

**IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION  
[ORDER XLVIII]**

**CURATIVE PETITION NO. 44 OF 2022**

**In**

**REVIEW PETITION (C.) No. 704/2021**

**In**

**C.A. NO. 1599/2020**

[ARISING OUT OF THE ORDER DATED 20.07.2021 DISMISSING R. P. (C.) NO. 704 / 2021, WHEREIN THE JUDGMENT DATED 14.02.2020 ALLOWING C.A. NO. 1599/2020 WAS IMPUGNED]

**IN THE MATTER OF:**

M/S BHASKAR RAJU & BROTHERS & ANR. ... PETITIONERS

VERSUS

M/S DHARMARATNAKARA RAI

BAHADUR ARCOT NARAINSWAMY MUDALIAR

CHATTRAM & OTHER CHARITIES & ORS.

... RESPONDENTS

**PAPER BOOK**

FOR INDEX PLEASE SEE INSIDE

**ADVOCATE FOR THE CURATIVE PETITIONERS: DEBESH PANDA**

## RECORD OF PROCEEDINGS

| S.NO. | DATE OF RECORD OF PROCEEDINGS | PAGES |
|-------|-------------------------------|-------|
|-------|-------------------------------|-------|

**A**

**IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION**

**[ORDER XLVIII]**

**CURATIVE PETITION NO. \_\_\_\_\_ OF 2022**

**In**

**REVIEW PETITION (C.) No. 704/2021**

**In**

**C.A. NO. 1599/2020**

**IN THE MATTER OF:**

M/S BHASKAR RAJU & BROTHERS & ANR. ... PETITIONERS

VERSUS

M/S DHARMARATNAKARA RAI

BAHADUR ARCOT NARAINSWAMY MUDALIAR

CHATTRAM & OTHER CHARITIES & ORS.

... RESPONDENTS

**OFFICE REPORT ON LIMITATION**

1. The Petition is within Limitation.
2. The Petition is barred by time and there is delay of \_\_\_\_\_ days in filing the same against order dated and petition for Condonation of \_\_\_\_\_ delay has been filed.
3. There is delay of ..... days in re-filing the petition and petition for condonation of ..... days in refilling has been filed.

**BRANCH OFFICER**

Place: New Delhi  
Dated: 07.12.2022

## I N D E X

| S.NO. | PARTICULARS  | PAGES |
|-------|--|-------|
| 1.    | Office Report on Limitation  | A     |
| 2.    | Synopsis and List of Dates   | B –F  |
| 3.    | Final Impugned Order dated 20.07.2021 in R.P. (C.) No. 704/2021 passed by this Hon’ble Court | 1-2   |
| 4.    | Curative Petition with Affidavit   | 3 –21 |
| 5.    | Certificate of Senior Advocate   | 22-25 |

**SYNOPSIS**

Petitioners seek kind indulgence of this Hon'ble Court in preferring the instant curative petition against the order dated 20.07.2021 whereby this Hon'ble Court was pleased to reject the review petition bearing R.P. (C.) 704 / 2021 by way of a non-speaking order, thereby upholding the judgment dated 14.02.2020 in Civil Appeal No. 1599 of 2020.

In review petition, Petitioners relied upon *M/s N.N. Global Mercantile Pvt. Ltd. v. M/s Indo Unique Flame Ltd. & Ors.*, C.A. No. 3802-3803/2020 to submit that a co-ordinate bench of this Hon'ble Court had declared the judgment in *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66 as bad and not the correct position of law, and therefore, reliance upon *SMS Tea Estates (supra)* rendered the impugned judgment dated 14.02.2020 also bad in law.

Inasmuch as the review petition has been dismissed by a non-speaking order, the Petitioners submit that interference in curative jurisdiction is merited in the larger interests of justice in the present case, as the Petitioners have been non-suited by relying on a decision of this Hon'ble Court, whose correctness is squarely under challenge and is presently under consideration before a larger bench. In effect, merely on account of non-payment of stamp duty on a commercial contract, the arbitration agreement therein had been invalidated and rendered non-existent in law, and thus un-enforceable.

Hence, the present curative petition.

