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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 4th June, 2021

+ CS(OS) 262/2021 & I.A. Nos.6904/2021, 6906/2021,
6907/2021, 6908/2021

JUHI CHAWLA & ORS. Plaintiffs

Through: Mr. Deepak Khosla, Advocate
for plaintiffs along with
Ms. Juhi Chawla Mehta,
plaintiff No.1 and Mr.
Veeresh Malik, plaintiff No.2

versus

SCIENCE AND ENGINEERING
RESEARCH BOARD & ORS. Defendants

Through: Mr. Tushar Mehta, SGI with
Mr. Amit Mahajan CGSC,
Mr. Kanu Aggarwal and Mr.
Dhruv Pande, Advocates for
D-2/DoT/UOI
Mr. Anurag Ahluwalia, CGSC
with Mr. Abhigyan Siddhant
and Mr. Nitnem Singh
Ghuman, Advocates for D-
7/Indian Council of Medical
Research
Mr. Arjun Mitra, Advocate for
D-23/Indraprastha Institute of
Information Technology Delhi
Mr. Kapil Sibal, Senior
Advocate with Mr. Manjul
Bajpai and Mr. Shashwat
Bajpai, Advocates for D-25,
D-26, D-27 and D-29/
Cellular Operators
Association of India

**CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA**

J U D G M E N T

I.A. No. 6905/2021 under Section 149 of CPC

1. The plaintiffs have affixed Court-fees of Rs.1,950/- on the plaint on the ground that the plaintiffs intend to challenge the Court-fees Act. According to the plaintiffs, if the justice dispensation system requires around 15-20 years for settlement of a suit, the Court has lost the moral as well as legal right to require the Court-fees to be paid upfront at the beginning of the suit. The plaintiffs further intend to challenge the Court-fees Act in terms of the original intent of the Act being to recoup the costs for administration of justice, whereas the present system is such that the inflow of the Court-fees far exceeds the amount spent by the State on providing the infrastructure to dispense justice. Relevant portion of the application is reproduced hereunder:

“3. That the suit has been filed by affixing court fees of Rs. 1,950 for the present, and the plaintiffs / applicants seeks time to deposit the balance (if any).

4. That it is also their intent to challenge the Court Fees Act on the grounds, inter alia, that if the justice dispensation system requires around 15-20 years for settlement of a suit, it has lost the moral as well as legal right to require the court fees to be paid upfront at the beginning of the suit.

5. That it is also their intent to challenge the Court Fees Act in terms of the original intent of the Act being to recoup the costs for administration of justice, whereas the present system is such that the inflow of

fees far exceeds the amount spent by the State on providing the infrastructure to dispense justice.

6. That under these circumstances, if the court fee be found short, this Hon'ble Court may be pleased to record the undertaking of the plaintiffs to pay whatever be the appropriate court fee within four weeks of this Hon'ble Court granting time to do so, or within 4 weeks of losing their challenge to the Court Fees act (if he loses), whichever be later.

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PRAYER

In view of the aforesaid facts and circumstances, it is prayed that this Hon'ble Court may be pleased to :

(a) Allow this application, and grant appropriate time to the plaintiff to pay the full Court Fees as may be applicable to the matter (if the Court Fees paid at all be short).

(b) Allow that the time to be fixed by this Hon'ble Court be fixed keeping in mind the challenge to be raised to the Court Fees Act.”

Plaintiffs' Submissions

2. The plaintiffs seek time to pay the Court-fees under Section 149 read with Section 148 of CPC because of COVID-19 constraints and Plaintiff No. 1's visit to South Africa on or around 26th May, 2021.

3. Since the quantum of Court-fees quantified by the plaintiffs in para 147 of the plaint (at Rs. 12,210) may, perhaps, also be called into question (namely, as to how, in any case, the Court-fees cannot be less than Rs. 2 lakhs, especially since, at para 164, the suit has been valued by the plaintiffs themselves at Rs. 2 crores), the plaintiffs are ready to immediately file elaborate Written Submissions on this aspect, if required by this Court to do so.

