

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...
LPA no.20/2023
c/w LPA no.46/2023
CM nos.694/2023; 1172/2023; 1173/2023

Reserved on: 17.03.2023

Pronounced on: 03.04.2023

Fayaz Ahmad Rather

.....Appellant(s)

Through: Mr M. A. Qayoom, Advocate
Mr P. S. Ahmad, Advocate

Versus

Union Territory of J&K and others

.....Respondent(s)

Through: Mr Jahangir Iqbal Ganai, Senior
Advocate with Mr Mansoor Ahmad,
Advocate

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE

JUDGEMENT

1. These two Appeals, one filed by *Fayaz Ahmad Rather* and another by his counsel, *Shri P. S. Ahmad*, Advocate, are directed against judgement dated 11th January 2023, passed by learned Single Judge (*Writ Court*) in WP(C) no.2610/2022, whereby the Writ Court has dismissed the writ petition of the appellant herein ("*the writ petitioner*") along with costs of Rs.1,00,000/-, on the solitary ground of suppression of material facts and misleading the Court. The Writ Court has also deprecated the conduct of counsel for writ petitioner and has warned him to be very careful in future.

2. Both the writ petitioner and his counsel, Mr Ahmad, are aggrieved of the impugned judgement and have assailed the same on multiple grounds, more prominently on the ground that on the facts and on material on record there was no suppression of material facts and that the Writ Court could not draw distinction between the “material facts” and “unnecessary and peripheral facts”.
3. Before we advert to the grounds of challenge vehemently urged by Mr.Qayoom, learned counsel for appellants, we deem it appropriate to give brief resume of the factual antecedents leading upto the filing of the instant appeals.
4. There is a dispute between writ petitioner and respondents 8 to 10 with respect to the land measuring 01 Kanal 01 Marla under Survey no.748, 05 Marlas under Survey no.749, and 06 Marlas under Survey no.752, along with a double storeyed house constructed thereon, situate at Rani Pura, Kulgam (*subject property*). Indisputably the subject property was owned by respondent no.11 (*a migrant*). The writ petitioner claims the subject property on the basis of an affidavit and agreement purportedly executed by respondent no.11 in his favour for consideration of Rs.16.00 Lacs; out of which the writ petitioner claims to have paid Rs.10.00 Lacs to respondent no.11. Respondents 8 to 10 have laid their claim on the subject property on the basis of a valid sale deed executed by respondent no.11 after seeking prior permission from the competent authority, i.e., Divisional Commissioner, Kashmir, in terms of Order no.1283-DIVK of 2010 dated 3rd April 2010. Respondents 8 to 10 also rely upon mutation no.3418 dated 22nd December 2011, attested by attesting officer, mutating the subject property in their favour.

5. This tug of war to claim subject property between the parties led the writ petitioner to file a civil suit for declaration before the court of learned Munsiff, Kulgam (*Trial Court*), wherein the writ petitioner challenged the Deed of Power of Attorney and Agreement to Sell executed by respondent no.11 in favour of respondents 8 to 10. Along with the suit, the writ petitioner also moved an application for grant of temporary injunction restraining respondents 8 to 10 herein from interfering in the suit property. Vide interim order dated 9th November 2011, the Trial Court, while issuing notice to respondents 8 to 10 herein (defendants in the suit), directed the parties to maintain status quo with regard to the suit property till further orders. The suit was contested by respondents 8 to 10 by filing written statement as also by moving an application for vacation of the ad interim *ex parte* stay granted by the Trial Court on 9th November 2011. The Trial Court, after hearing both the sides and considering the merits, dismissed the application for interim injunction vide order dated 4th August 2012 and vacated ad interim *ex parte* stay granted on 9th November 2011.
6. Feeling aggrieved, the writ petitioner filed an appeal before the court of Principal District Judge Kulgam (*the Appellate Court*). The appeal too was dismissed on 27th December 2012. The writ petitioner having failed to persuade the Trial Court as well as Appellate Court to grant interim order of status quo, filed yet another suit before the court of Munsiff, Kulgam. This time, the writ petitioner challenged the sale deed executed by respondent no.11 in favour of respondents 8 to 10. Along with the suit an application for temporary injunction was also filed. The writ petitioner not only sought stay of the sale deed but also sought an

order restraining respondents 8 to 10 from causing any interference in the suit property. The application was dismissed by the Trial Court vide its order dated 12th June 2016, against which, an appeal filed by the writ petitioner is stated to be pending before the court of Principal District Judge, Kulgam. Thus, the writ petitioner again failed to obtain the desired interim directions, restraining respondents 8 to 10 from interfering or causing any interference in the subject property.