**LIST OF DATES**

- 1995 Respondent No.1 Trust (which is a charitable trust engaged in public charitable activities), sought to develop and run a multi-purpose community hall with office complex on a property belonging to the Respondent No.1. After negotiations, Petitioner No.1 offered that the Samadhi of the founder of the Trust located on the subject property would be renovated.
- 31.05.1996 Purported first “Lease Deed” was executed between Petitioner No.1 and Respondent No.1, for a period of 38 years with respect to the subject property. However, the same was never registered and neither was possession handed over to Petitioner no. 1.
- 12.03.1997 Another purported “Lease Deed” was executed between Petitioner No.1 and Respondent No.1 for a period of 38 years containing similar terms and conditions as in the erstwhile document. Both the purported “lease deeds” were not registered. The document is titled as “Lease Deed” but the same is an “agreement to lease” because the possession was never handed over to the Petitioner no.1 and further, it was uncertain even if to be given at a future date. According to clause 11 contained therein, Petitioner was required to evict all the incumbent tenants and then get vacant possession of the subject property.

## D

- 1997-2010 Petitioner no. 1 filed four civil suits (being O.S. Nos. 10878/1997, 10879/1997, 10880/1997, 8079/1998) against the incumbent tenants and in return defended two civil suits (being O.S. Nos. 2112/1998, 10632/1997) in order to secure the vacant possession of the subject property. The last person to be evicted from the subject property was one Mr. T. Mohammad Unni who filed appeal bearing RFA No. 1948/2005 arising out of O.S. No. 8079/1998 before the Hon'ble Karnataka High Court which got dismissed vide order dated 17.03.2010 and thereafter, he vacated on 03.11.2010
- 2010 Respondents filed O.S. No. 8952/2010 before the City Civil Court at Bengaluru against the Petitioners seeking relief of permanent injunction from interfering with the peaceful possession over the property enjoyed by Respondent no. 1.
- 18.06.2011 Petitioner Nos. 1 and 2 filed written statement in the suit.
- 06.09.2013 Petitioners filed Civil Misc. Petition No. 167/2013 before the Hon'ble Karnataka High Court at Bengaluru under Section 11 of the Arbitration and Conciliation Act, 1996.
- 25.09.2014 Registrar (Judicial) of the High Court of Karnataka submitted a report pointing out that the document of 1997 executed/entered into between the parties was a

“lease deed” and not an “agreement to lease” and passed an order directing Petitioners nos. 1 and 2 to pay deficit stamp duty and penalty of INR 1,01,56,388/- (Rupees one crore one lakh fifty six thousand three hundred and eighty eight only).

01.12.2014 Hon’ble High Court appointed Justice (Retd.) L. Sreenivasa Reddy as the arbitrator to resolve disputes between the parties arising out of purported “lease deed” dated 12.03.1997.

08.01.2015 Petitioner filed Memo before the Ld. Trial Court in O.S. No. 8952/2010 stating that the matter had been referred to arbitration.

02.03.2015 However, the suit bearing O.S. No. 8952/2010 was decreed against the Petitioners but the said memo filed by the Petitioners was also placed on record which got mentioned in para 15 of the judgment dated 02.03.2015 in O.S. No. 8952/2010.

2015 Proceedings commenced pursuant to appointment of arbitrator in CMP No. 167/2013. Respondents filed their Reply purely on the merits of the case against the Claim submitted by the Claimants/Petitioners before the Ld. Arbitrator without raising any preliminary objection against the appointment/jurisdiction of the Ld. Arbitrator. However, Respondents preferred Special Leave Petition (C) No. 7088/2015 before this Hon’ble Court impugning the order dated 01.12.2014 passed by the Hon’ble Karnataka High Court at



Bengaluru in Civil Misc. Petition No. 167/2013.

- 14.02.2020 Impugned judgment was passed by this Hon'ble Court in Civil Appeal No. 1599 of 2020 arising out of Special Leave Petition (C) No. 7088/2015 contrary to the change in position of law as well judgment of co-ordinate Bench of this Hon'ble Court.
- 17.03.2020 Application for recall filed by Petitioners before this Hon'ble Court, being M.A.No.1041/2020 in C.A. No. 1599/2020.
- 08.06.2020 Order passed by this Hon'ble Court in M.A.No.1041/2020 in C.A. No. 1599/2020, whereby the Appellant's willingness to deposit the deficit stamp duty and the amount of penalty levied, within four weeks, was recorded, and subject to which, Notice was issued on the said Application. The said sum of Rs. 1,01,56,388/-(Rupees One crore One lakh fifty-six thousand Three hundred and Eighty-eight only), was deposited forthwith with the Registry of this Hon'ble Court.
- 17.08.2020 Application for recall dismissed by this Hon'ble Court.
- 15.02.2021 Review Petition, being R. P. (C.) 704 / 2021, filed by Petitioners before this Hon'ble Court.
- 20.07.2021 Order passed by this Hon'ble Court dismissing the Review Petition.
- 07.12.2022 Hence, the present Curative Petition.

IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION

REVIEW PETITION (CIVIL) Diary No.4375/2021 IN CIVIL APPEAL  
NO.1599/2020

M/S. BHASKAR RAJU & BROTHERS & ANR.

Petitioner(s)

VERSUS

M/S. DHARMARATNAKARA RAI BAHADUR ARCOT  
NARAINSWAMY MUDALIAR CHATTRAM OTHER CHARITIES  
& ORS.

Respondent(s)

O R D E R

This review petition has been filed against Judgment dated 14<sup>th</sup> February, 2020 whereby the Appeal filed by the respondents – herein was allowed

There has been an inordinate delay of 337 days in filing the Review Petition which has not been satisfactorily explained by the petitioners.

Even on merits, we see no case for review of Judgment dated 14<sup>th</sup> February, 2020 is made out.

Consequently, the review petition is dismissed on the ground of delay as well as on merits.

.....CJI  
(N.V. RAMANA)

.....J  
(B.R. GAVAI)

.....J  
(SURYA KANT)

NEW DELHI;  
20TH JULY, 2021.

//TRUE COPY//

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

REVIEW PETITION (CIVIL) Diary No(s). 4375/2021 IN C.A. No.1599/2020

M/S. BHASKAR RAJU & BROTHERS & ANR.

Petitioner(s)

VERSUS

M/S. DHARMARATNAKARA RAI BAHADUR ARCOT NARAINSWAMY  
MUDALIAR CHATTRAM OTHER CHARITIES & ORS.

Respondent(s)

(IA No. 51837/2021 - CONDONATION OF DELAY IN FILING SLP)

Date : 20-07-2021 This matter was circulated today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE SURYA KANT

By Circulation

UPON perusing papers the Court made the following  
O R D E R

The Review Petition is dismissed on the ground of delay as well as on merits in terms of the signed order.

(VISHAL ANAND)  
ASTT. REGISTRAR-cum-PS

(Signed Order is placed on the file)

(R.S. NARAYANAN)  
COURT MASTER (NSH)

//TRUE COPY//

**IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION  
[ORDER XLVIII]**

**CURATIVE PETITION NO.            /2022  
ARISING OUT OF  
REVIEW PETITION (CIVIL) NO. 704/2021  
ARISING OUT OF  
C.A. NO. 1599/2020**

[ARISING OUT OF THE ORDER DATED 20.07.2021 DISMISSING R.P. (C.) NO. 704/2021, WHEREIN THE JUDGMENT DATED 14.02.2020 ALLOWING C.A. NO. 1599/2020 WAS IMPUGNED]

**IN THE MATTER OF:**

**Position of Parties**

|  | <b>In the<br/>Civil<br/>Appeal</b> | <b>In the<br/>Review<br/>Petition</b> | <b>In the<br/>Curative<br/>Petition</b> |
|--|------------------------------------|---------------------------------------|---|
| 1. M/s Bhaskar Raju & Brothers, Off: Coles Corner, 38, Coles Road, Bangalore -5 By its Partner S K Bhaskar Raju                                  | Respondent<br>No.1                 | Petitioner<br>No.1                    | Petitioner<br>No.1                      |
| 2. M/s B & B Infrastructure Ltd.,<br>Off: 37, 4 <sup>th</sup> cross, Aga Abbas Ali Road, Ulsoor, Bangalore -42, By its director S K Bhaskar Raju | Respondent<br>No.2                 | Petitioner<br>No.2                    | Petitioner<br>No.2                      |

