) as contained under the said Chapter reads

*“ Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he has paid,..... in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (2 of 1899), and an enrolment fee payable to the State Bar Council of [six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council:]*

*Provided that where such person is a member of the Scheduled Castes or the Scheduled Tribes and produces a certificate to*

*that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be [one hundred rupees and to the Bar Council of India, twenty-five rupees.]”*

- 5) Additionally, Section 24(1)(e) empowers the State Bar Council to prescribe additional conditions other than those under Section 24 for enrolment as of person as an advocate. Also, Section 28(1) confers general rule making powers on the State Bar Councils to carry out the purpose of Chapter III and specifically Section 28(1)(d) empowers the respective State Bar Councils to prescribe the conditions subject to which a person may be admitted as an advocate on any such roll. Section 28(2)(e) also authorizes the respective State Bar Councils to prescribe the instalments in which the enrolment fee may be paid. Also, Section 49(1)(h) empowers the Bar Council of India to make rules for prescribing fees which may be levied in respect of any matter under the Act.
- 6) In the background of the aforesaid legislative scheme, it is submitted that as per the fee structure available on Bar Council of Delhi's website along with their enrolment form, the Bar Council of Delhi charges an additional fee of Rs. 8,350 (excluding Rs. 1,000 towards enrollment form) towards various funds/ identity card/ welfare A/C which is *ipso facto* a direct contravention of Section 24(1)(f). It is also pertinent to note that that the Bar Council of India Rules do not permit State Bar Councils to levy such an additional fees towards enrolment. Hence, levy of such an additional exorbitant fee is illegal,

arbitrary and *de hors* the provisions of the Act. (A copy of the fee structure prescribed by the Bar Council of Delhi on their website is marked and annexed hereto as **Annexure – A**) (A copy of the original enrolment form prescribed by the Bar Council of Delhi is marked and annexed hereto as **Annexure – B**).

7) It is further submitted that Section 26 provides that the enrolment committee is entrusted with the responsibility of the deciding on applications submitted for admission as an advocate. In this regard, it is pertinent to note that as per the FAQs available on the Bar Council of Delhi's website, enrollment as advocates is held once or twice every month, as per the date given by the office. In the said meeting, all those applications are entertained which have been filed prior to the said date of meeting. However, for getting enrolled on the very same day of meeting, the Bar Council of Delhi charges an additional amount of Rs.3,000/- as Circulation Fees. (A copy of the FAQs as available on the website of the Bar Council of Delhi is marked and annexed hereto as **Annexure – C**).

8) It is therefore, submitted that neither Section 24(1)(f), nor Section 26 permits the State Bar Councils to levy such a circulation fee. Moreover, even the Bar Council of India has neither prescribed such a fee nor permitted the State Bar Councils to levy such a fee. Hence, levy of such an exorbitant circulation fee is illegal, arbitrary and *de hors* the provisions of the Advocates Act, 1962.

9) It is also pertinent to mention that the rule making powers of the State Bar Councils under Section 24(1)(e) and Section 28 of the Act cannot be interpreted in any manner to empower the Bar Council of Delhi to levy such an additional exorbitant fees.

10) In this regard, observations of the Hon'ble Supreme Court in *Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla and Ors.*, (1992) 3 SCC 285 may be relied upon, wherein, the court observed

*“...It has been consistently held by this Court that whenever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment. Nothing is to be read and nothing is to be implied and one should look fairly to the language used...”*

11) Reliance may be also placed on the judgment of the Hon'ble High Court of Kerala in *Koshy T. v. Bar Council of Kerala and Ors.*, ILR 2017 (3) Kerala 201 wherein, the court observed

*“...It is quite clear to appreciate that under the guise of rule making power in respect of the field covered by Sec. 24(1)(e) and Sec. 28(2)(d), the State Bar Council will not have the competence to frame any rule in respect of conditions stipulated in sub clauses (a) (b) and (c) of Sec. 24(1) which deals with citizenship, minimum age, minimum law degree therein, etc. If the power to make rules as per Sec. 28(2) if so invoked, it would amount to plain and utter violation of the plenary provisions of law as contained in sub clauses (a), (b), (c) and (f) of Sec. 24(1) and such purported subordinate*