7. When the Civil Courts did not come to the rescue of the writ petitioner and declined to protect his possession, respondents 8 to 10 approached Deputy Commissioner, Kulgam, (*respondent no.3 herein*) requesting the latter to ensure that no illegal interference is caused by the writ petitioner with respect to the suit property. The writ petitioner was evicted from the subject property by the orders of respondent no.3 and respondents 8 to 10 were put back in the possession. It is alleged that the writ petitioner again resorted to illegal occupation of the subject property, which constrained respondents 8 to 10 to file another application before respondent no.3. On presentation of the application and consideration thereof, respondent no.3 sought report from Tehsildar concerned. The Tehsildar vide its report dated 17th November 2021, informed respondent no.3 that writ petitioner, who is in occupation of the subject property, did not have any legal or authentic document in support of his claim of ownership and possession. It was also brought to the notice of respondent no.3 that the writ petitioner has resorted to illegal occupation once again. On consideration of the report of the Tehsildar concerned, respondent no.3 issued communication dated 19th April 2022, directing Tehsildar Kulgam to proceed further in

the matter and take appropriate action under law under an intimation to the office of respondent no.3.

8. When the writ petitioner failed to substantiate his claim of ownership and possession of the subject property by producing any documentary evidence, respondent no.3, vide order dated 12th November 2022, impugned in the writ petition, directed Tehsildar Kulgam to proceed on spot and evict the writ petitioner from the subject property. It was this order of respondent no.3, the writ petitioner felt aggrieved and challenged it before the Writ Court in WP(C) no.2610/2022.
9. The writ petition was contested by respondents 8 to 10 as well as respondent no.11. The respondents, while filing their objections, took up the preliminary objection with regard to maintainability of writ petition on the ground that there has been serious misrepresentation of facts by the writ petitioner to obtain favourable orders and that the writ petitioner had deliberately avoided to detail out the true facts pertaining to the subject property and the controversy raised in the petition with a view to mislead the court.
10. The Writ Court considered the entire matter in light of the pleadings before it and the material placed on record by the rival parties and came to the conclusion that the writ petitioner was guilty of *suppressio veri* and *suggestio falsi* and therefore, was not entitled to invoke the equitable and discretionary remedy under Article 226 of the Constitution of India. The Writ Court came heavily on the writ petitioner as well as his counsel. The writ petition was dismissed with costs of Rs.1,00,000/- to be deposited by the writ petitioner in the Advocates Welfare Fund whereas the learned counsel appearing for

writ petitioner was indicted for his conduct for the reason that it was the learned counsel who was appearing for the writ petitioner before the Civil and Revenue Courts and, therefore, was well aware of all the relevant and material facts which the writ petitioner suppressed while filing the writ petition.

11. Heard learned counsel for parties and perused the material on record.

12. The facts are not much in dispute. Indubitably, with a view to protecting the possession qua the subject property, the writ petitioner first approached the court of Munsiff, Kulgam, by way of a suit for declaration challenging the power of attorney and agreement to sell executed by respondent no.11 in favour of respondents 8 to 10. The writ petitioner had specifically prayed for interim injunction to restrain respondents 8 to 10 from interfering in the subject property which the writ petitioner claimed to be in his possession. Initially the civil court granted interim order on 9th November 2011 but the same was vacated later on when it was objected to and contested by respondents 8 to 10. The appeal preferred by the writ petitioner too was dismissed. Resultantly, the writ petitioner failed to protect his possession over the subject property through the intervention of the civil court. He made another attempt by filing a second suit and this time challenging the sale deed executed by respondent no.11 in favour of respondents 8 to 10. He could not get any interim order of stay from the court of Munsiff, Kulgam. He filed an appeal before the Principal District Judge, Kulgam, but failed to persuade the appellate court also to grant interim order of protection to his possession. The appeal is *sub judice* before the District Judge.

13. When writ petitioner failed to protect his possession over the subject property, respondents 8 to 10 approached Deputy Commissioner (respondent no.3) by way of an application seeking eviction of writ petitioner. The eviction of writ petitioner was ordered and he was evicted from the subject property. As is the contention of respondents 8 to 10 which is substantiated by the report of Tehsildar, Kulgam, that the writ petitioner had occupied the subject property without any authority of law. This made respondents 8 to 10 to approach respondent no.3 again. He again intervened in the matter and after receiving the report from Tehsildar concerned, who had given ample opportunity to writ petitioner to substantiate his claim of ownership and possession over the subject property, directed eviction of writ petitioner vide its order 12th November 2022. It is this order which was called in question by the writ petitioner before the Writ Court. As to what the petitioner pleaded and what the petitioner did not plead in writ petition; needs to be taken note of to come to any conclusion as to whether there has been any suppression of relevant/material facts in the instant case.