**Versus**

- |    |   |                            |                             |                             |
|----|---|----------------------------|-----------------------------|-----------------------------|
| 1. | <p>M/S<br/>DHARMARATNAKARA<br/>RAI<br/>BAHADUR ARCOT<br/>NARAINSWAMY<br/>MUDALIAR<br/>CHATTRAM &amp; OTHER<br/>CHARITIES, 68, St. John's<br/>Road, Bangalore-1, B its<br/>Hon. Secretary / 3<sup>rd</sup><br/>Respondent</p>                        | <p>Petitioner<br/>No.1</p> | <p>Respondent<br/>No. 1</p> | <p>Respondent<br/>No. 1</p> |
| 2. | <p>Sri A K Madhava Narrain,<br/>President, M/S<br/>DHARMARATNAKARA<br/>RAI<br/>BAHADUR ARCOT<br/>NARAINSWAMY<br/>MUDALIAR<br/>CHATTRAM &amp; OTHER<br/>CHARITIES, 555, 16<sup>th</sup> cross,<br/>Indiranagar, Bangalore -38</p>                    | <p>Petitioner<br/>No.2</p> | <p>Respondent<br/>No.2</p>  | <p>Respondent<br/>No.2</p>  |
| 3. | <p>Sri AK Niranjan Narrain,<br/>Honorary Secretary, M/S<br/>DHARMARATNAKARA<br/>RAI<br/>BAHADUR ARCOT<br/>NARAINSWAMY<br/>MUDALIAR<br/>CHATTRAM &amp; OTHER<br/>CHARITIES, Apt. 001,<br/>Farah Plaza Apartments, 31,<br/>Cubbon Road, Bangalore</p> | <p>Petitioner<br/>No.3</p> | <p>Respondent<br/>No.3</p>  | <p>Respondent<br/>No.3</p>  |

- |    |  |                    |                    |                    |
|----|--|--------------------|--------------------|--------------------|
| 4. | AK Sridhar Narrain, Trustee,<br>M/S<br>DHARMARATNAKARA<br>RAI<br>BAHADUR ARCOT<br>NARAINSWAMY<br>MUDALIAR<br>CHATTRAM & OTHER<br>CHARITIES, 122/3, Infantry<br>Road, Bangalore                             | Petitioner<br>No.4 | Respondent<br>No.4 | Respondent<br>No.4 |
| 5. | Sri T V Annaswamy,<br>Trustee, M/S<br>DHARMARATNAKARA<br>RAI<br>BAHADUR ARCOT<br>NARAINSWAMY<br>MUDALIAR<br>CHATTRAM & OTHER<br>CHARITIES, 1, Arcot Road,<br>Kingston Street, Richnmond<br>Town, Bangalore | Petitioner<br>No.5 | Respondent<br>No.5 | Respondent<br>No.5 |
| 6. | Sri A K Satya Narrain,<br>Trustee, M/S<br>DHARMARATNAKARA<br>RAI<br>BAHADUR ARCOT<br>NARAINSWAMY<br>MUDALIAR<br>CHATTRAM & OTHER<br>CHARITIES, 6, Farah Plaza<br>Apartments, 31, Cubbon<br>Road, Bangalore | Petitioner<br>No.6 | Respondent<br>No.6 | Respondent<br>No.6 |
| 7. | Sri A K Madhavakrishnan,   | Petitioner         | Respondent         | Respondent         |

Trustee, M/S  
DHARMARATNAKARA  
RAI  
BAHADUR ARCOT  
NARAINSWAMY  
MUDALIAR  
CHATTRAM & OTHER  
CHARITIES, Sparrows Nest,  
64, St. John's Road,  
Bangalore -42

**All Respondents are contesting Respondents**

**CURATIVE PETITION UNDER ARTICLE 142 OF THE  
CONSTITUTION OF INDIA READ WITH RULE XLVIII OF THE  
SUPREME COURT RULES, 2013**

To

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE CURATIVE PETITION  
OF THE PETITIONER HEREIN

**MOST RESPECTFULLY SHOWETH:**

1. That petitioners are constrained to invoke the curative jurisdiction of this Hon'ble Court, being aggrieved by the fact that the judgment dated February 14, 2020 of this Hon'ble Court in C.A. No.

1599/2020, was not interfered with in a review petition preferred by the Petitioner herein being R.P. (C.) 704/2021, and by a non-speaking order dated July 20, 2021 it was summarily dismissed, even though the “...*circumstances incorporated in the review or curative petition are such that they must inevitably shake public confidence in the integrity of the administration of justice if the judgment or order is allowed to stand....*” as will be more fully detailed, in this petition.

