

(2009) 10 SC CK 0033

In the Supreme Court Of India

Case No : I.A. No. 2 of 2009 in Special Leave Petition (C) No. 18481 of 2009

Vijay Dhanji Chaudhary

APPELLANT

Vs

Suhas Jayant Natawadkar

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Supreme Court Rules, 1966 — Rule 1, 5, 6

Citation : (2010) 3 AWC 2540 Supp : (2010) 3 BomCR 689 : (2009) 15 JT 472 : (2010) 1 MLJ 156 : (2009) 13 SCALE 652 : (2010) 1 SCC 166 : (2010) 1 SCC(L&S) 26 : (2009) 1 SCR 518

Hon'ble Judges : R. V. Raveendran, J;G. S. Singhvi, J

Bench : Division Bench

Advocate : Vikas Mahajan and Dharam Bir Raj Vohra, for the Appellant;

Final Decision : Dismissed

Judgement

1. I.A. No. 2 of 2009 is an application for restoration of the SLP dismissed for non-prosecution on 20.7.2009. This application discloses a disturbing trend in regard to the functioning of Advocates-on-record.

2. The SLP is stated to have been drafted by Mr. Vikas Mahajan, Advocate and filed by Mr. D.B. Vohra, Advocate-on-Record. The application for restoration is filed by Mr. D.B. Vohra, alleging that the case was listed for hearing on 20.7.2009; that he (Mr. D. B. Vohra, Advocate-on-Record for the petitioner) was aware of the listing of the petition; that he informed the clerk of Mr. Vikas Mahajan, about the listing; that Mr. Vikas Mahajan, Advocate by mistake did not enter this case in his diary and therefore, Mr. Vikas Mahajan did not appear. There is no affidavit of Mr. Vikas Mahajan in support of the application.

3. What is puzzling is the role or rather the absence of the role of the Advocate-on-Record in this matter. Para 4 of the application shows that the Advocate-on-Record had nothing to do with the SLP except to lend his name for filing the petition. He did not take instructions from the client/petitioner. He did not

prepare the special leave petition. He did not instruct any counsel. He was not required to or expected to attend the hearing of the case.

4. The Supreme Court Rules, 1966 provide that though any advocate enrolled under the Advocates Act, 1961 is entitled to appear and plead before the Court, no advocate other than the Advocate-on-Record shall be entitled to file an appearance or act for a party in the Court [vide Rule 1, Rule 6(b) and Order IV]. Rule 5 provides that no advocate shall be qualified to be registered as advocate-on-record unless he has undergone training for one year with an Advocate-on-Record approved by the court and thereafter has passed the tests held by the court. Rule 6(a) provides that an Advocate-on-Record shall, on his filing memorandum of appearance on behalf of a party, accompanied by Vakalatnama duly executed by the party, be entitled to act as well as to plead for the party in the matter and to conduct and prosecute before the court all proceedings that may be taken in respect of the said matter or any application connected with the same or any decree or order passed therein including proceedings in taxation and applications for review. Sub-clause (c) of Rule 6 requires all Advocates-on-Record to keep such books of account as may be necessary to show in connection with his practice as an advocate-on-record, moneys received from or on account of and the money paid to or on account of each of his client.

5. Unfortunately, many special leave petitions are being filed with Advocates-on-Record being mere name-lenders, without having, or taking, any responsibility for the case. As a result of prevalence of such a practice, in such cases, the Advocates-on-record do not appear when the matters are listed either before the Registrars or before the Chamber Judge or the Court nor do they take any interest or responsibility for processing or conducting the case. They also play no role in preparation of the special leave petitions, nor ensure that the requirements of the Rules are fulfilled and defects are cured. If the role of an advocate-on-record is merely to lend his name for filing cases without being responsible for the conduct of the case, the very purpose of having the system of Advocates-on-Record would get defeated.

6. The question that arises for consideration is whether an Advocate-on-Record can file appearances as mere name-lender for facilitating filing of petitions by others, without performing any of the functions associated with an Advocate-on-Record.

7. In order to enforce discipline in the working of advocates-on-record and to avoid the misuse of the system, and to ensure that the court has the benefit of effective assistance of the Advocates-on-record, a solution has to be found.

8. We, therefore, direct issue of notice to the Advocates-on-record Association and the Supreme Court Bar Association to assist us to find appropriate solutions and provides necessary checks and balances. The Registry is directed to furnish copies of this order to the said Associations.

9. List the matter on 30.11.2009.