

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR &  
LADAKH AT JAMMU**

**File No. 15/COS, I/A 144/2023**

**CNR No. JKJM020056282022, JKJM0220082702023**

**D.O.Institution: 04.11.2023**

**D.O.Decision: 11.01.2024**

**Sub: Reference under Section 113 read with Order XLVI of the Code of Civil Procedure, 1908 civil suit numbered Suit for Damages/15/2022, titled Prediman Krishan Tickoo v. Roshan Lal and Ors.**

May it please your Lordships,

1. A civil suit numbered Suit for Damages/15/2022, titled Prediman Krishan Tickoo v. Roshan Lal and Ors. is pending before me in which the defendants/applicants have filed an application seeking reference under Section 113 read with Order XLVI of the CPC by raising issue as to the validity of the amendments brought by the Central Government in Order V Rule 1 and Order VIII Rules 1 and 10 of the CPC by S.O. 1123 (E) dated 18.03.2020 [J&K Reorganisation (Adaptation of Central Laws) Order, 2020].
2. The said amendments in the CPC provide that on expiry of one hundred twenty days from the date of service of summons, the defendant in a civil suit shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record. Since the defendants/applicants have also filed an application for condonation of delay in filing the written statement beyond the period of 120 days from the date of service of summons, therefore, the determination of above issues raised by the defendants/applicants are necessary for the disposal/adjudication of the condonation of delay application as also the suit.
3. After hearing the arguments of Mr. Rahul Sharma, Advocate for the defendants/applicants and Mr. Vikas Mangotra, Advocate for the plaintiff/non-applicant and perusing the judgments cited at bar, I am of the considered opinion that the amendments brought in the CPC by the Adaptation Order are invalid and has not been so declared by the Hon'ble High Court of Jammu and Kashmir & Ladakh or by the Hon'ble Supreme Court.

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Verifying Officer

1st Addl. Secy. & Session Judge

Jammu

4. After setting out my opinion on validity of the amendments brought in the CPC by the Adaptation Order, I now proceed to set forth my reasons therefor:

(a) Order V Rule 1 and Order VIII Rules 1 and 10 of the CPC have been amended by virtue of the Adaptation Order which was issued under Section 96 of the Jammu and Kashmir Reorganisation Act, 2019 (J&K Reorganisation Act). So, effectively, amendments were brought in the CPC under Section 96 of the J&K Reorganisation Act.

Section 96 of the J&K Reorganisation Act enables the Central Government to make only such adaptations and modifications in the laws as may be necessary or expedient "for the purpose of facilitating the application in relation to the successor Union Territories" of those laws. The scope of Section 96 is, therefore, limited to amendments which are only of *form* and not of *substance*. Therefore, no *substantive* amendments could have been brought in CPC made under Section 96 of the J&K Reorganisation Act.

However, in the present case, substantive amendments have been brought in the CPC by way of the Adaptation Order. These amendments have changed the nature and character of the provisions of CPC, by making it mandatory for the defendant to file written statement within 120 days from the service of summons, failing which his right to file the written statement shall be closed and the court shall not allow the written statement to be taken on record.

In my considered opinion, such substantive amendments could have been brought only by a competent legislature and not by the executive in exercise of power under Section 96 of the J&K Reorganisation Act. Therefore, such amendments brought by the Central Government by way of Adaptation Order, in my opinion, are invalid being *ultra vires* of Section 96 of the J&K Reorganisation Act.

In taking this view, I am supported by the decision of the Hon'ble High Court of Telangana in a case titled *Healthcare Reforms Doctors Association and Ors. Vs. The State of Telangana and Ors.*, reported in 2023(3)ALD97, in which interpretation of Section 101 of the Andhra Pradesh Reorganisation Act, 2014, which is *pari materia* to Section 96 of

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the J&K Reorganisation Act, was in question. The Hon'ble High Court of Telangana after threadbare discussion on the true meaning and import of the word "*adaptation*" held as under:

"50. Applying the above analogy to G.O.Ms. No. 68 dated 03.08.2015, the Andhra Pradesh Medical Practitioners Registration Act, 1968 (Telangana Adaptation) Order, 2014, can only be construed to mean application of Andhra Pradesh Medical Practitioners Registration Act, 1968, as amended as on 02.06.2014, to the new State of Telangana. **Therefore, only such modification or amendment as may be necessary for alignment of the aforesaid Act to the State of Telangana would be permissible. The modification or amendment can only be of form and not of substance. For example, the name of the state can be substituted from the State of Andhra Pradesh to the State of Telangana, appearing either in the title of the Act or in the body of the Act and modification or amendment of like nature. However, what was sought to be amended by way of Para 4(3)(i) was substantial amendment to Section 3(2)(b) of the parent Act affecting the substance of the legislation. Substitution of the words "thirteen members" by the words "five members" would change the nature and character of the Medical Council constituted under the Medical Practitioners Registration Act as adapted to the State of Telangana. From a dominant position, the elected members have now been made a minority block having lesser members than the members nominated by the government. The said exercise, in our view, could not have been carried out by way of an adaptation order. It is a legislative act for which legislation is necessary by way of an amendment by the State Legislature of Telangana. The same could not have been carried out by way of an executive order though in the form of an adaptation order.**

51. In view of the above discussion, Para 4(3)(i) appearing in Andhra Pradesh Medical Practitioners Registration Act, 1968 (Telangana Adaptation) Order, 2014 as contained in G.O.Ms. No. 68 dated 03.08.2015 cannot be sustained."

In my view, above decision of the Hon'ble High Court of Telangana is squarely applicable to the case at hand.

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In my opinion, the said amendments brought in the CPC are otherwise also discriminatory as they have made period of 120 days for filing written statement mandatory in all civil suits, whether commercial or non-commercial, within the UT of J&K, whereas in rest of India, the stipulated period for filing written statement is mandatory in commercial suits only and is directory in non-commercial suits.

Moreover, I could not find any rationale/objective for bringing in such substantive amendment, either in the Adaptation Order or otherwise,

which would justify applying different provisions to the UT of J&K in contrast to the law which is applicable in all other parts of India.

Therefore, in my opinion, the said amendments fall foul of Article 14 of the Constitution of India being arbitrary and discriminatory in nature.

In view of my opinion as rendered above, I refer the following questions for the opinion of the Hon'ble High Court:

A. Whether the amendments brought in Order V Rule 1 and Order VIII Rules 1 and 10 of the CPC by S.O. 1123 (E) dated 18.03.2020 [J&K Reorganisation (Adaptation of Central Laws) Order, 2020] by the Central Government are invalid being *ultra vires* of Section 96 of the J&K Reorganisation Act, 2019?

B. Whether the amendments brought in Order V Rule 1 and Order VIII Rules 1 and 10 of the CPC by S.O. 1123 (E) dated 18.03.2020 [J&K Reorganisation (Adaptation of Central Laws) Order, 2020] are invalid being violative of Article 14 of the Constitution of India?

A reference, therefore, is made on the above two points and same is placed before the Hon'ble High Court for its opinion on the questions as formulated above, so that I may proceed in the above-mentioned civil suit accordingly.

18.03.2024  
(Virinder Singh Bhou)  
1<sup>st</sup> Additional District Judge  
Jammu

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