It is submitted that the grounds set out in this curative petition fall within the parameters prescribed in Paragraph 196(iii) of the seminal judgement of this Hon’ble Court in *Indian Council for Enviro Legal Action v. Union of India*, (2011) 8 SCC 161, whereby taking into consideration its own decision in *Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388, this Hon’ble Court had been pleased to hold as under:

*“196. On consideration of pleadings and relevant judgments of the various courts, following irresistible conclusions emerge:*

*(i) The judgment of the Apex Court has great sanctity and unless there are extremely compelling, overriding and exceptional circumstances, the judgment of the Apex Court should not be disturbed particularly in a*



*case where review and curative petitions have already been dismissed.*

*(ii) The exception to this general rule is where in the proceedings the Judge concerned failed to disclose the connection with the subject-matter or the parties giving scope of an apprehension of bias and the judgment adversely affected the petitioner.*

*(iii) The other exception to the rule is where the circumstances incorporated in the review or curative petition are such that they must inevitably shake public confidence in the integrity of the administration of justice if the judgment or order is allowed to stand.”*

(emphasis supplied)

2. That it is a matter of record that this Hon’ble Court allowed C.A. No. 1499/2020 and granted relief against the Curative Petitioner herein, by its judgement dated February 14, 2020, by subscribing to the view taken by this Hon’ble Court in its judgement in *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66. The relevant passages from paragraphs 19 and 20 of the impugned judgment dated February 14, 2020 whereby it was held so, are excerpted below:

*“...19. The issue is no longer res integra. This Court in the case of SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited had*

*occasion to consider the provisions which are in pari materia with the provisions of the Karnataka Stamp Act, 1957....”*

[...]

*“20. [...] [...] [...] It has further been held, that if the Court comes to the conclusion, that the instrument is not properly stamped, it should be impounded and dealt with, in the manner specified in Section 38 of the Stamp Act, 1899. **It has also been held, that the Court cannot act upon such a document or the arbitration clause therein** [...] [...] [...] In this view of the matter, we are of the considered view, that in view of the law laid down in the case of **SMS Tea Estates Private Limited** (supra), that the lease deed containing the arbitration clause which is required to be duly stamped, was not sufficiently stamped and though the Registrar (Judicial) had directed the respondent Nos. 1 and 2 to pay deficit stamp duty and penalty of Rs.1,01,56,388/- (Rupees One crore One lakh fifty-six thousand Three hundred and Eighty-eight only), the respondents failed to do so, the High Court has erred in relying on the said lease dated 12.3.1997.*

3. That this judgement thus wholly invalidated the arbitration clause in the contract between the parties and rendered it non-existent in the eyes of law, merely on account of non-payment of stamp duty on the

said contract by the parties, that too at a stage when the arbitrator was appointed, and the Statement of Claims was also duly lodged.

4. That it is also a matter of record that the Petitioners thereafter also *bona fide*, deposited the deficit stamp duty and the penalty of a sum of Rs. 1,01,56,388/- (Rupees One crore One lakh fifty-six thousand Three hundred and Eighty-eight only) before the Registry of this Hon'ble Court, on June 08, 2020, pursuant to orders of this Hon'ble Court, in M.A. No. 1041/2020 in CA No. 1599/2020, without prejudice to their rights, as they have always *bona fide*, been keen on prosecuting their claims and disputes through the mechanism of arbitration. As is clearly evident, the existence and validity of the arbitration clause *inter-parties* is not in dispute in this case. Unfortunately, M.A. No. 1041/2020 in CA No. 1599/2020 having been dismissed by an order dated August 17, 2020, the said amount deposited in the Registry of this Hon'ble Court has been returned to them.
5. That the Petitioners nevertheless sought review and reconsideration of the judgement dated February 14, 2020 in C.A. No. 1499/2020 by filing R.P. (C.) 4375/2021 and inviting the attention of this Hon'ble Court to the error apparent on the face of the record whereby merely

on account of non-payment of stamp duty on a commercial contract, the arbitration agreement therein had been invalidated and rendered non-existent in law, and thus un-enforceable.

