

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**  
**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

**Gwalior, Dated :03/05/2019**

Shri K.K. Shrivastava, Advocate for petitioner.

Shri P.S. Raghuvanshi, Government Advocate for respondents no.1 to 6/State.

None for respondent no.7.

This petition under Article 226 of the Constitution of India

has been filed seeking the following reliefs:-

“(7.1) प्रतियाचिकाकर्तागणों को आदेशित/निर्देशित किया जावे कि माननीय व्यवहार न्यायाधीश वर्ग-2 दतिया के समक्ष संचालित वाद में विवादित भूमि के संबंध में घोषणा बावत प्रस्तुत वाद के निराकरण न होने के कारण याचिकाकर्ता के विरुद्ध जारी आदेशों, आदेश दिनांक 28.06.2018 (एनेकजर पी-13), आदेश दिनांक 23.08.2018 (एनेकजर पी-14), आदेश दिनांक 13.03.2019 (एनेकजर पी-1) निरस्तनीय किये जाने के आदेश पारित करें।

(7.2) प्रतियाचिकाकर्तागणों को आदेशित/निर्देशित किया जावे कि याचिकाकर्ता के विरुद्ध बिना कोई सूचना पत्र दिये याचिकाकर्ता के विरुद्ध जारी आदेश दिनांक 28.06.2018 (एनेकजर पी-13), आदेश दिनांक 23.08.2018 (एनेकजर पी-14), आदेश दिनांक 13.03.2019 (एनेकजर पी-1) निरस्तनीय किये जाने के आदेश पारित करें।

(7.3) प्रतियाचिकाकर्तागण को आदेशित किया जावे कि याचिकाकर्ता के द्वारा प्रस्तुत अपील/वाद के अंतिम निराकरण तक वर्तमान स्थल से बेदखल नहीं किये जाने के आदेश पारित कर यथास्थिति बनाये रखी जावे।

(7.4) यहकि प्रतियाचिकाकर्तागण को आदेशित किया जावे कि याचिकाकर्ता को 20-30 वर्षों से अधिक निवासरत होने के आधार पर विधि के नियमानुसार बेदखल नहीं किये जाने के आदेश पारित करें।

(7.5) अन्य कोई आदेश/निर्देश माननीय न्यायालय जो उचित समझे जारी किया जावे। ”

2. It is submitted by the counsel for the petitioner that the petitioner has filed a civil suit against the respondents which is pending before the Court of Civil Judge, Class-II Datia and an

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**  
**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

order of removal of encroachment was passed by Nazul Tahsildar by holding that the petitioner is an encroacher. The petitioner being aggrieved by the order of the Nazul Tahsildar had filed an appeal before the SDO, District Datia, which was dismissed by order dated 23/8/2018. Initially the respondents had issued warrant of arrest against the petitioner for not having removed the encroachment. Since the appeal filed by the petitioner was pending before Commissioner accordingly, this Court by order dated 6/10/2018 passed in Writ Petition No.23897/2018 observed as under:-

“Neither pleadings nor learned counsel for the petitioner is able to inform that any application for stay has been moved alongwith the said appeal before the Commissioner. Unless and until a prayer for stay is made before the appellate authority, the order of removal of encroachment, if not complied with, entitles the competent authority to take coercive steps under the Madhya Pradesh Land Revenue Code.

In view of above, no case for interference is made out and this petition is disposed of with liberty to the petitioner to move an appropriate application for stay before the appellate authority, which if moved within a period of ten days from today, shall be considered and decided on its own merits without being influenced by this order and of the fact of petitioner having approached this court.

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**  
**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

Till decision on the said application, if filed by the petitioner within ten days from today, no coercive steps be taken against the petitioner.”

3. It is submitted that since the order of the SDO dated 23/8/2018 was challenged by the petitioner and the appeal was pending before the Commissioner, Gwalior Division, Gwalior, therefore, he was directed to decide the application for stay on its own merits, however, as the application for stay was not decided, therefore, the petitioner filed another Writ Petition No.195/2019, by which the following order was passed:-

**“Gwalior dated 06.01.2019**

Shri K.K. Shrivastava, Advocate for the petitioner.

Shri Prakhar Dengula, Government Advocate for the respondents/State.

Shri Anmol Khedkar, learned counsel for the complainant.

Heard on the question of admission and interim relief.

In this petition under Article 226 of the Constitution of India, the petitioner has assailed the order dated 31/12/2018 (Annexure P/1), whereby, encroachment made by the petitioner is directed to be removed. The aforesaid action would be initiated on 07/01/2019 at 10 Am.

