

IN THE COURT OF X ADDITIONAL DISTRICT AND SESSIONS
JUDGE, TIRUPATI.

Present: **Sri V. Sreenivasa Siva Ram,**
X Additional District & Sessions Judge,
Tirupati.

Friday, the 12th day of August, 2022

I.A.No. 01 of 2022
O.S.NO. 44 OF 2021

Between:

1, Sri. Koganti Venkata Seshagiri Rao (Publisher), Office at Thukivakam Village and Post, Renigunta Mandal, Chittoor District.

2. Sri K. Srinivas (Editor), Amoda Publications Private Limited, Andhra Jyothi Buildings S.No.717/B/5, Thukivakam Village and Post, Renigunta Mandal, Chittoor District.

3. Srivemuri Radha Krishna, Managing Director, Amoda Publications Private Limited, Plot No.76, Ashwani Lay-out, Huda Heights Road No.70, Jubilee Hills, Hyderabad. 5000-033.

4. M/s Amoda Publications Private Limited, Represented by its Managing Director, Sri Vemuri Radha Krishna, Huda Heights Road No.70, Jubilee Hills, Hyderabad.

5. Andhra Jyothi Telugu Daily News Paper, Represented by its Chief Editor, Thukivakam Village and Post, Amoda Publications Private Limited Renigunta Mandal, Chittoor District.

. Petitioners/Defendants.

And:

Tirumala Tirupati Devasthanam (TTD), Represented by its Executive Officer, TTD Administrative Building, K.T. Road, Tirupati – 517-501, Andhra Pradesh.

..Respondent/Plaintiff

This petition came before me on 28-04-2022 for hearing in the presence of Sri K. Kranthi Chaitanya, Advocate for

Petitioner/Defendant and of Sri. S. Subramanya Swamy, for the respondent/Plaintiff and upon hearing arguments, perusing the record and having considered the matter, this Court delivered the following:-

ORDER

1) This is a petition under Section 151 CPC r/w Section 32 of Advocates Act to revoke the permission accorded to Mr. Subramanya Swamy for appearing in this case through the order dated 01-05-2021 in I.A.No.227 of 2021.

2) The brief facts of the petition are that the petitioner herein is the second defendant in the suit and that the respondent/plaintiff has instituted a suit for defamation against the Petitioners/defendants and at the time of filing of the suit, the respondent/plaintiff filed a petition under Section 32 of Advocates Act, seeking permission of the Hon'ble court for appearance of Mr. Subramanian Swamy for representing the respondent/plaintiff in this case and the said petition i.e I.A.No.227 of 2021 dated 01-05-2021 was allowed. After coming to know of the same, the petitioners/defendants filed Vakalath and obtained certified copy of the petition and orders which was passed in their absence and that the order is beyond the scope of Section 32 of Advocates Act and Mr. Subramanya Swamy is not entitled to represent the plaintiff institution under sec.32 of Advocates Act as he has a motive and stand on the subject and issues involved in this case and Mr.Subramanian Swamy has a

personal interest in the subject matter. After getting the permission to represent the respondent/plaintiff in this case, Mr. Subramanya Swamy assumes the role of an Advocate due to which the code of conduct under Advocates Act applies to Mr. Subramanian Swamy and he is misusing and misinterpreting the said permission accorded by this Hon'ble Court and the permission is the discretionary power of the Court and the permission granted by the court can be revoked at any time.

3) At the time of granting of the permission the the Hon'ble court has not taken into consideration the scope and ambit of section 32 of Advocates Act and as per the Judgment of the apex court in Harishankar Rastogi -v-s Girdhari Sharma AIR 1978 SC 1019, "A private person, who is not advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact, the Court may, even after grant of permission, withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission".

4) As per settled law that, if a party to the proceedings is unable to engage an advocate, then the court can permit a

party to be represented by an non-advocate keeping in view of the need of representation to such party in the proceedings. In the instant case the suit is filed by the plaintiff institution for damages of Rs.100 crores by paying a court fee of more than Rupees One crore and the plaintiff institution is the richest religious institution in the world and as such the respondent institution can engage eminent advocates of its choice. In such case they cannot seek permission to be represented by a non-advocate/ private person, though he may have legal knowledge and capacity to represent before the court of law. If that would be the case, in many instances the parties can appoint non-advocates of their choice, which is not permissible as per Advocates Act and as such the permission accorded to Mr. Subramanian Swamy is totally against the scope and ambit of Section 32 of the Advocate Act.