4. Without this becoming an issue at this stage, and subject to their rights being permitted by this Court to stand preserved, the plaintiffs undertake to pay whatever Court-fees is required by the Registry to be paid, under directions of this Court after reading the Written Submissions to be filed herein, in the time to be stipulated by this Court.

5. This Court, while allowing the application and granting deferment for whatever period of time this Court deems fit, may make it clear that the quantum of Court-fees is yet to be decided by this Court, thereby allowing fair opportunity to the plaintiffs to present their arguments on this point in due course.

6. Nonetheless, if this Court wishes, the plaintiffs agree to pay whatever Court-fees as may be directed by this Court, subject to preservation of all their rights and contentions by this Court.

7. The resolution of this particular issue, if in favour of the plaintiffs, shall be a landmark judgment by this Court, as it is their respectfully-submitted contention that it is an erroneous proposition in law to hold that Court-fees is payable on either the value of relief claimed, or the pecuniary jurisdiction of the Court, whichever is higher; it is their case that the Court-fees is to be paid only on the value of the relief claimed, independent of the valuation of the suit for the purposes of pecuniary jurisdiction.

Findings

8. The plaintiffs have valued the suit for purpose of jurisdiction at Rs.2 Crore. The law is well settled that the valuation of the suit for the purpose of jurisdiction and Court-fees has to be same. In that

view of the matter, the plaintiffs are liable to pay Court-fees of Rs.1,97,544/- on the plaint. As such, there is deficiency of the Court-fees of Rs.1,95,594/- by the plaintiffs.

9. Section 149 of Code of Civil Procedure empowers this Court to extend the time to pay the deficient Court-fees. However, the challenge sought by the plaintiffs into the validity of the Court-fees Act is not permissible under Section 149 of Code of Civil Procedure. As such, no case for determination of the Court-fees amount is made out.

10. The application is misconceived, frivolous and unsustainable. The law with respect to valuation and computation of Court-fees is well settled. However, the plaintiffs have taken a stand not to pay the Court-fees in utter disregard of well-settled law. All the objections raised by the plaintiffs to the payment of Court-fees are hereby rejected.

11. The application is partially allowed and in interest of justice, the plaintiffs are granted one week to deposit the deficit Court-fees of Rs.1,95,594/-.

I.A. No. 6909/2021 under Section 80(2) of CPC

12. The plaintiffs are seeking dispensation from issuing notice to the State entities under Section 80(1) of the Code of Civil Procedure on the ground that it is an empty formality. Relevant portion of the application is reproduced hereunder:

“3. That in any case, all the State entities have been served with this suit prior to filing of the same, the suit itself being fair notice, and yet, they have not appeared

before this Hon'ble Court, this itself being their waiver to objecting to grant of interim relief.

4. That under these circumstances, it is humbly prayed that the empty formality of issuance of notice may be dispensed with in exercise of this Hon'ble Courts power under Section 80(2) CPC.

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PRAYER

It is therefore most respectfully and humbly prayed that this Hon'ble Court may be pleased to :-

i. Exercise its power under Section 80(2) CPC, and dispense with the empty formality of issuance of notice to State entities under Section 80(1) of the CPC.”

Plaintiffs' Submissions

13. Section 80(2) empowers this Court to waive the requirement of prior notice on State Defendants and/or prior 60 days' wait, subject to the caveat that it shall not grant relief in the suit, whether interim or otherwise, except after giving the State Defendants a reasonable opportunity of showing cause in respect of the reliefs prayed for in the suit.

14. Since the 5G roll-out has not actually happened, though - equally damaging - trials involving the human population have started (which is not the same as doing trials on pigs and/or rats, and/or in an empty Thar Desert, or on the employees of the private defendants) - so that not even one single human life is lost by these trials, the plaintiffs are agreeable if this Court, while waiving the requirement of Section 80(1) of the CPC, grants fair opportunity to the State Defendants to show cause as to why no interim relief be granted which, in any case, is sought against the private defendants, and not against the State defendants.

15. In any case, all the State defendants have been served with the suit, and have appeared today, which constitutes compliance with the spirit of Section 80(1) of the CPC.