Learned counsel for the petitioner submits that the respondents could not have issued the impugned order inasmuch as this Court in W.P. No. 23897/2018 vide order dated 06/10/2018 had granted liberty to the petitioner

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

to move an appropriate application for stay before the appellate authority within a period of 10 days. The petitioner moved an application for stay within a period of 10 days from the date of order i.e. 06/10/2018, but without deciding the same, impugned order dated 31/12/2018 (Annexure P/1) has been issued. This Court had specifically mentioned in the order dated 06/10/2018 that till the decision of the said application, if filed by the petitioner within 10 days from the date of passing of the order, no coercive steps be taken against the petitioner. Learned counsel for the petitioner further submits that without deciding the application for stay, the respondents/authorities are bent upon to remove the encroachment, which cannot be done as the same amounts to contempt of the order dated 06/10/2018. The petitioner submits that till the application as directed by this Court is decided, the order dated 31/12/2018 (Annexure P/1) may not be given effect to.

On the other hand, learned State counsel for the respondents opposed the submissions made by the petitioner and submits that the order passed by this Court on 06/10/2018 in W.P. No. 23897/2018 relates to issuance of warrant for sending the petitioner to civil jail, against which, this Court had directed that no coercive action be taken against the petitioner till the decision of the said application, but has nothing to do with the proceedings under section 248 of M.P. Land Revenue Code, 1959 (for brevity, MPLRC).

Heard learned counsel for the parties.

On bare perusal of the order dated 06/10/2018 passed in W.P. No. 23897/2018, it is seen that the petitioner has already filed an appeal against the order dated 23/08/2018

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

passed under section 248 of MPLRC, but could not file an application for interim relief, therefore, this Court had granted liberty to the petitioner to file the same within 10 days and till then no coercive steps be taken against him. The respondents instead of deciding the application has issued the impugned order dated 31/12/2018 which could not have been done in view of the order dated 10/06/2018.

In these circumstances, the impugned order dated 31/12/2018 (Annexure P/1) is hereby set aside. However, the respondents are at liberty to first get the said application filed by the petitioner decided on merits in accordance with the directions issued by this Court in W.P. No. 23897/2018 vide order dated 06/10/2018 and thereafter are free to take action against the petitioner in accordance with law. The said application be decided within a period of 15 (fifteen) days from the date of receipt of certified copy of this order passed today.

Accordingly, the instant petition stands allowed to the extent indicated herein above.

Certified copy today.”

4. It is submitted by the counsel for the petitioner that it is clear that the order issuing arrest warrant was set aside by this Court in Writ Petition No.195/2019. Later on, the Commissioner, Gwalior Division, Gwalior has dismissed the appeal filed by the petitioner by impugned order dated 13/3/2019. IA No.1772/2019 has been filed stating that in execution of the arrest warrant the petitioner has been sent to civil jail for a period of six months

**THE HIGH COURT OF MADHYA PRADESH****W.P. No.5968/2019****Mukesh Kumar Ahirvar Vs. State of M.P. and others**

and, therefore, the petitioner may be directed to be released from the civil jail.

5. Heard learned counsel for the petitioner.

6. It appears that, earlier the petitioner was sent to civil jail for not having removed the encroachment and after undergoing the entire sentence of civil jail, he was released on 5/9/2018. Thereafter, the Revenue Inspector was sent on spot and it was found that the petitioner has not removed the encroachment and accordingly, by order dated 14/9/2018 it was directed that as the petitioner has once again encroached upon the land in question, therefore, the jail warrant be issued for undergoing the civil jail for a period of six months. It is the contention of the petitioner that this jail warrant was set aside by this Court by order dated 6/1/2019 passed in Writ Petition No.195/2019 and, therefore, now the petitioner cannot be sent to jail on the strength of the jail warrant which has already been set aside by this Court.

7. Since the petitioner had not annexed the copy of the writ petition No.195/2019, therefore, the record of writ petition No.195/2019 was called. After going through the record of the writ petition No.195/2019 as well as after going through the

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**  
**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

present writ petition and the documents annexed with the same, it is clear that the petitioner is guilty of suppressing material facts, as the factum of dismissal of his application under Order XXXIX Rule 1 and 2 of CPC as well as Miscellaneous Appeal has not been mentioned and thus on earlier occasion, he had succeeded in obtaining favourable order.