6. That in the same review petition, the attention of this Hon'ble Court was also invited to the fact that a co-ordinate bench of this Hon'ble Court by a judgement dated January 11, 2021, in *M/s N.N. Global Mercantile Pvt. Ltd. v. M/s Indo Unique Flame Ltd. & Ors.*, C.A. No. 3802-3803/2020, had already held that is not the correct position in law, with specific reference to the judgement in *SMS Tea Estates (supra)* which had been relied upon in the judgement in their case. In the interests of completeness, the exact passage from *N.N. Global (supra)*, is reproduced below:

*“...12. We are of the considered view that the finding in SMS Tea Estates and Garware that the **non-payment of stamp duty on the commercial contract would invalidate even the arbitration agreement, and render it non-existent in law, and un-enforceable, is not the correct position in law.***

*In view of the finding in paragraph 92 of the judgment in Vidya Drolia by a co-ordinate bench, which has affirmed the judgment in Garware, the aforesaid issue is required to be authoritatively settled by a Constitution bench of this Court.*

*We consider it appropriate to refer the following issue, to be authoritatively settled by a Constitution bench of five judges of this Court. Whether the statutory bar contained in Section 35 of the Indian Stamp Act, 1899 applicable to instruments chargeable to Stamp Duty under Section 3 read with the Schedule to the Act, would also render the arbitration agreement contained in such an instrument, which is not chargeable to payment of stamp duty, as being non-existent, unenforceable, or invalid, pending payment of stamp duty on the substantive contract / instrument ?*

*In light of the same, the Registry may place this matter before the Hon'ble Chief Justice of India for appropriate orders / directions.*

(emphasis supplied)

7. That the Curative Petitioner in its review petition further beseeched your Lordships, without equivocation, to also:

*“...work out a mechanism that ensures that the arbitration agreement between the parties is not nullified, and it is left open for the arbitral tribunal to render findings of fact without being influenced by findings rendered on the merits of the controversy in the judgement-under-review, after having the benefit of the evidence led by the parties...”*

8. That additionally, as a token of their *bona fides*, the Curative Petitioners also reiterated, without prejudice to their rights, that they were ready to once again deposit the sum of Rs. 1,01,56,388/- (Rupees One crore One lakh fifty-six thousand Three hundred and Eighty-eight only), which they had earlier deposited before the Registry of this Hon'ble Court, on June 08, 2020, in terms of orders passed in M.A. No. 1041/2020. Their express pleading was as under:

*“...The Review-Petitioner once again also reiterates its prayer to this Hon'ble Court that it may be permitted, without prejudice to its rights, to deposit the requisite amount with the Registry of this Hon'ble Court, and beseeches this Hon'ble Court to issue such appropriate directions as would be consistent with the law declared by a coordinate bench of this Hon'ble Court in Dilip Construction Company v. Hindustan Steel Limited, (1969) 1 SCC 597 which with utmost respect, directions in the judgement under review, are also manifestly in conflict with...”*

9. That inasmuch as the review petition has been dismissed by a non speaking order, the Petitioners submit that interference in curative jurisdiction is merited in the larger interests of justice in the present case, as the Petitioners have been non-suited by relying on a decision of this Hon'ble Court, whose correctness is squarely under challenge

and is presently under consideration before a larger bench of this Hon'ble Court, and a provision in their contract has been invalidated for non-payment of stamp duty, even though the Petitioners have repeatedly made it clear that they are ready to deposit the said amount, consistent with the law declared by a coordinate bench of this Hon'ble Court in *Dilip Construction Company (supra)*, which decision was not even noticed in *SMS Tea Estates (supra)*.

10. That in addition to the above, the Petitioners invite the attention of this Hon'ble Court to one more aspect, which they had highlighted in their review petition, which appears to have escaped consideration. The exact pleading in the review petition is reproduced below:

*“...That Review-Petitioner further submits that if the instant review petition is dismissed in limine without awaiting the outcome of proceedings before the Constitution bench, and eventually it is held by a Constitution bench of this Hon'ble Court that SMS Tea Estates (supra) did not lay down a sound principle of law, **it would be a constitutional anathema.** In this regard, the Review-Petitioner reproduces the opinion of D.Y. Chandrachud, J., in review petitions arising out of Beghar Foundation through its Secretary and Anr. v. Justice K S Puttaswamy (Retd.) & Ors., W.P. (C.) No. 494/2012:*