*legislation would be nothing short of being ultra vires and beyond the scope of rule making powers going by the well known elementary principles regulating the power of subordinate legislation. Therefore, since, the Parliament has consistently enunciated its clear objective and policy by engrafting a specific provision under Sec. 24(1)(f) for enrolment fee chargeable shall be limited to ' 750 as stated above, subject to demand of any valid stamp duty that may be chargeable under the provisions of the Indian Stamp Act, 1989, neither the Bar Council of India by resort to its rule making power under Sec. 49(1) nor the State Bar Council by virtue of its rule making powers under Sec. 28(2) of the Act can have the competence and jurisdiction to frame any rule prescribed for enrolment fee which is at variance with the one already engrafted by the Parliament in Sec. 24(1)(f). It is therefore, pertinent to note that the Parliament has clearly legislated upon the issue of enrollment fees payable to the State Bar Councils and Bar Council of India. Such a rule as may be made by the State Bar Council which is ultra vires Sec. 24(1)(f) of the Act, cannot be made valid merely on account of the so called approval granted thereto by the Bar Council of India by purported resort to the provisions contained in Sec. 28(3)...”*

**12)** It is further submitted that if at all the power to levy fees under the Act is to be traced, then Section 49(1)(h) only empowers the Bar Council of India to levy fees in respect of any matter under the Act. However, even such a power cannot



in turn be interpreted to permit Bar Council of India to levy any fees in contravention to any substantive provisions of the Act which fixes the fee at Rs. 650 or Rs.125, as the case may be. In this regard, reliance may also be placed on the judgment of the Hon'ble Supreme Court in ***J.K. Industries Ltd. v. Union of India***, ( 2007 ) 13 SCC 673 , wherein the Court held

*“It is well settled that, what is permitted by the concept of "delegation" is delegation of ancillary or subordinate legislative functions or what is fictionally called as "power to fill up the details". The judgments of this Court have laid down that the Legislature may, after laying down the legislative policy, confer discretion on administrative or executive agency like Central Government to work out details within the framework of the legislative policy laid down in the plenary enactment. Therefore, power to supplement the existing law is not abdication of essential legislative function. Therefore, power to make subordinate legislation is derived from the enabling Act and it is fundamental principle of law which is self-evident that the delegate on whom such power is conferred has to act within the limitations of the authority conferred by the Act. It is equally well settled that, Rules made on matters permitted by the Act in order to supplement the Act and not to supplant the Act, cannot be held to be in violation of the Act. A delegate cannot override the Act either by exceeding the authority or by making provisions inconsistent with the Act. (See *Britnell v. Secretary of State* 1991 (2) AER 726”*

**13)** It is therefore, submitted that the additional enrolment fee of Rs. 8,350 (excluding Rs. 1,000 towards enrollment form) and the circulation fee of Rs. 3,000 as levied by the Bar Council of Delhi is illegal, arbitrary and *de hors* the provisions of the Advocates Act, 1961 and the observations of the Hon'ble Supreme Court and other High Courts in the aforesaid cases.

**b)** The creation of various funds by the Bar Council of Delhi and mandatory contribution sought thereby at the time of enrolment.

**14)** It is respectfully submitted that the enrollment fee prescribed by the Bar Council of Delhi comprises payment towards different funds (**Annexure – A and B**). The said funds are enumerated as follows:

**a.** Indigent and Disabled Lawyer's Account

**b.** Library Fund

**c.** Building Fund

**d.** Welfare Fund (as per BCI Rule 40)

**15)** However, Section 6(2) empowers a State Bar Council to constitute one or more funds in the prescribed manner only for the purposes of—

(a) giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;

(c) establishing law libraries.