5) As per Section 32 of Advocates Act, the plaintiff who intends to seek permission to engage non-advocate to represent him, has to appear before the court and seek its permission. A non-advocate can represent the plaintiff/party only after the permission is granted. In this case Mr.Subramanya Swamy signed the plaint even before permission was accorded. In fact Mr. Subramanya Swamy himself and argued and sought permission to represent the plaintiff, which is contrary to Section 32 of the Advocates Act.

6) Mr. Subramanya Swamy has personal interest and motive in the present case and the Court should not permit such persons to make use of the provisions of law which are meant for welfare of a litigant public. In the press meeting Mr. Subramanya Swamy categorically claimed personal interest and in the affidavit filed in the petition under Section 32 of the advocates Act, Mr. Subramanya Swamy has mentioned that he has filed Writ Petition before the Hon'ble High Court of A.P seeking speedy investigation in a crime registered against the petitioners with respect to defamation under criminal law and as such Mr. Subramanya Swamy has personal interest in the subject matter.

7) As permission was accorded to Mr. Subramanya Swamy under Section 32 of the Advocates Act, he is deemed to be an advocate for all practical purpose and the Code of Conduct under the advocates Act will apply and he has violated the code of conducted stipulated by the Bar council of India as he has given interviews to the press at the time of filing of the suit and also on subsequent occasions, in which he made a personal allegations against the defendant newspaper attributing some motives which are in defamatory and though attributions are as follows:-

‘Andhra Jyothi thinks that they got the support of Mr.Chandra Babu Naidu. The Chandra babu Naidu has no support at all’. It is not true, which is being

propagated. Mr. Chandra Babu Naidu is behind many of these actions. It is only to provoke Hindu people, to raise against the Jagan Government's nomination in T.T.D. (At Tirupati & Amaravathi on the occasion of filing of the case). "The articles and editorials shows that they likings Chandababu Naidu". We have said Andhra Jyothi a). apologize b). pay Rs.100 crores as damages". "The defeat of Andhra Jyothi will be happened within short time. I do not know how they are going to pay 100 crores. They can easily apologize." (at Tirupati on 29-12-2021). The above comments are clearly violations the rules of Bar Council of India made under section 49 1(c) of Advocates Act and as per rule 9 of section I: "An Advocate should not act or plead in any matter in which he himself is pecuniarily interested". The broader meaning of pecuniary interest includes all types of personal interests and motives.

8) As per rule 18: "An Advocate shall not, at any time, be a party to fomenting of litigation". In the present case, Mr. Subramanya Swamy is fomenting the litigation on his personal volition, by demanding apology from the petitioners/defendants and all these things clearly exposes he has personal motive in appearing on behalf of the plaintiff institution by taking advantage of the section 32 of Advocates Act, which is impermissible.

9) In the prayer seeking permission for appearance of Mr. Subramanian Swamy it is mentioned that he is assisted by M/S. Lakkaraju Associates rep by N. Padma Rao, Advocate Hyderabad and N. Ravindra, Advocate, Tirupati, which is the beyond the scope of Section 32 of the Advocates Act and the respondent/plaintiff is getting the services of an advocate, cannot seek permission to engage a non-advocate to represent his case. In the operative portion of the order, the Hon'ble court has permitted only Mr. Subramanian Swamy to appear on behalf of the respondent/plaintiff and contrary to the order, the the above said persons are trying to represent the plaintiff which is not permissible. In the previous adjournment when the petitioners counsel opposed the representation of others, then Mr. Subramanian has submitted that this Hon'ble Court has mentioned in the order that the petition is allowed as prayed for and the advocates, whose names are mentioned in the petition are also entitled represent the matter along with him, which contention is not as per law and Mr. Subramanian Swamy is misinterpreting the order and trying to exploit the provision of section 32 of Advocates Act, for his personal rights due to his personal interest. Hence, this petition.

10) The respondents/plaintiffs filed a counter stating that the averments of the petition are false, incorrect, unsubstantiated, unwarranted which are not maintainable on facts or on law. The preliminary submissions are as follows.

The practice & procedure adopted by this Hon'ble Court in I.A. No. 227 of 2021 in Order dated 01.05.2021 is in complete obedience, agreement and goodness in law laid down by the Hon'ble Supreme Court of India. That Hon'ble Supreme Court of India, while granting permission to the Private person in **Harishankar Rastogi Vs. Girdhari Sharma and Another [(1978) 2SCC1 65]** held: then: Nevertheless, it is open to a person, who is Party to proceedings, to get himself represented by a non-advocate in a particular instance or case....”