14. The petitioner has not suppressed the fact that he had filed two civil suits in respect of subject property before the court of Munsiff, Kulgam. He has also made a mention of order of status quo issued by learned Munsiff, Kulgam on 9th November 2011. However, the writ petitioner has not indicated anywhere in the writ petition that the aforesaid stay was later on vacated and even the appeal preferred against the vacation of stay stood dismissed by the appellate court. He has also not taken the Writ Court into confidence by way of specific pleadings in the writ petition that even in the subsequent suit where he has thrown challenge

to sale deed executed by respondent no.11 in favour of respondents 8 to 10, the Trial Court as well as Appellate Court have declined to intervene by way of any interim order to protect his possession over the subject property. The writ petitioner has not also stated truthfully that he had appeared before the Tehsildar, in that the challenge to the order of Deputy Commissioner is primarily mounted on the ground of violation of principles of natural justice and for not affording him an opportunity of being heard. These are vital and relevant facts, if not technically speaking material facts, pertaining to the subject matter of the writ petition which the writ petitioner ought to have narrated/ disclosed in his petition.

15. Undoubtedly, the Writ Court was called upon to adjudicate the validity of the order dated 12th November 2022 passed by Deputy Commissioner, Kulgam. It was, thus, necessary for the writ petitioner to bring it to the notice of the Writ Court that despite having filed two civil suits before the court of learned Munsiff, Kulgam, the writ petitioner has failed to persuade the civil courts to grant him protection vis-à-vis subject property. These facts, if pleaded in the writ petition, could have completely turned the tables on the writ petitioner. Once the writ petitioner has taken the dispute to the civil court and the matter is still *sub judice* and the civil court has declined to protect his possession qua subject property, there was perhaps no defence left with the writ petitioner to protect his occupation of subject property and remain continuously in unauthorised possession thereof. Had the Writ Court been apprised of the true facts, the Writ Court might not have even entertained the writ petition, *for*, apart from technical pleas that could

have been raised by the writ petitioner, he had no material on record to substantiate his claim of ownership and possession qua the subject property. The writ petitioner presented before the Writ Court half-baked truth and suppressed the material that was relevant to controversy raised in the writ petition. Not only the writ petitioner is guilty of suppression of material and relevant facts but has failed to disclose all the facts relating to the litigation qua the subject property and the orders passed therein at different stages.

16. Mr. M. A. Qayoom, learned counsel appearing for appellant/writ petitioner, may be correct in saying that the facts allegedly suppressed by the writ petitioner in relation to the subject matter may not be technically speaking material facts in that the disclosure of such facts would not have altered the merits of the case. However, this Court cannot lose sight of the fact that the writ petitioner has very cleverly pleaded the facts suitable for him and suppressed those which could have been used against him. Once the writ petitioner was referring to the civil litigation, it was incumbent upon him to give all the details of the suits filed and orders passed therein from time to time. The writ petitioner was under obligation to disclose all facts relating to the dispute that he had brought before the Writ Court by way of writ petition.

17. Whether or not the disclosure of complete account of true facts in relation to the subject property in respect of which the entire litigation before civil and revenue courts including the writ petition before this Court had ensued would have impacted the disposal of the writ petition before the Writ Court, was a question that the Writ Court would have

confronted at the time of disposal of the writ petition on merits. However, the fact remains that there is wilful attempt on the part of writ petitioner not to state the entire facts pertaining to the subject matter and, thus, to mislead the court to pass favourable order. This is exactly what has happened in this case. The Writ Court, being presented half-truth and truncated facts, was persuaded to pass an ad interim *ex parte* order dated 23rd November 2022, thereby staying order dated 12th November 2022. Not only the writ petitioner succeeded in persuading the Writ Court to pass the order of stay of the order of Deputy Commissioner dated 12th November 2022, but also persuaded the Writ Court to issue further direction that the writ petitioner shall be deemed to be in possession of the subject property if he had been in possession thereof on the date of passing of the said order.

We are not sure whether the Writ Court would have passed the same order had it been made aware of the relevant facts including those suppressed by writ petitioner.

18. In the above backdrop, an important issue crops up for deliberation in the instant case, i.e., impact and affect of suppression of relevant information from the Writ Court exercising equitable jurisdiction.

19. The material facts are those facts upon which plaintiff's cause of action or defendant's defence depends, or strictly speaking, all those facts which must be proved. Law is already settled on this aspect. There is plethora of case law

20. In *Virender Nath v. Satpal Singh (2007) 3 SCC 617*, the Supreme Court held thus:

“The phrase ‘material facts’ may be said to be those facts upon which a party relies for his claim or defense. In other words, ‘material facts’ are facts upon which the plaintiff’s cause of action or the defendant’s defense depends. What particulars could be said to be ‘material facts’ would depend upon the facts of each case and no rule of universal application can be laid down.”