8. Similarly, the record of Writ Petition No.23897/2018 was called. I have gone through the writ petition and in the entire writ petition except by mentioning that the suit filed by the petitioner for declaration of title and permanent injunction is pending, there is no whisper with regard to the rejection of the application under Order XXXIX Rule 1 and 2 CPC as well as dismissal of his appeal. Thus, it is clear that the order dated 6/10/2018 passed in Writ Petition No.23897/2018 was also obtained by the petitioner by suppressing the material fact. Further, one Smt. Rajshri Ahirvar, who claims herself to be the Whistle Blower, has filed a petition for review on the ground that the order dated 6/10/2018 has been obtained by the petitioner by suppressing material facts and the said Review Petition has been registered as R.P. No.1723/2018. In the Review Petition by order dated 3/12/2018

**THE HIGH COURT OF MADHYA PRADESH****W.P. No.5968/2019****Mukesh Kumar Ahirvar Vs. State of M.P. and others**

this Court had directed for payment of process fee within a period of three days, otherwise the Review Petition shall stand dismissed and the office was also directed to reflect the name of Shri K.K. Shrivastava, as the counsel for the respondent. The notice of the said Review Petition has been served on the petitioner on 27/12/2018. Thus, the petitioner is also aware of the fact that Review Petition No.1723/2018 is pending against the order dated 6/10/2018 passed in Writ Petition No.23897/2018, but still there is no reference of the pendency of said Review Petition.

9. Be that as it may.

10. The petitioner was declared as an encroacher by the revenue authorities, therefore, he has filed a suit for declaration of his title and permanent injunction. The copy of the plaint is filed as Annexure P/2. It appears that the petitioner had filed an application under Order XXXIX Rule 1 and 2 CPC, however, nothing has been mentioned by the petitioner in the writ petition about the filing of the application for temporary injunction as well as about the outcome of the said application except by mentioning that “stay was rejected by Trial Court”. In the



**THE HIGH COURT OF MADHYA PRADESH****W.P. No.5968/2019****Mukesh Kumar Ahirvar Vs. State of M.P. and others**

meanwhile, the order of the revenue authorities was challenged by the petitioner and now by the impugned order dated 13/3/2019 passed by the Additional Commissioner, Gwalior Division, Gwalior the appeal filed by the petitioner against the order of the SDO has been dismissed. The present petition has been filed challenging the order dated 13/3/2019 passed by the Additional Commissioner, Gwalior Division, Gwalior. Since there was nothing in the writ petition to indicate that whether the petitioner had filed any application under Order XXXIX Rule 1 and 2 CPC and what happened to the said application, therefore, without granting any interim relief, this Court had issued notices. During the course of arguments it is accepted by the counsel for the petitioner that the petitioner had filed an application under Order XXXIX Rule 1 and 2 CPC before the trial court and the said application was dismissed by the trial court by order dated 26/10/2004. Being aggrieved by the said order passed by the trial court the petitioner had filed an appeal under Order XLIII Rule 1 CPC, which too was dismissed by the appellate court by order dated 6/7/2005.

11. When a specific question was put to the petitioner as to

**THE HIGH COURT OF MADHYA PRADESH****W.P. No.5968/2019****Mukesh Kumar Ahirvar Vs. State of M.P. and others**

why he had not disclosed the fact of dismissal of his application filed under Order XXXIX Rule 1 and 2 CPC as well as his appeal under Order XLIII Rule 1 CPC, then initially the counsel for the petitioner tried to submit that since the said orders have been placed on record by the respondent no.7, therefore, it cannot be said that there was any suppression on the part of the petitioner. The answer given by the counsel for the petitioner was shocking, therefore, this Court directed the petitioner to read out the entire writ petition and to point out that whether any specific averment has been made in the writ petition to the effect that the petitioner had filed an application under Order XXXIX Rule 1 and 2 CPC before the trial court and whether there is any reference to the outcome of the said application, then with great difficulties, the counsel for the petitioner admitted that he has not pleaded specifically in this regard. Thereafter, again the counsel for the petitioner was asked as to why he has not placed the said two orders on record, then he tried to divert the attention of this Court by saying that since in the impugned order there is a reference of rejection of application under Order XXXIX Rule 1 and 2 CPC, therefore, he did not file it. Thus, it is clear that there

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

is a deliberate suppression by the petitioner and by suppressing this fact that his application for temporary injunction was already dismissed and the appeal arising therefrom has already been dismissed, the petitioner has tried to obtain the order from this Court for the protection of his encroachment and in the past he had succeeded in obtaining the favourable order . This suppression on the part of the petitioner cannot be tolerated.