Furthermore, as a matter of procedure laid down by the Hon'ble Supreme Court of India in the afore mentioned case has held that:

“4..he must get the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion.....”

11) It is incorrect to state that the Permission granted to Dr. Subramanian Swamy is beyond the scope of Section 32 of the Advocates Act and also incorrect and misleading to say that “he is misusing and misinterpreting the said permission accorded by this Hon'ble Court”. The contents of the Paragraph No.2 and the quotes statements above are wrong and outside of the scope of the Defendants to file.

12) A plain reading of Section 32 of Advocates Act, 1961 is Clear, the permission is between the Court and the Plaintiff and no other person. Therefore, any affidavits at the instance of defendants should not be entertained. In this connection it is submitted, Hon'ble High Court of Judicature Andhra Pradesh in **Surender Raj Jaiswal & Others Vs. Smt. Vijaya Jaiswal [2008 (3) APLJ 286 (HC)]**, held:

“...-9...No_ doubt, it is always open for the Court to withdraw such permission but such permission cannot be withdrawn at the instance of the Petitioner herein as there is nothing on record to show that the general power of attorney holder has created an unhealthy atmosphere or indisciplined situation or exchanged words...” Therefore, such affidavit filed by the Defendants is contrary to law and not maintainable.

13) That this is not a Revision Court/Appellate Court where review of the Order dated 01.05.2021 in I.A No. 227 of 2021 can be entertained. Therefore, on this ground also the petition is not maintainable.

14) The para wise remarks of the respondent/ plaintiff which expand the preliminary submissions are to the effect that the permission accorded under sec.32 of Advocates Act is being misused is not correct and that the power to permit is the discretion of the courts and that prior permission came from the

party as the affidavit is in the name of Executive Officer of the Plaintiffs and under sec.32 of the Advocates Act there is no prohibition that in cases where the party is unable to engage an advocate in such cases only a non-advocate can represent a party. The grant of permission by the court is a matter between the court and the plaintiff and no other person has a role in the said proceedings.

15) W.P.(pil) number 70/2021 was instituted as a Public Interest Litigation seeking timely/speedy investigation guaranteed under Article 21 of the Constitution in FIR.No.534/2019, dated 14.12.2019 for the offences under sec.153-A and 295-A of IPC of East Police Station, Tirupathi and as per the FSL Report annexed with the affidavit, the word "Yesaiah" was not found in the image files recovered from the plaintiff and the said Writ Petition was disposed that the trial court shall proceed in the matter in accordance with law and that the trial schedule concluded as expeditiously as possible.

16) With respect to the averments about the statements made in the media the contents on the petition is misleading and the Dr.Subramanya Swamy has no personal interest and he is a public figure, active in Politics and Public Affairs and deeply concerned with the protection of Rule of Law and enforcement of statutory duties and he holds a Doctorate in Economics from Harvard University, USA and he also taught Economics at IIT Delhi and he is a Senior Politician, a Member of Parliament for

six terms, Senior Cabinet Minister including the Portfolio of Commerce, Law and Justice and other eminent positions.

17) Dr.Subramanya Swamy has instituted various cases some which are decided and some which are pending and a few of them are as follows:

i) Dr.Subramanya Swamy Vs. State of Tamil Nadu
2014 (5) SCC 75.

ii) Dr.Subramanya Swamy Vs. Dr. Manmohan Singh and another, 2012 (3) SCC, 64.

iii) Dr.Subramanya Swamy and others Vs. Raju, 2013 (10) SCC, 465.

iv) Dr.Subramanya Swamy Vs. Director, CBI.

v) Dr.Subramanya Swamy Vs. State of U.P.

vi) Dr.Subramanya Swamy Vs. Election Commission of India, 2013 (10) SCC 500.

vii) Dr.Subramanya Swamy Vs. Ramasethu Case
Public Interest litigation with respect to constitutionality of the place of worship (Special Provision) Act, 1991.

and prayed that the petition may be dismissed.