Findings

16. The notice under Section 80(1) of the Code of Civil Procedure to the Government is mandatory before institution of the suit against the Government. The object of the notice under Section 80(1) is to give an opportunity to the Government to reconsider the matter and to make amends and settle the claim out of Court. Section 80 was enacted for the advancement of justice for securing public good by avoidance of unnecessary litigation.

17. In *State of Andhra Pradesh v. Gundugola Venkata Suryanarayana Garu*, AIR 1965 SC 11, the Supreme Court observed that the object of the notice under Section 80(1) is to give an opportunity to the Government to reconsider the matter and to make amends and settle the claim out of Court. The Supreme Court further observed that Section 80(1) is imperative and must be strictly complied with. The Supreme Court further observed that failure to serve a notice complying with the requirements of the statute will entail dismissal of the suit. Relevant portion of the judgment is reproduced hereunder:

“11. The object of the notice under Section 80 is to give to the Government or the public servant concerned an opportunity to reconsider its or his legal position and if that course is justified to make amends or settle the claim out of Court. The section is imperative and must undoubtedly be strictly construed: failure to serve a notice complying with the

requirements of the statute will entail dismissal of the suit. But the notice must be reasonably construed. Every venial error or defect cannot be permitted to be treated as a peg to hang a defence to defeat a just claim. In each case in considering whether the imperative provisions of the statute are complied with, the Court must face the following questions:

(1) whether the name, description and residence of the plaintiff are given so to enable the authorities to identify the person serving the notice;

(2) whether the cause of action and the relief which the plaintiff claims are set out with sufficient particularity;

(3) whether the notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section; and

(4) whether the suit is instituted after the expiration of two months next after notice has been served, and the plaint contains a statement that such a notice has been so delivered or left.

In construing the notice the Court cannot ignore the object of the Legislature to give to the Government or the public servant concerned an opportunity to reconsider its or his legal position. If on a reasonable reading but not so as to make undue assumptions the plaintiff is shown to have given the information which the statute requires him to give, any incidental defects or errors may be ignored."

मास्यमेव जयते (Emphasis Supplied)

18. In ***State of A.P. v. Pioneer Builders, A.P.***, (2006) 12 SCC 119, the Supreme Court held that service of notice under Section 80 is a condition precedent for the institution of a suit against the Government. The Supreme Court further observed that the object of Section 80 is the advancement of justice for securing public good by avoidance of unnecessary litigation. The relevant portion of the judgment is reproduced hereunder:

*“14. From a bare reading of sub-section (1) of Section 80, it is plain that subject to what is provided in sub-section (2) thereof, no suit can be filed against the Government or a public officer unless requisite notice under the said provision has been served on such Government or public officer, as the case may be. It is well settled that before the amendment of Section 80 the provisions of unamended Section 80 admitted of no implications and exceptions whatsoever and are express, explicit and mandatory. The section imposes a statutory and unqualified obligation upon the court and in the absence of compliance with Section 80, the suit is not maintainable. (See *Bhagchand Dagadusa v. Secy. of State for India in Council* [(1926-27) 54 IA 338 : AIR 1927 PC 176] ; *Sawai Singhai Nirmal Chand v. Union of India* [(1966) 1 SCR 986 : AIR 1966 SC 1068] and *Bihari Chowdhary v. State of Bihar* [(1984) 2 SCC 627].) The service of notice under Section 80 is, thus, a condition precedent for the institution of a suit against the Government or a public officer. The legislative intent of the section is to give the Government sufficient notice of the suit, which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. As observed in *Bihari Chowdhary* [(1984) 2 SCC 627] the object of the section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.*

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17. Thus, from a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the court. Leave of the court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though

Section 80(2) does not specify how the leave is to be sought for or given, yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the court has been imposed, namely, the court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit.

18. Having regard to the legislative intent noticed above, it needs little emphasis that the power conferred on the court under sub-section (2) is to avoid genuine hardship and is, therefore, coupled with a duty to grant leave to institute a suit without complying with the requirements of sub-section (1) thereof, bearing in mind only the urgency of the relief prayed for and not the merits of the case. More so, when want of notice under sub-section (1) is also made good by providing that even in urgent matters relief under this provision shall not be granted without giving a reasonable opportunity to the Government or a public officer to show cause in respect of the relief prayed for. The provision also mandates that if the court is of the opinion that no urgent or immediate relief deserves to be granted it should return the plaint for presentation after complying with the requirements contemplated in sub-section (1).”

