

CJ & ASKJ:

31.08.2020

(through video conferencing)

W.P.No.7338/2020

1. This *suo motu* writ petition has been initiated in terms of the order dated 28th May 2020 passed by this Court. In the said *suo motu* writ petition, it is stated that due to limited functioning of the Courts as a result of the spread of COVID – 19 pandemic, various procedural issues have arisen for consideration for smooth functioning of the Courts. In fact, one of the objects of initiating this public interest litigation petition is to issue directions under Article 226 of the Constitution of India, with a view to ensure that the litigants do not suffer as a result of limited functioning of the Courts.

2. It is no doubt that compared to June and July 2020, the functioning of the Courts has improved to some extent. Considering the fact that in the State of Karnataka, the positive cases of COVID – 19 are multiplying very fast, it will be very difficult to restore the normal functioning of the Courts in the near future. We are passing this order which will govern certain procedural aspects as far as the High Court at its Principal seat and Benches are concerned.

3. On 18th March, 2020, a direction was issued on the administrative side, prohibiting entry of the litigants and visitors to the precincts of High Court of Karnataka, Principal Bench at Bengaluru and the Benches at Dharwad and Kalaburagi. By the notification dated 21st March 2020, the virtual Courts were created at the principal seat and at both the Benches and the guidelines were issued on 23rd March 2020 for utilization of e-filing facilities.

4. A notification was published on 24th March 2020 as a result of the announcement made by the Hon'ble Prime Minister of India regarding lockdown for three weeks. As a result of the said notification, the regular physical hearing at the Principal seat and the Benches was suspended and few Benches were made available at the Principal seat for hearing the extremely urgent cases through video conferencing. The notification records that the members of the Bar or advocate's clerks and the parties in person will not be permitted to enter the Court complexes of the High Court for rectification of the office objections. From the second/third week of May-2020 physical filing was permitted subject to seeking prior appointment. From 1st June 2020 rectification of the office

objections was permitted only by fixing prior appointment. The said facility of physical filing with prior appointment and rectification of office objections by prior appointment continues even till today except for a brief period when the lockdown was declared in the City of Bengaluru in July 2020.

5. As physical filing of the cases was permitted from second/third week of May 2020, a large number of cases are being filed every day. Many cases have been e-filed. However, maximum 50 to 60 appointments can be granted per day for rectification of the office objections at the Principal Seat as well as at the Benches. All these restrictions/measures were initiated with the sole object of reducing the footfall in the High Court complexes to the minimum and for ensuring that functioning of the Court does not contribute to the spread of COVID-19.

6. At this stage, it is necessary to make a reference to the directions issued by the Apex Court in exercise of the powers under Article 142 of the Constitution of India on 6th April, 2020 in *Suo Motu Writ (Civil) No.5 of 2020*. The Apex Court observed that it is the duty of every Court to ensure that the

Court premises do not contribute to the spread of corona virus.

Paragraphs 1 and 2 of the said order read thus:

“1. The recent outbreak of COVID 19 (coronavirus) in several countries, including India, has necessitated the immediate adoption of measures to ensure social distancing in order to prevent the transmission of the virus. The Supreme Court of India and High Courts have adopted measures to reduce the physical presence of lawyers, litigants, court staff, para legal personnel and representatives of the electronic and print media in courts across the country and to ensure the continued dispensation of justice.”

2. Every individual and institution is expected to cooperate in the implementation of measures designed to reduce the transmission of the virus. The scaling down of conventional operations within the precincts of courts is a measure in that direction. Access to justice is fundamental to preserve the rule of law in the democracy envisaged by the Constitution of India. The challenges occasioned by the outbreak of COVID-19 have to be addressed while preserving the constitutional commitment to ensuring the delivery of and access to justice to those who seek it. It is necessary to ensure compliance with social distancing guidelines issued from time to time by various health authorities, Government of India and States. Court hearings in congregation must necessarily become an exception during this period.”

(underline supplied)

Thereafter, in paragraph 5 of the order, the Apex Court observed thus:

“5. Faced with the unprecedented and extraordinary outbreak of a pandemic, it is

necessary that Courts at all levels respond to the call of social distancing and ensure that court premises do not contribute to the spread of virus. This is not a matter of discretion but of duty. Indeed, Courts throughout the country particularly at the level of the Supreme Court and the High Courts have employed video conferencing for dispensation of Justice and as guardians of the Constitution and as protectors of individual liberty governed by the rule of law. Taking consonance of the measures adopted by this Court and by the High Courts and District Courts, it is necessary for this Court to issue directions by taking recourse to the jurisdiction conferred by Article 142 of the Constitution.

(underline supplied)

7. The consequence of permitting e-filing and physical filing of large number of cases is that there are more than 7,000 newly filed cases from 21st March 2020 which are pending for rectification of office objections. In fact, the figure at Principal seat at Bengaluru exceeds 6,000 cases. However, considering the fact that large number of positive cases of COVID-19 are being reported every day, rectification of the office objections cannot be permitted in more than 50 to 60 cases per day. Therefore, rectification of objections in these cases will require more than 100 working days. The reason for restricting the activity to few cases is that the members of the Bar cannot be allowed to enter the office premises for rectification of office objections as it may lead to congregation and the breach of

rules of social distancing. It is for their safety as well. Therefore, at the Principal seat and the Benches, arrangements have been made for rectification of objections outside the office where the files are taken by the Registry and the members of the Bar are permitted to rectify the objections. This practice will have to continue for some more time. Unless the situation improves drastically, normalcy in terms of allowing every member of the Bar to enter the office premises for rectification the office objections cannot be restored.