18) **Now the points for consideration are**

1) *what is the scope and ambit of Sec.32 of Advocates Act?*

2) *Whether Sec.32 of Advocates act applies to institutions, companies, trusts etc or is it restricted or confined to representation of an individual?*

- 3) *Whether permission accorded in IA.No. 227 of 2021 permitting S.Subramanya Swamy for prosecuting the matter on behalf of plaintiff without hearing the petitioners/defendants is legal and proper?*
- 4) *Whether the code of conduct under Advocates Act applies to S.Subramanya Swamy?*
- 5) *Whether the present petition amounts to an appeal or review over the order in IA.No. 227 of 2021 and whether it is maintainable?*

19) **POINT NO.1** : At the outset there is no dispute with respect to the following provisions of advocates act Sec 2 (a) “advocate” means an advocate entered in any roll under the provisions of this Act

Sec 2 (k) “roll” means a roll of advocates prepared and maintained under this Act;

Sec. 29. Advocates to be the only recognized class of persons entitled to practice law.—Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practice the profession of law, namely, advocates.

Sec.30. Right of advocates to practice.—Subject to the provisions of this Act, every advocate whose name is entered in the 3[State roll] shall be entitled as of right to practice throughout the territories to which this Act extends,—

- (i) in all courts including the Supreme Court;

(ii) before any tribunal or person legally authorized to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice.

Sec.33. Advocates alone entitled to practice.—Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under this Act.

20) In view of the above legal position, it is crystal clear that no body, except an advocate who is enrolled with the State Bar Council, can argue a case before the Hon'ble Supreme Court, High Court, Tribunal, Appellate Authority, Assessing Authority, or person, and cannot practice the profession of law either in litigious as well as non litigious matters.

21) However there is an exception to the above said provisions in the form of Sec.32 of advocates Act which is as follows:

Power of court to permit appearances in particular cases.—Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

22) The ambit and scope of the Sec.32 of Advocates act is clarified in the case of In **T.C. Mathai v. District & Sessions Judge, Thiruvananthapuram reported in 1999 SCC (3) 614** wherein it was held that

para 8 :The work in a court of law is a serious and responsible function. The primary duty of a criminal court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case, can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal court who becomes the pleader of the party. In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides.

Para 9. Legally qualified persons who are authorized to practice in the courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the court to appoint such persons to represent him in court. Section 30 of the Advocates Act confers a right on every advocate whose name is entered in the Roll of Advocates maintained by a State Bar Council to practice in all the courts in India including the Supreme Court. Section 33 says that no person shall be entitled to practice in any court unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. The Bar is one of the main wings of the system of justice. An advocate is the officer of the court and is hence accountable to the

court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

Para10. But if the person proposed to be appointed by the party is not such a qualified person, the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause [Section 2(q) of the Code] that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the court, is to enable the court to verify the level of equipment of such a person for pleading on behalf of the party concerned.

23) Another decision relied upon by both the counsels is in the case of **Harishankar Rastogi v. Girdhari Sharma, (1978) 2 SCC 165 : 1978 SCC (Cri) 168** at page 167 the Hon'ble supreme court held as follows:

Para 4. Having regard to this conspectus of considerations I hold that a private person, who is not an advocate, has no right to barge into court and claim to argue for a party. He must get the prior permission of the court, for which the motion must come from the party himself. It is open to the court to grant or withhold permission in its discretion. In fact, the court may, even after grant of permission, withdraw it halfway through if the representative proves himself reprehensible. The antecedents, the relationship,

the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission. In the present case I have noticed the petitioner and his friend who is to represent him, come together with mutual confidence. The party somehow has not shown sufficient confidence in advocates he has come by. This bodes ill for him. I should have suspected the association of the private person as having sinister implications of exploitation of a guileless party but suspicion by itself should not be the basis of a conclusion. Therefore, I think it right to give the party, who appears to be unable to represent his own case, an opportunity to present his grievance through his friend. That friend, judging by the note prepared and put in, seems to be familiar with law, although quacks can prove fatal friends. I grant the petitioner permission to be represented by a private person as prayed for, with the condition that if this latter proves unworthy, the permission will be withdrawn.

In Harishankar Rastogi v. Girdhari Sharma AIR 1978 SC 1019: (SCC p. 167, para 3)

“If the man who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the court may receive counter-productive service from him. Justice may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-informed or blackguardly or blockheadedly private representatives filing arguments at the court. Likewise, the party himself may suffer if his private representative deceives him or destroys his case by

mendacious or meaningless submissions and with no responsibility or respect for the court. Other situations, settings and disqualifications may be conceived of where grant of permission for a private person to represent another may be obstructive, even destructive of justice.”

