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M/S. PIR Chambers And Co., AOR

For Respondent(s) Mr. Tushar Mehta, SGI  
Mr. Vikramjeet Banerjee, ASG  
Mr. K.M. Nataraj, ASG  
Mr. Kanu Agrawal, Adv.  
Ms. Swarupma Chaturvedi, Adv.  
Mr. Arvind Kumar Sharma, AOR

Dr. A.M. Singhvi, Sr. Adv.  
(Appearance not given)

UPON hearing the counsel the Court made the following  
O R D E R

These three petitions have been filed challenging the order dated 09.06.2021 passed by the High Court refusing to take the affidavits of the petitioners herein on record.

We have heard Mr. Rakesh Dwivedi, learned senior counsel appearing for the petitioners in SLP(Cr1.)No. 4228/2021 and SLP(Cr1.)No.4344/2021, Mr. Vikas Singh, learned senior counsel appearing for the petitioner(s) in SLP(Cr1.)Nos.4278-4284/2021 and Mr. Tushar Mehta, learned Solicitor General, for respondent CBI-contestant respondent No.1 at some length. Dr. A.M. Singhvi, learned senior counsel has appeared for some of the accused persons.

The grievance of the petitioners herein is that the affidavits in reply filed by them before the High Court on 7.06.2021 and 09.06.2021 respectively have not

been taken on record for certain reasons assigned in the impugned order, which, according to them, cannot be justified in law as they were not granted sufficient/ any opportunity to file their response to the petitions filed before the High Court. Detailed submissions have been advanced by the learned counsel for the petitioners in support of the contentions that their counter affidavits ought to have been accepted. Mr. Tushar Mehta, learned Solicitor General has, however, submitted that order of the High court is fully justified as the petitioners have been participating in the proceedings before the High Court and by not filing their response, they had waived their right to file the same.

During the course of the submissions made by the parties, this Court made a query as to whether any application was filed by the petitioners before the High Court assigning reasons for taking the counter affidavits on record at the stage when the hearing had already commenced, to which learned counsel for the petitioners submitted that no such application was filed by them as, according to them, the same was not required and the affidavits in reply ought to have been taken into record in normal course.

Considering the totality of the facts and circumstances of this case, we are of the opinion that the petitioners ought to have filed an application for taking

their respective counter affidavits on record, especially when the submissions/arguments of the parties were going on and had progressed substantially. At this stage, a suggestion was made by this Court that the matter could be remanded to the High Court to decide it afresh on the basis of the reasons to be given in the applications which may be filed by the petitioners within a specified time. The learned counsel for the parties have graciously agreed to this suggestion of the Court. Accordingly, we dispose off these three petitions with the following directions:-

(i) In view of the fact that 29.06.2021 is the date fixed before the High Court, we direct that the petitioners may file their respective applications giving reasons to bring the counter affidavits filed by them on 07.06.2021 and 09.06.2021 respectively on record, by Monday i.e. 28.06.2021, after serving advance copies on the counsel for the Central Bureau Of Investigation and other necessary parties, on or before 27.06.2021. The Central Bureau Of Investigation and other parties, if they so desire, may file their reply to the application by 29.06.2021, after serving an advance copy to learned counsel for the petitioners by 28.06.2021.

(ii) We request the High Court to first decide the aforesaid applications of the petitioners herein, for taking the counter affidavit/affidavits in response on record, before proceeding to decide the merits of the

case.

(iii) We may further add that to avoid any prejudice to be caused to any of the parties, the order dated 09.06.2021 shall stand annulled and the High Court shall decide the matter de-novo. It goes without saying that after deciding the aforesaid applications of the petitioners, the High Court shall decide the further course of action and proceed with the matter accordingly.

The Special Leave Petitions and pending applications shall stand disposed of accordingly.

It is, however, clarified that any observations made by us in this order shall not have any bearing on the merit consideration of the matters by the High Court.

(B.Parvathi)  
Court Master

(Anand Prakash)  
Court Master