8. Therefore, the only direction which can be issued for the benefit of the litigants and the members of the Bar in exercise of the powers under Article 226 of the Constitution of India is to dispense with all the objections except few material objections so that the cases where the material objections have not been raised, can be made ready for posting before the Court and a large number of advocates are not forced to visit the High Court complexes for rectification of the office objections. Some of the essential objections can be enlisted. The first essential objection is regarding non payment of Court fee or insufficient payment of Court fee. The second objection can be of bar of limitation. Third can be an objection regarding maintainability

of the proceedings. Fourth objection can be an objection regarding the failure to annex the impugned order/ impugned circular, etc. Another objection can be regarding the failure to furnish second set of papers in case of the Division Bench matters. Rule 3A of Chapter-X of the High Court of Karnataka Rules, 1959 (for short 'the said Rules of 1959) requires copies of the interlocutory applications to be furnished in advance to the office of the Government Advocate. Similarly, an office order has been issued on 20th July 1998 which provides that in every criminal petition, a copy of the petition and necessary enclosures shall be supplied by the advocate for the petitioner in the office of the State Public Prosecutor before filing the petition in the High Court. Therefore, except for the aforesaid objections which may go to the root of the matter, all objections can be waived for the time being in case of all the matters which are filed from 21st March 2020 till 31st August 2020. The objections can be waived for the time being subject to the discretion of the concerned Court to issue a direction to rectify a particular objection provided the Court finds that without rectification of that objection, the matter cannot be heard on merits.

9. In a large number of cases filed prior to 26th March 2020, the Courts have passed pre-emptory orders for rectification of the office objections. In many cases, time granted by the Court to rectify the office objections has expired in April or May 2020. During these two months, it was impossible for anyone to rectify the office objections. As the pre-emptory orders have become operative, the cases in which the same have been passed stand dismissed. The litigants cannot be allowed to suffer due to no fault on their part.

10. At this stage, we may again go back to the order of the Apex Court dated 5th April 2020. The first direction issued in paragraph 6 is relevant which reads thus:

“6. Therefore, in exercise of the powers conferred on the Supreme Court of India by Article 142 of the Constitution of India to make such orders as are necessary for doing complete justice, we direct that:

(i) All measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful.”

11. The purport of the order of the Apex Court is that all measures that have been taken and shall be taken by the High

Courts to reduce the need for physical presence of all stakeholders within the Court premises and to secure functioning of the Courts in consonance with the social distancing guidelines shall be deemed to be lawful. Therefore, the directions which we propose to issue being essential for reducing the need for physical presence of all the stakeholders within the Court premises and to secure the functioning of the Court in consonance with the social distancing guidelines, shall be deemed to be lawful.

12. Accordingly, we issue the following directions:

- (i) In all cases filed from 21st March 2020 till 31st August 2020 (both days inclusive) in the High Court at the principal seat and both the Benches at Dharwad and Kalaburagi, all the office objections save and except the objections enlisted below shall stand waived. The objections which are not waived are as under:
 - (a) objections regarding non-payment of court fee or insufficient payment of court fee;
 - (b) objection regarding bar of limitation;
 - (c) objection regarding maintainability of the proceedings;

- (d) objection regarding failure to furnish second set of papers (only in case of Division Bench matters);
 - (e) objections regarding failure to annexure copies of the impugned judgments/orders/impugned notifications / impugned endorsements / impugned communications;
 - (f) objections regarding the non-compliance of Rule 3A of Chapter 10 of the said Rules of 1959; and
 - (g) objections regarding non-compliance with the circular dated 20th July 1998 in the criminal petitions about failure to serve the petitions in advance to the offices of the State Public Prosecutor.
- (ii) All office objections raised in the cases filed during the period from 21st March 2020 to 31st August 2020 (both days inclusive) except the objections which are enlisted above shall stand waived. All the cases where the objections raised are not covered by any of the 7 objections enlisted above, shall be registered for placing the same before the Court. However, this order will not

preclude the concerned Courts hearing the matters from directing rectification of any specific objection which goes to the root of the matter and which prevents the Court from hearing the case on merits. By way of an illustration, we may state that the Hon'ble Judges who are not conversant with Kannada language can direct production of English translation of the material Kannada documents;

(iii) It is clarified that if any of the objections which are raised relate to one of the 7 objections enlisted above, the case will not be registered unless an order of posting before the Court is passed by the Court or unless the objections are rectified;

(iv) In the cases which were filed before or after 21st March 2020 in the High Court at principal seat as well as Benches where pre-emptory orders were passed fixing the time limit for rectification of the office objections and where the time fixed by the Court for rectification of office objections has expired between 21st March 2020 and 31st May 2020 (both days inclusive), the time granted for rectification of the office objections shall stand extended

till 30th September 2020 and, therefore, such cases shall be treated as pending;

(v) As directed by the Apex Court by the order dated 6th April 2020, the aforesaid directions shall be treated as lawful.

13. The operating part of this order in paragraph 12 above shall be web hosted on the official website of this Court in the form of notice by the Registrar General and copies thereof be provided to the Karnataka State Bar Council and all concerned Bar Associations. A link to this order shall be made available on home page of website of this Court.

14. List the petition on 4th September 2020 at 12.45 p.m. as directed earlier.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

AHB