12. At this stage, it is submitted by the counsel for the petitioner that by IA No.1772/2019 the petitioner has prayed for release of the petitioner from civil jail because he has been sent to jail on the basis of the warrant of arrest, which has already been set aside by this Court in Writ Petition No.195/2019. Accordingly, this Court has gone through the record of Writ Petition Nos.23897/2018 and 195/2019. In Writ Petitions No.23897/2018 and 195/2019, there is again complete silence about dismissal of application filed by the petitioner under Order XXXIX Rule 1 and 2 CPC as well as dismissal of his appeal under Order XLIII Rule 1 (r) CPC. Thus, it is clear that even writ petitions No. 23897/2018 and 195/2019 were filed by suppressing the material facts. Furthermore, this Court by order

**THE HIGH COURT OF MADHYA PRADESH****W.P. No.5968/2019****Mukesh Kumar Ahirvar Vs. State of M.P. and others**

dated 6/1/2019 passed in Writ Petition No.195/2019 has quashed the order dated 31/12/2018 on the ground that this Court by order dated 6/11/2018 passed in Writ Petition No.23897/2018 had granted the liberty to the petitioner to move an appropriate application for stay before the appellate authority and during the pendency of the said stay application, the order dated 31/12/2018 has been issued. This Court has gone through the order dated 31/12/2018. By this order, the Nazul Tahsildar, Datia has written to the SDO (P), Datia for providing police protection for removing the encroachment. The order dated 14/9/2018 by which the arrest warrants were issued has not been set aside by this Court by its order dated 6/1/2019 passed in Writ Petition No.195/2019. Thus, the submission made by the counsel for the petitioner that since his arrest warrant has already been set aside, therefore, the petitioner cannot be arrested on the strength of the said arrest warrant, cannot be accepted, but on the contrary, it is clear that once again the petitioner has tried to mislead the Court.

13. The Supreme Court in the case of **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar** reported in (2004) 7 SCC 166 has held as under :

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case.....”

The Supreme Court in the case of **Dalip Singh v. State of**

**U.P.** reported in **(2010) 2 SCC 114** has held as under :

“4. In *Welcom Hotel v. State of A.P.* [(1983) 4 SCC 575 ] the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

5. In *G. Narayanaswamy Reddy v. Govt. of Karnataka* [(1991) 3 SCC 261] the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed: (SCC p. 263, para 2)

“2. ... Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions.”

6. In *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1] the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd. v. SBI* [(2007) 8 SCC 449] it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R. v. Kensington Income Tax Commissioners* [(1917) 1 KB 486 (CA)], and observed: (*Prestige Lights Ltd. case*, SCC p. 462, para 35)

In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

**8.** In *A.V. Papayya Sastry v. Govt. of A.P.* [(2007) 4 SCC 221] the Court held that Article 136 does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made the Supreme Court a regular court of appeal or a court of error. This Court only intervenes where justice, equity and good conscience require such intervention.

**9.** In *Sunil Poddar v. Union Bank of India* [(2008) 2 SCC 326] the Court held that while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct.

**10.** In *K.D. Sharma v. SAIL* [(2008) 12 SCC 481] the Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in *G. Jayashree v. Bhagwandas S. Patel*].”

The Supreme Court in the case of **Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society** reported in (2013) 11 SCC 531 has held as under :

***“Suppression of fact***

42. While dealing with the conduct of the parties, we may also notice the submission of the learned counsel for Respondent 1 to the effect that the petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2-5-2003 of the first application for extension of time filed by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the petitioners. It was submitted that in view of the suppression, special leave to appeal should not be granted to the petitioners.

43. The learned counsel for the petitioners submitted that no material facts have been withheld from this Court. It was submitted that while the order dated 2-5-2003 was undoubtedly not filed, its existence was not material in view of subsequent developments that had taken place. We cannot agree.

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention of the order dated 2-5-2003 in the order



**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.

45. We may only refer to two cases on this subject. In *Hari Narain v. Badri Das* stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows: (AIR p. 1560, para 9)

“9. ... It is of utmost importance that in making material statements and setting forth grounds in applications for special leave care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent.”

46. More recently, in *Ramjas Foundation v. Union of India* the case law on the subject was discussed. It was held that if a litigant does not come to the court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said: (SCC p. 51, para 21)

“21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty-bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.”

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof.”

The Supreme Court in the case of **Manohar Lal v.**

**Ugrasen**, reported in (2010) 11 SCC 557 has held as under:

“48. The present appellants had also not disclosed that land allotted to them falls in commercial area. When a person approaches a court of equity in exercise of its extraordinary jurisdiction under Articles 226/227 of the Constitution, he should approach the court not only with clean hands but also with clean mind,

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

clean heart and clean objective. “Equally, the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice.” Who seeks equity must do equity. The legal maxim “*Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem*”, means that it is a law of nature that one should not be enriched by the loss or injury to another. (Vide *Ramjas Foundation v. Union of India*, *K.R. Srinivas v. R.M. Premchand* and *Noorduddin v. Dr. K.L. Anand* at SCC p. 249, para 9.)