अस्यमेव जयति (Emphasis Supplied)

19. In *State of Kerala v. Sudhir Kumar Sharma*, (2013) 10 SCC 178, the Supreme Court observed that a suit filed without compliance of Section 80(1) of the Code of Civil Procedure cannot be regularized by simply filing an application under Section 80(2) of the Code of Civil Procedure.

20. The plaintiffs’ contention that Section 80(1) notice is an empty formality is contrary to the well settled law and is hereby

rejected.

21. This Court is of the view that the notice under Section 80(1) of the Code of Civil Procedure is necessary in the present case. The application is therefore, dismissed.

I.A. No. 7001/2021 under Section 91(1)(b) of CPC

22. The plaintiffs are seeking leave to institute this suit on various grounds *inter-alia* that the matter concerns public health and EMF radiation caused by cellular telecommunication technology must have caused harm to many members of the general public.

Plaintiffs' Submissions

23. While Section 91(1)(b) of the CPC has been invoked, it is respectfully submitted that Section 91 has been invoked only in relation to the '*wrongful acts*' of the defendants, the '*wrongful acts*' relating to the act of omission in not completing studies on the health hazards of 5G before permitting any further activity in that field. Therefore, only some of the prayers in the suit relate to '*wrongful acts*' of the defendants, such as prayer (xiii), the other prayers, though also relating to the acts of omission on the part of the State defendants, however, are more in the exercise of the statutory rights of the plaintiffs. The Supreme Court has settled the proposition that the '*precautionary principle*' stands embedded within the fold of Article 21 of the Constitution of India, thereby conferring statutory (rather, fundamental) rights upon the plaintiffs even independent of Section 91 of CPC.

24. The suit also seeks prayers that, though connected, can also be sought *de hors* the '*wrongful acts*' of the defendants, and have been

preferred by the plaintiffs in exercise of their statutory rights e.g. prayer (i) which is under Order XXVII-A of the CPC.

25. Even independent of grant of permission under Section 91(1)(b) of the CPC, the suit ought to be permitted to proceed, where, at the highest, the issue of whether or not prior leave was actually required in respect of each and every single prayer could, become one of the issues to be framed in the suit.

26. Since numerous admissions of the defendants themselves have been tabled, which clearly show that they are guilty of '*wrongful acts*', as the plaintiffs do not wish to rely upon a State actor to prosecute the present cause on their behalf (i.e. the learned Standing Counsel), they humbly request this Court to grant leave under Section 91(1)(b) of the CPC for such prayers that this Court deems appropriate to be covered under the aforesaid provision.

27. As the plaintiffs have themselves suffered special as well as general injury, therefore, as is made clear by the provisions of Sub-Section (2) of Section 91 of the CPC, the suit ought to be permitted to be proceeded with by this Court even if, for any reason, it is not inclined to grant leave under Sub-Section (1) (b) of Section 91.

28. The provision is supposed to be an aid to the citizens of India, whereby a duty is cast upon the learned Standing Counsel to prosecute on their behalf. In other words, it is an enabling provision, intended to assist the general populace in conserving their own time and money when they be acting in general public interest, and not intended to become a hindrance in their path of seeking justice, if and when they be agreeable to pursue justice at the expense of their

own time, their own money and their own effort and which is why there is no such similar stipulation with respect to Public Interest Litigations preferred under the Constitution of India.

I.A. No. 7002/2021 under Order VIII Rule 1 of CPC

29. The plaintiffs are seeking leave to sue in representative interest on the ground that colossal harm is eminent to general public by the roll out of 5G technology and the suit involves issues regarding public health of the present as well as future generations.

Plaintiffs' Submissions

30. The plaintiffs, especially Plaintiff No. 1, who has been publicly and vociferously canvassing against the effects of EMF radiation for the last decade or so, have been approached by a number of individuals, requesting them to initiate legal proceedings against the '*silent killer*' that exists in our country's air, and who have expressed their desire to join them in such proceedings.