24) Based on above legal position the learned counsel for petitioner contended that Dr.Subramanya Swamy is not an advocate and the respondent- institution is one of the richest temples in the world and that the respondent-institution can engage the best advocates of their choice and Dr.Subramanya Swamy may not be able to properly assist the court even though he may have legal knowledge.

25) On the other hand Dr.Subramanya Swamy contended that he was instrumental in filing a lot of public interest litigation's in various courts on different aspects and he has aptly assisted various courts and that in all the cases he was the petitioner and only in the case Ashram Bapu he has appeared as non advocate under Sec.32 of Advocates Act.

26) Therefore as seen from the above contentions and legal provisions and judgment law mentioned above Sec.32 is an exception which allows non advocates to prosecute the matter if he is able to assist the court in a proper manner and his *her antecedents are not of doubtful nature. In the instant case there is no dispute as to the integrity and character of Dr.Subramanya Swamy and also there is no dispute that Dr.Subramanya Swamy*

has aptly rendered valuable assistance to various courts throughout the country in various public interest litigations some of them which were refereed in the counter of the respondents/plaintiffs.

27) With respect to the modalities of Sec.32 it is undisputed fact that a motion has to be made by the party engaging an advocate. In the instant case admittedly the respondent-institution through its executive officer has filed IA.No.227/2021 and sought permission for prosecuting the case. In this regard the contention of the petitioner counsel that Dr.Subramanya Swamy even prior to the permission by the court has argued IA.No.227/2021 and as such the permission petition is liable for rejection has no basis as it is at the stage of hearing the court has an opportunity to assess the kind of assistance and quality of assistance it gets from a non advocate prosecuting the matter and therefore this contention has no merits.

28) Therefore in view of the above reasons stated above I find that the order in IA.No.227/2021 is within ambit and scope of Sec.32 of Advocates Act.

29) **POINT NO.2** : On this aspect in the case of Goa Antibiotics & Pharmaceuticals Ltd. Vs. R. K. Chawla & Anr, reported as 2011(15) SCC 449 the head note published is as follows:-

Advocates Act, 1961 — S. 32 — Discretion of court to allow non-advocates to argue person — Held, natural persons

can be permitted to argue their own case even if he is not an advocate — But non-advocates cannot be allowed to represent an artificial person like company or cooperative society or trust as in present case — Therefore, discretion under S. 32 was not allowed to the Manager to represent its company in court — However, leave was granted to the petitioner to engage a lawyer within four weeks' time to appear and argue on behalf of the company — Civil Procedure Code, 1908 — Or. 3 — Corporate Laws — Companies Acts, Rules and Company Law — Company Law — Legal representation of company — Persons competent.

30) A perusal of the head note indicates that non advocates cannot represent an artificial person like company or cooperative society or trust, and admittedly in the instant case the respondent-institution is a trust brought under the First Schedule 2 of the Act 30 of 1987. The Board of Trustees is constituted by members appointed by the government.

31) But on careful perusal of the judgment the Hon'ble supreme court held as follows

Para 4: Section 32 of the Act, however, vests discretion in the court, authority or person to permit any person who is not enrolled as an advocate to appear before the court and argue a particular case. Section 32 of the Act is not the right of a person (other than an enrolled advocate) to

appear and argue before the court but it is the discretion conferred by the Act on the court to permit anyone to appear in a particular case even though he is not enrolled as an advocate.

Para 5. In this case, an application for permission has been filed by Mr Vishnu Kerikar who wishes to appear and argue on behalf of the petitioner Goa Antibiotics & Pharmaceuticals Ltd. which is a company registered under the Companies Act, 1956. We are not inclined to exercise our discretion under Section 32 of the Act and hence we reject the said application. However, we grant the petitioner four weeks' time to engage a lawyer to appear and argue on behalf of the petitioner Company.

Para 6. We make it clear that as regards artificial persons like a company registered under the Companies Act, or a registered cooperative society, or a trust, neither the Director of the company nor member of the Managing Committee or office-bearer of the registered society or a trustee has a right to appear and argue on behalf of that entity, since that entity is distinct from its shareholders or office-bearers or Directors. However, it is the discretion of the court under Section 32 of the Act to permit such person to appear on behalf of that entity.