49. Similarly, in *Ramniklal N. Bhutta v. State of Maharashtra* this Court observed as under: (SCC p. 140, para 10)

“10. ... The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. ... the interests of justice and the public interest coalesce. They are very often one and the same. ... The courts have to weigh the public interest vis-à-vis the private interest while exercising ... any of their discretionary powers.”

(emphasis added)

50. In *Tilokchand Motichand v. H.B. Munshi*, *State of Haryana v. Karnal Distillery Co. Ltd.* and *Sabia Khan v. State of U.P.* this Court held that filing a totally misconceived petition amounts to abuse of the process of the court. Such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “*full and true disclosure of facts*”.

51. In *Abdul Rahman v. Prasony Bai*, *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar* and *Oswal Fats & Oils Ltd. v. Commr. (Admn.)* this

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

Court held that whenever the court comes to the conclusion that the process of the court is being abused, the court would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the courts to deter a litigant from abusing the process of the court by deceiving it.”

14. The manner in which the petitioner has repeatedly approached this Court by suppressing the material facts, this Court is of the considered opinion that the petitioner is required to be dealt with firmly. All the orders from this Court have been obtained by the petitioner by suppressing the material fact that his application for grant of temporary injunction has already been rejected by the trial court as well as the appeal has also been dismissed. Under these circumstances, this Court is of the *prima facie* opinion that this petition is liable to be dismissed with heavy cost in the light of the judgment passed by the Supreme Court in the case of **Messer Holdings Ltd. v. Shyam Madanmohan Ruia** reported in **(2016) 11 SCC 484**, wherein the Supreme Court has held as under:-

“49. This case should also serve as proof of the abuse of the discretionary jurisdiction of this Court under Article 136 by the rich and powerful in the name of a “fight for justice” at each and every interlocutory step of a suit. Enormous

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**

**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

amount of judicial time of this Court and two High Courts was spent on this litigation. Most of it is avoidable and could have been well spent on more deserving cases.

**50.** This Court in *Ramrameshwari Devi v. Nirmala Devi* observed at para 54: (SCC p. 268)

“54. While imposing costs we have to take into consideration pragmatic realities and be realistic as to what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter-affidavit, miscellaneous charges towards typing, photocopying, court fee, etc.”

**51.** We therefore, deem it appropriate to impose exemplary costs quantified at Rs 25,00,000 (Rupees twenty-five lakhs only) to be paid by each of the three parties i.e. GGL, MGG and the Ruias. The said amount is to be paid to the National Legal Services Authority as compensation for the loss of judicial time of this country and the same may be utilised by the National Legal Services Authority to fund poor litigants to pursue their claims before this Court in deserving cases.”

15. Therefore, the present petition is **dismissed** with a cost of **Rs.30,000/- (Rs. Thirty Thousand Only)** to be deposited by the petitioner in the account of Legal Aid Services Authority, Gwalior within a period of one month from today.

16. At this stage, it is submitted by the counsel for the

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**  
**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

petitioner that since the petitioner has already been arrested by the police in execution of the warrant of arrest issued by order dated 14/9/2018, therefore, it would not be possible for him to deposit the **cost of Rs.30,000/- within a period of one month from today.**

17. Considering the submissions made by the counsel for the petitioner, it is directed that the cost shall be deposited within one month from the date of release of the petitioner from the civil jail and the respondents are directed to immediately serve a copy of this order on the petitioner, in the jail.

18. Since, all previous orders from this Court were obtained by the petitioner by suppressing material facts, accordingly, this petition is **dismissed** with direction to the respondents to proceed for removal of encroachment as per law.

19. The office is directed to immediately send a copy of this order to the respondents and the respondents are directed to file their report regarding removal of encroachment within a period of two months. Generally, this Court would not have issued above mentioned direction, but after having come to a conclusion that order dated 16/1/2019 passed by this Court in Writ Petition

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No.5968/2019**  
**Mukesh Kumar Ahirvar Vs. State of M.P. and others**

No.195/2019 (by which the request for police force for removal of encroachment was set aside by this Court) as well as order dated 6/10/2018 passed in W.P. No.23897/2018 were obtained by concealing facts, therefore, this Court is left with no other option but to issue above mentioned direction.

20. The office is directed to **list this case under the caption “Direction Matters”**, for consideration of compliance report.

**Arun\***

**(G.S. Ahluwalia)**  
**Judge**