31. As time, in light of COVID-19 constraints, was too short to actually call upon all the other interested individuals to join hands in the present suit, hence, it is in that respect that leave has been sought by this Court to sue also in a representative interest, so that such individuals, after release of appropriate advertisement, also can join the proceedings in due course.

32. Since the plaintiffs, themselves, have individually suffered special as well as general damages, it is not the case of the plaintiffs that the suit cannot proceed if the permission under Order I Rule 8 of the CPC is to be denied by this Court.

33. In fact, grant of leave of this Court will give a first-hand

opportunity to this Court to assess how actually widespread is the antagonism of members of the public at large against the acts of omission of our regulatory agencies, just as was the case with tobacco, pan masala, asbestos, etc.

34. In other words, the number of co-plaintiffs that are likely to join the present proceedings will undoubtedly rock the conscience of this Court into being sympathetic to the cause of present (as well as unborn) generation(s) against what is undeniably a 'silent killer'.

Findings in respect of I.A. Nos. 7001/2021 and 7002/2021

35. No case for grant of leave to institute the suit is made out under Section 91(1)(b) of the Code of Civil Procedure or to sue in representative interest under Order I Rule 8 of the Code of Civil Procedure or to maintain the suit without the aforesaid leave/permission, as the plaintiffs' suit is defective and not maintainable for the following reasons :-

- I. **Order VI Rule 2(1) of the Code of Civil Procedure** provides that the plaint shall contain statements of material facts in a concise form but no evidence by which they are to be proved. However, the plaintiffs have not complied with Order VI Rule 2 of the Code of Civil Procedure as (i) The statement of plaintiffs are not in concise form and (ii) The plaintiffs have incorporated the evidence in the plaint.
- II. **Order VI Rule 9 of the Code of Civil Procedure** provides that the contents of any document shall not be set out in the plaint unless the precise words of the document or any part thereof are material. However, the plaintiffs

have not complied with Order VI Rule 9 of the Code of Civil Procedure and have reproduced the documents in the plaint.

- III. The plaint is stuffed with unnecessary scandalous, frivolous and vexatious averments which are liable to be struck down under **Order VI Rule 16 of the Code of Civil Procedure.**
- IV. The plaintiffs have joined 33 defendants in this suit. However, the plaint does not reflect the compliance of **Order I Rule 3 of the Code of Civil Procedure** in joining 33 defendants in one suit.
- V. The plaintiffs have joined various causes of action without complying with **Order II Rule 3 of the Code of Civil Procedure.**
- VI. The plaintiffs have not verified the plaint which is mandatory under **Order VI Rule 15 of the Code of Civil Procedure.**
- VII. In the affidavit filed along with the plaint, the plaintiffs have deposed that only paras 1 to 8 of the plaint are true to their knowledge whereas paras 1 to 169 of the plaint are based on information and legal advice, meaning thereby that the plaintiffs have no personal knowledge of any of the averments made in the plaint. The suit totally based upon information and legal advice is not maintainable.
- VIII. Since the plaintiffs have no personal knowledge of any averments made in the plaint and the whole plaint is based

on information and legal advice received, it appears that the plaintiffs want an inquiry to be conducted by this Court into the averments made in the plaint which is not permissible in law in these proceedings.

- IX. **Section 34 of the Specific Relief Act, 1963** deals with declaratory suits. A person entitled to any legal character can institute a suit against another person who denies or is interested to deny his right. In the present case, the plaintiffs never approached the defendants claiming any right and therefore, there was no occasion for the defendants to respond or deny to the plaintiffs alleged rights. In that view of the matter, the maintainability of the declaratory reliefs sought by the plaintiffs is doubtful.
- X. **Section 39 of the Specific Relief Act, 1963** deals with mandatory injunctions. The twin requirements of Section 39 are the existence of an obligation of the defendant towards the plaintiff and the breach thereof by the defendant. Both these requirements are not fulfilled. The maintainability of the mandatory injunctions sought by the plaintiffs are, therefore, doubtful.
- XI. The plaintiffs have not valued the suit properly for the purpose of Court-fees.
- XII. The plaintiffs have not given the mandatory notice under Section 80(1) of the Code of Civil Procedure.
36. The observations made by Justice Rajiv Sahai Endlaw in one of the cases that **'This is a classic textbook case of, how not to draft**

a plaint, which should be taught in law colleges and to young lawyers so that such bloopers in drafting of pleadings, damaging to one's own client, are avoided is fully applicable to the present case.

