

CIVIL MISC. APPLICATION

*Before the Hon'ble Mr. Justice S. H. Sheth and
the Hon'ble Mr. Justice G. T. Nanavati.*

PROF. M. D. SHAH & ANR. v. UNION OF INDIA & ANR.*

Constitution of India, 1950-Art. 226-Discretionary relief-Party coming for such relief must have its clean hands-Court ordering production of documents referred to in affidavit-As such documents not produced court ordered to strike off defence.

A party which refers to or relies upon certain documents in support of his defence is bound to produce them in Court. His hands must be clean. All the documents must be laid open before the Court for scrutiny. No one can ever think of trotting up his case in a writ petition by filing a mere affidavit-in-reply, and without substantiating it by the documents upon which it is based. Failure on the part of the Indian Airlines to produce the documents which it was ordered to produce must result into consequences in law. The Court, therefore, ordered to strike off the defence of the Indian Airlines. (Paras 5-6)

Civil Appln. No. 3844 of 1980.

B. P. Tanna, for *B. R. Shah*, for the Petitioner.

K. S. Nanavati, for Respondent No. 2

Civil Appln. No. 3848 of 1980.

K. S. Nanavati, for the Petitioner (respondent No. 2).

B. P. Tanna, for *B. R. Shah*, for the Opponent (Petitioner.)

S. H. SHETH, J. On December 9, 1980 after hearing the learned Advocate General who appeared on behalf of Indian Airlines and the learned Advocate who appeared for the other side, we made an order directing Indian Airlines to produce in this Court documents which we specified in that order. We further directed that the said documents shall be produced in this Court on or before December 26, 1980. Indian Airlines has not complied with that order and has filed Civil Application No. 3848 of 1980 in which it prays that this Court should decide certain preliminary questions first and then direct Indian Airlines to produce the documents if it is found necessary.

2. The learned Advocate General who appeared on behalf of Indian Airlines on December 9, 1980 did not raise the contention which Indian Airlines now seeks to raise. If it was really necessary that certain preliminary issues be decided first before Indian Airlines is called upon to produce the documents specified in that order, then certainly he would have raised that contention. We therefore, find that Indian Airlines has made the present application only for the purpose of delaying the proceedings. They appear to be playing a game of hide-and-seek. They try to take shelter under totally untenable contentions which they did not raise at a proper stage and which they raise at a later stage in order to shield themselves against exposure. We cannot allow Indian Airlines to play such a game.

3. It may be stated that the documents of which production is sought from Indian Airlines are not documents of which the original petitioner .

*Decided on 31-12-1980. Civil Appln. No. 3844 of 1980 (with Civil Appln. No. 3348 of 1980 in Misc. Civil Appln. No. 427 of 1980 and Spl. C.A. No. 2735 of 1979) praying to strike off the defence of the respondent No. 2 in Spl. C. A. No. 2735 of 1979 etc. etc.

seeks discovery. They are the documents which have been referred to or relied upon in the long affidavit-in-reply filed by Indian Airlines. Since it relies upon its affidavit in order to substantiate its case then it is bound to produce in this Court, for inspection all the documents which it has referred to or relied upon in its affidavit-in-reply. It cannot escape that obligation and try to contend that certain preliminary issues must be decided first. What did not strike the wisdom of the learned Advocate General on December 9, 1980 appears to have struck the wisdom of Indian Airlines now. This shows the belated and frantic effort on the part of Indian Airlines to hide the facts. This cannot be allowed to be done. We, therefore, reject Civil Application No. 3848 of 1980.

4. So far as Civil Application No. 3844 of 1980 is concerned, it has been filed by the original petitioner *inter alia* to strike off the defence of Indian Airlines as they have failed to comply with the order for production of documents made against them on December 9, 1980. Mr. Nanavati who appears on behalf of Indian Airlines states that Indian Airlines would like to file an affidavit in reply to that application. It is difficult to imagine what reply can it give to that application except what it has stated in its own Civil Application No. 3848 of 1980. If they had any justification for not complying with the order, they would have stated it in their Civil Application. Mr. Nanavati thereupon requested us to discharge him from the obligation of appearing for Indian Airlines. It cannot be done. We do not unsaddle the horse in the midstream. We have, therefore, not granted the request made by Mr. Nanavati. Mr. K. S. Nanavati also states that he is not appearing in the Civil Application. This submission of Mr. Nanavati cannot be accepted. A copy of that Civil Application was served upon him. He has filed his appearance in the Special Civil Application. He is under an obligation to represent his client in all interlocutory proceedings taken out in that Special Civil Application.

5. A party which refers to or relies upon certain documents in support of his defence is bound to produce them in Court. His hands must be clean. All the documents must be laid open before the Court for scrutiny. No one can ever think of trotting up his case in a writ petition by filing a mere affidavit-in-reply and without substantiating it by the documents upon which it is based. Indian Airlines are trying to do what it can not do in law. Failure on the part of Indian Airlines to produce the documents which it was ordered to produce by our order dated December 9, 1980, must result into consequences in law. Civil Application No. 3848 of 1980 which Indian Airlines has filed clearly shows that it has been wilfully and deliberately not producing the documents which it has relied upon or referred to in its affidavit-in-reply. In our opinion, therefore, it cannot be said to have filed any affidavit-in-reply in the Special Civil Application filed by the original petitioners.

6. In the result, we allow Civil Application No. 3844 of 1980 and strike off the defences of Indian Airlines in Special Civil Application No. 2735 of 1979. Indian Airlines shall not be entitled in that petition to rely upon the affidavit which it has filed. The petition shall be heard and decided without the said affidavit being considered on merits.

Order accordingly.