21. In *Kishore Samrite v. State of U.P.*, (2013) 2 SCC 398, deprecating the practice of suppression of relevant material facts from Writ Court, the Supreme Court in paragraphs 35 to 39 observed as under:

“29. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

- (i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.
- (ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.
- (iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.
- (iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.
- (v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

- (vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.
- (vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.
- (viii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the *lis* well-justifies it.

[Refer : *Dalip Singh v. State of U.P. & Ors.* (2010) 2 SCC 114; *Amar Singh v. Union of India & Ors.* (2011) 7 SCC 69 and *State of Uttaranchal v Balwant Singh Chauhal & Ors.* (2010) 3 SCC 402].

30. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In *P.S.R. Sadhanantham v. Arunachalam & Anr.* (1980) 3 SCC 141, the Court held:

"15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic 'human-right' of a system which purports to guarantee legal rights."

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of procession obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition."

31. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the

consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue.

This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : *Tilokchand H.B. Motichand & Ors. v. Munshi & Anr.* [1969 (1) SCC 110]; *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr.* [(2012) 6SCC 430]; *Chandra Shashi v. Anil Kumar Verma* [(1995) SCC 1 421]; *Abhyudya Sanstha v. Union of India & Ors.* [(2011) 6 SCC 145]; *State of Madhya Pradesh v. Narmada Bachao Andolan & Anr.* [(2011) 7 SCC 639]; *Kalyaneshwari v. Union of India & Anr.* [(2011) 3 SCC 287]).

34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et in juria fieri locupletioem*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

35. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court

knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {*K.D. Sharma v. Steel Authority of India Ltd. & Ors.* [(2008) 12 SCC 481].

36. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (*Buddhi Kota Subbarao (Dr.) v. K. Parasaran*, (1996) 5 SCC 530).”

22. In the recent judgement of the Apex Court in *Shri K. Jayaram and others v. Bangalore Development Authority and others*, 2021 SCC Online 1994, paragraphs 12 to 16 are very relevant and, therefore, reproduced hereunder:

12. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

13. This Court in *Prestige Lights Ltd. V. State Bank of India* has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus:

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of

material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”

14. In *Udyami Evam Khadi Gramodyog Welfare Sanstha and Another v. State of Uttar Pradesh and Others*², this Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.

15. In *K.D. Sharma v. Steel Authority of India Limited and Others*³, it was held thus:

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commrs.*- (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) in the following words: (KB p. 514)

"... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-it says facts, not law.

He must not misstate the law if he can help it-the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement." (emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you

have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.* (supra), Viscount Reading, C.J. observed: (KB pp. 495-96) "... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived.

Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit." (emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts.

The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.* (supra) is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction.

If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself

and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”

16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.”

(underlying to supply emphasis)

23. From the case law referred to hereinabove, we can possibly deduce following principles:

- (i) Jurisdiction of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary.
- (ii) To invoke this extraordinary, discretionary and equitable jurisdiction, it is of utmost necessity that the petitioner approaching the Writ Court must come with clean hands and put forward all facts before the court without concealing or suppressing anything.
- (iii) A litigant is bound to state all facts which are material or relevant to the litigation.
- (iv) The litigant must candidly state all the facts before the court without reservation. He cannot be permitted to play “hide and seek” or to “pick and choose” the facts he likes to disclose and keep back or conceal other facts.

- (v) Jugglery, manipulation, manoeuvring or misrepresentation has no place in equitable and prerogative jurisdiction.
- (vi) Suppression of material facts, concealment of full details of litigation, present and past, between the parties qua subject matter of dispute, distortion or manipulation of relevant facts, misleading the court by stating false facts or withholding true facts disentitle a party to invoke equitable jurisdiction under Article 226 of Constitution of India.

24. In the light of clear exposition of law by the Apex Court, when we examine the impugned judgement, we cannot help reach a conclusion that the view taken by the Writ Court is a very balanced view in the facts and circumstances of the case and, therefore, unexceptionable. The Writ Court has been very considerate while administering warning to the learned counsel for the writ petitioner.

25. For the reasons elaborated above, both the appeals are found to be without merit and substance and, thus, **dismissed**. We, however, wish to substitute the “warning” administered to the learned counsel by “advice”. It is in his interest to remain careful in future and not entirely get into the shoes of client. As an officer of the Court, a lawyer has equally onerous duty towards the Court as he has towards his client.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

Srinagar

03.04.2023

Ajaz Ahmad, PS

Whether approved for reporting? Yes