**16)** It is therefore contended that any other fund so constituted by the Bar Council of Delhi in violation of Section 6(2) is illegal,

arbitrary and *de hors* the provisions of the Advocates Act, 1961.

17) Furthermore, it is also contended that even the contributions sought towards the funds duly constituted under Section 6(2) violates Section 6(3) which provides that a State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section. It is clear that nowhere does Section 6(3) permits State Bar Councils to seek mandatory contribution towards these funds at the time of enrolment. Therefore, compelling fresh law graduates to pay for the said funds under the guise of an enrolment fees is also *de hors* the provisions of the Act.

18) It is therefore submitted that creation of such funds and subsequently making its payment, a condition precedent to enrolment, is illegal, arbitrary and *de hors* the provisions of the Advocates Act, 1961 and in violation of the ruling of the Hon'ble Supreme Court in *Global Energy Limited & Anr. v. Central Electricity Regulatory Commission, (2009) 15 SCC 570* wherein the Court observed

*“It is now a well settled principle of law that the rule making power “for carrying out the purpose of the Act” is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such a provision alone, the regulation making power cannot be exercised so as to bring into existence substantive rights or*

*obligations or disabilities which are not contemplated in terms of the provisions of the said Act...*”

- c) The fee levied by the Bar Council of India for transfer of name from one roll to another along with the NOC fee imposed by the Bar Council of Delhi for such transfer.

19) It is respectfully submitted that Section 18 of the Act provides for transfer of name from one State roll to another.

The said provision in its relevant part reads

*“(1)Notwithstanding anything contained in section 17, any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and, on receipt of any such application the Bar Council of India shall direct that the name of such person shall, without the payment of any fee, be removed from the roll of the first mentioned State Bar Council and entered in the roll of the other State Bar Council and the State Bar Councils concerned shall comply with such direction:.....”*

20) However, despite the clear wording of the aforesaid provision, the Bar Council of India charges a sum of Rs. 2,000 for transfer of name from one State Roll to another State Roll as a process fee. (The downloaded version of the application form for such transfer as prescribed by the Bar Council of India is available at **Annexure – D**).

21) Similarly, the Bar Council of Delhi charges a sum of Rs. 1,000 to obtain a No Objection Certificate (NOC) for transfer of name from one state roll to another state roll (Annexure – A). Therefore, in order to get the name transferred from one State Roll of Delhi to another, a total of Rs. 3,000 is required to be paid. It is also pertinent to note that the Bar Council of India vide its Rules has stipulated Rs. 500 for obtaining an NOC certificate from the State Bar Council.

22) It is therefore, submitted that the fees levied by the Bar Council of India and Bar Council of Delhi for transfer of name from one state roll to another state roll is illegal, arbitrary and *de hors* the provisions of the Advocates Act, 1961. In this regard, reliance may be placed on the judgment of the Hon'ble Supreme Court in *Assistant Collector of Central Excise v. Ramakrishnan Kulwant Rai, 1989 Supp (1) SCC 541* wherein, the court observed

*“It is an accepted principle that delegated authority must be exercised strictly within the limits of the authority. If rule making power is conferred and the rules made are in excess of that power the rules would be void even if the Act provided that they shall have effect as though enacted in the Act as was ruled in State of Kerala v. K.M. Ghana Abdullah & Co.: [1965] 1 SCR 601....”*

2. Aggrieved therefore by the impugned decisions, the petitioner prefers the present petition on the following amongst other grounds:

### **GROUND**

- A. The additional enrolment fees of Rs. 8,350 (excluding the payment for enrolment form) prescribed by the Bar Council of Delhi is illegal, arbitrary and *de hors* Section 24(1)(f) of the Advocates Act, 1961 which restricts it to Rs. 650 or Rs. 100 as the case maybe;
  - B. The levy of Rs. 3,000 towards circulation fee for expediting the process of enrolment is illegal, arbitrary and *de hors* Section 24(1)(f) and Section 26 of the Advocates Act, 1961;
  - C. The constitution of various funds by the Bar Council of Delhi along with making payments towards them as a condition precedent to enrolment is illegal, arbitrary and *de hors* Section 6(2) of the Advocates Act, 1961 which only authorizes constitution of funds for the purposes of giving financial assistance, organize welfare schemes, giving legal aid and establish law libraries.
  - D. The levy of fees for transfer of name from one state roll to another by the Bar Council of India and an additional levy of NOC fee for transfer as levied by the Bar Council of Delhi are illegal, arbitrary and *de hors* Section 18 of the Advocates Act, 1961 which provides for such transfer without payment of any fee;
  - E. The levy of Rs. 500 by the Bar Council of India for obtaining an NOC from the State Bar Council for transfer of name from one roll to another is *de hors* the provisions of the Advocates Act, 1961.
3. The Petitioner has not filed any other writ petition before this Hon'ble Court or before the Hon'ble Supreme Court of India on the same cause of action.

**PRAYER**

Wherefore it is prayed that this Hon'ble Court may be pleased to:

- a. Declare the enrolment fee as levied by the Bar Council of Delhi and Bar Council of India, in addition to the prescribed statutory amount as illegal, arbitrary and *de hors* the provisions of Advocates Act, 1961.
- b. Declare the circulation fee as illegal, arbitrary and *de hors* the provisions of Advocates Act, 1961;
- c. Declare that the constitution of various funds by the Bar Council of Delhi and making contributions towards them as a condition precedent to enrolment is illegal, arbitrary and *de hors* the provision of Section 6(2) and thereby, direct Respondent No. 1 from not collecting such sum at the time of the enrolment;
- d. Declare that the fees levied by the Bar Council of India towards transfer of names from one state roll to another and the additional levy of NOC for transfer fee by the Bar Council of Delhi is illegal, arbitrary and *de hors* the provisions of Advocates Act, 1961
- e. Declare the fee of Rs. 500 as prescribed by the Bar Council of India vide its rules, for obtaining NOC certificate from the State Bar Council as illegal, arbitrary and *de hors* the provisions of the Advocates Act, 1961.
- f. Pass any other orders in the interests of justice, equity and good conscience;

PETITIONER

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**AFFIDAVIT**

I, Ankit Gupta

do hereby solemnly affirm

and declare on oath as under:

1. That I am fully conversant with the facts and circumstances of the case and is appearing in petitioner in-person.
2. I state that I have read and understood the contents of the accompanying petition. The same has been drafted by me and the contents thereof are true and correct to my knowledge and belief. The annexures are true copies of the respective originals.

**DEPONENT**

**VERIFICATION**

Verified at New Delhi on this \_\_\_\_\_ day of May 2020 that the contents of the aforesaid affidavit are true and correct to my knowledge and belief and nothing material has been concealed there from.

**DEPONENT**



**IN THE HIGH COURT OF DELHI AT NEW DELHI**

C.M. No. \_\_\_\_\_ of 2020

IN

WRIT PETITION (CIVIL) No. \_\_\_\_\_ OF 2020

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**APPLICATION UNDER SECTION 151 CPC READ WITH  
ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR  
EXEMPTION**

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**MOST RESPECTFULLY SHOWETH:**

1. The accompanying petition has been filed by the petitioner and contents of the petition may please be treated as part and parcel of the present Application as the same are not being repeated herein for the sake of brevity.
2. Along with the accompanying petition, the petitioner has filed copies of documents. The Plaintiff therefore seeks exemption from filing originals / certified / fair typed / clear / margin versions of documents. The application is being filed bona fide and in the interest of justice.

**PRAYER**

It is, therefore, most respectfully prayed that the Hon'ble Court may be pleased to:

- a. Exempt the petitioners from filing the originals/ certified/ fair typed/ clear/ margin copies of documents filed with the petition.
- b. Pass any other and/or such other order(s) as this Hon'ble Court may deem fit.

PETITIONER

THROUGH

ANKIT GUPTA  
PETITIONER IN-PERSON

NEW DELHI

DATED: \_\_\_\_.\_\_\_\_.2020