37. The plaintiffs filed this suit on 28th May, 2021 in which the Registry raised an objection to the maintainability of the suit. The plaintiffs, instead of explaining how the suit is maintainable, requested the Registry to list the suit as it is with defects and the plaintiffs undertook to bear *the cost and consequences* of the same, whereupon the Registry listed this matter, subject to objections, before this Court.

38. The entire suit filed by the plaintiffs is under Section 91 of the Code of Civil Procedure read with Order XXVII-A and Order I Rule 8 of the Code of Civil Procedure. However, no application was filed along with this suit to seek the leave of this Court to institute this suit.

39. On 31st May, 2021, the plaintiffs filed two applications namely I.A. Nos. 7001/2021 and 7002/2021 seeking leave to sue under Section 91(1)(b) of the Code of Civil Procedure and Order I Rule 8 of the Code of Civil Procedure. Although the plaint is not based on any special damage suffered by plaintiffs by EMF radiation caused by cellular telecommunication technology, the plaintiffs have attempted to set up a new plea in I.A. Nos. 7001/2021 and 7002/2021 that the plaintiffs have been advised that they suffered special damages because of EMF radiation caused by cellular telecommunication technology.

Conclusion

40. I.A. Nos. 6909/2021, 7001/2021 and 7002/2021 are dismissed. However, I.A. No. 6905/2021 is partially allowed and the plaintiffs are directed to deposit the deficit Court-fees of Rs.1,95,594/- within one week, failing which the Registry shall recover the Court-fees from the plaintiffs. Consequently, the suit is also dismissed. All other applications are disposed of.

41. The plaintiffs have abused and misused the process of law which has resulted in waste of judicial time. The cost of Rs.20 lakhs is imposed on the plaintiffs. The plaintiffs are directed to deposit the cost of Rs.20 lakhs with Delhi State Legal Services Authority (DSLISA) within one week. If the cost is not deposited within one week, DSLISA shall recover the same from the plaintiffs in accordance with law. DSLISA shall utilize this cost for the cause of the victims of road accidents.

42. If any proceedings are instituted by the Plaintiffs without the deposit of the deficient Court-fees of Rs.1,95,594/- and the cost of Rs.20 lakhs, the Registry shall place the copy of this judgment before the concerned Court in those proceedings.

43. It appears that the plaintiffs have filed this suit to gain publicity which is clear from the fact that plaintiff No.1 circulated the video conferencing link of this Court on her social media accounts, which resulted in the repeated disruption of the Court proceedings.

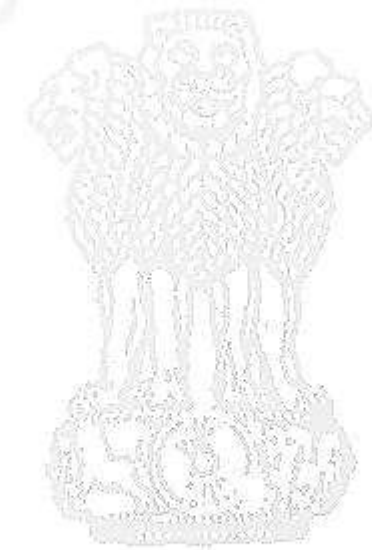
44. During the course of the hearing of this suit, the Court proceedings were disrupted thrice by the unknown miscreants who continued the disruptions despite repeated warnings. Issue show

cause notice to the persons who disrupted the Court proceedings as to why the proceedings for contempt of Court be not initiated against them. The Delhi Police shall identify the persons and serve the notice on them.

45. List for reporting compliance before Joint Registrar on 05th July, 2021.

JUNE 4, 2021
ds/ak

J.R. MIDHA, J.



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