Para 7. There is a distinction between the right to appear on behalf of someone, which is only given to enrolled

lawyers, and the discretion in the court to permit a non-lawyer to appear before it. Under Sections 29 and 33 of the Act only those persons have a right to appear and argue before the court who are enrolled as an advocate while under Section 32 of the Act, a power is vested in the court to permit, in a particular case, a person other than an advocate to appear before it and argue the case. A power-of-attorney holder cannot, unless he is an enrolled lawyer, appear in court on behalf of anyone, unless, permitted by the court under Section 32 of the Act, though of course he may sign sale deeds, agreements, etc. and do other acts on behalf of someone else, unless prohibited by law.

32) Therefore on careful perusal of the above judgement the head note is misleading and the law laid down is that trustees cannot appear as non advocate except with the permission of the court under Sec.32 of Advocates Act.

33) Therefore in view of the above legal position it cannot be said that Sec.32 has no application with respect to companies, trust, etc. accordingly this point is answered.

34) **POINT NO.3:** On this aspect the major contention raised by the petitioners is that they were not given an opportunity to resist the application and behind their back permission was accorded to Dr. Subramanya Swamy to prosecute the matter as a non advocate which is not legal. The said contention is resisted by Dr. Subramanya Swamy on the

ground that it is within the discretion of the court to grant permission or not and there is no need to give notice to the other side and no such permission is contemplated.

35) In view of the rival contentions no doubt it is the discretion of the court to grant permission under Sec.32 of Advocates Act permitting a non advocate to prosecute the matter and it is settled aspect of law that discretion should be exercised in a judicious manner. At cost of repetition it is important to point out that criteria for exercising discretion is already referred above in short , the non advocate should be able to effectively assist the court, and that the character of the non advocate should not be of doubtful nature. Admittedly there is no dispute as per petitioners counsel about the capacity or character of Dr. Subramanya Swamy to assist the court and his character is unblemished. A perusal of Sec.32 does not contemplate a notice to the opposite party before deciding to grant permission or deny permission for a non advocate to appear in a matter. It is pertinent to observe that it is for the court to satisfy itself about the capacity and competency of a person to represent in a matter and render assistance, and there is no provision or procedure for the opposite party to appear and disprove or rebut the capacity or competency of a non advocate to represent in a matter. In simple terms it is for the court to exercise its discretion under Sec.32 of Advocates Act basing on material before it and on submissions by the non advocate and there is

no need of notice to the opposite party and hearing them as the matter is between the court and the plaintiff. Therefore this contention of the counsel for the petitioners has no basis and this point is answered in favour of the respondent/plaintiff.

36) **POINT NO.4:** On this aspect admittedly Dr.Subramanya Swamy is not an advocate within the meaning of Advocate under Advocates Act and the contention by implication he is deemed to be a advocate and that code of conduct applies to him and that he is appearing in a matter wherein he has a personal intrest and that he made statements in the media which show his inclination or affiliation to a political group which renders Dr. Subramanya Swamy incapable to prosecute the matter is not correct as the code of conduct of advocates cannot be applied to a non advocate and if this reasoning is accepted then by implication Dr. Subramanya Swamy can be deemed to be an advocate and if that is the situation then the present petition it self is not maintainable. Therefore as the said analogy is not proper and wrong the said contention of deemed application of code of conduct of advocates on Dr. Subramanya Swamy is not correct, and this plea of the petitioners fails and this point is answered in favour of the respondent/ plaintiff.

37) **POINT NO. 5 :** On this aspect, admittedly the petitioner has not preferred any appeal against the orders in I.A.No.227/2021 dated 01-05-2021 nor the petitioner has

preferred a revision or review of the order passed and the filing of the present petition indicates that the petitioner wants to make back door entry under the guise of exercise of inherent powers for review or recall of decision, which is not permissible in law. No doubt as laid down in the case of **Surender Raj Jaiswal and others -vs- Smt. Vijaya Jaiswal reported in 2003 (3) A.P.L.J. 286 (HC)**, it is always open for the Court to withdraw such permission. The said decision is not in dispute and the permission accorded can always be withdrawn if there is any material indicate that Dr. S. Subramanya Swamy has not been able to assist the Court effectively or he has been incapacitated and therefore when the essential conditions for withdrawing the permission are not present under the guise of recall or review, the said permission cannot be withdrawn and accordingly this point is answered in favour of the respondent/plaintiff.

38) In the result, the petition is dismissed.

Dictated to the Stenographer, after his transcription, corrected and pronounced by me in open court, this the 12th day of August, 2022.

X ADDITIONAL DISTRICT JUDGE,
TIRUPATI