*"If these review petitions are to be dismissed and the larger bench reference in Rojer Mathew were to disagree with the analysis of the majority opinion in Puttaswamy (Aadhaar-5J.), it would have serious consequences – not just for judicial discipline, but also for the ends of justice. As such, the present batch of review petitions should be kept pending until the larger bench decides the questions referred to it in Rojer Mathew."*

(emphasis supplied)

11. That the Curative Petitioners are therefore constrained to submit that the order dated 20.07.2021 passed by this Hon'ble Court in Review Petition (C.) No. 4375/2021 is a constitutional anathema, in terms of the opinion expressed in review petitions arising out of Beghar Foundation through its Secretary and Anr. v. Justice K S Puttaswamy (Retd.) & Ors., W.P. (C.) No. 494/2012. This most certainly fulfills the criteria prescribed in Paragraph 196(iii) of the seminal judgement of this Hon'ble Court in *Indian Council for Enviro Legal Action v. Union of India*, (2011) 8 SCC 161, taking into consideration the view already expressed in *Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388 on curative jurisdiction under Article 142 of the Constitution of India.



12. That it is submitted that the Constitution Bench in **M/s. N.N. Global Mercantile Pvt. Ltd. v. M/s. Indo Unique Flame Ltd. And Ors. CA No. 3802-03/2020** is likely to next convene on 06.12.2022, as per order dated 29.09.2022. Since the question of law involved in the present case is still *res integra* and is pending adjudication before the Constitution Bench, it would further the interests of justice if this Hon'ble Court interferes in exercise of its curative jurisdiction in the facts and circumstances of the instant case.
  
13. That it bears emphasis that Hon'ble Court in *Zakarius Lakra v. Union of India*, (2005) 3 SCC 161, this Hon'ble Court has held that the grounds "*taken in the review petition would not have been noticed by the Court. The review petition was dismissed.*" and in such circumstances, was pleased to, in exercise of its curative jurisdiction, even permit conversion of a petition under Article 32 questioning legality of a death sentence confirmed by a judgement of this Hon'ble Court into a curative petition. Considering that the grounds set out in the review petition appear to have escaped consideration and there are no reasons forthcoming as to why the review petition was dismissed, interference is duly merited in the present case.

14. That yet another instance where this Hon'ble Court has been pleased to allow curative petitions, recall its judgement and orders, and restore the appeal for *de novo* hearing on similar considerations as urged above, is reported as *National Commission for Women v. Bhaskar Lal Sharma and others*, (2014) 4 SCC 252.
15. That even before this the judgement of this Hon'ble Court in *Rupa Ashok Hurra (supra)*, this Hon'ble Court appears to have exercised similar powers to revise and modify its earlier orders after it was apprised that they were passed on a wrong or mistaken assumption of facts and its implementation would have serious consequences, in *S. Nagaraj v. State of Karnataka*, 1993 Supp (4) SCC 595.
16. That the Curative Petitioners state that they have not filed any other Curative Petition in this Hon'ble Court against the order dated 20.07.2021 passed by this Hon'ble Court in Review Petition (C) No 4375 of 2021.

### **PRAYER**

In the facts, circumstances and grounds set out hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (i) Allow the present Curative Petition and set aside the judgment dated 14.02.2020 passed by this Hon'ble Court in C.A. No. 1599 of 2020, as well as the orders dated 17.08.2020 dismissing recall application and order dated 20.07.2021 dismissing Review Petition (C.) No.704 of 2021 whereby review of the said order had been prayed for by the Petitioners herein; and
- (ii) Grant any other further relief or reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

FOR THIS ACT OF KINDNESS, THE CURATIVE PETITIONER AS IN DUTY BOUND, SHALL EVER PRAY.

**DRAWN BY:**

Naman Maheshwari, Advocate

**SETTLED BY:**

Dinesh Chandra Somani, Senior Advocate

**FILED BY**



**(DEBESH PANDA)**  
**ADVOCATE FOR THE CURATIVE PETITIONERS**

**DRAWN ON: 03.12.2022**

**FILED ON: 07.12.2022**

**IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION  
[ORDER XLVIII]**

**CURATIVE PETITION NO.                      OF 2022  
IN  
REVIEW PETITION (CIVIL) NO. 704 OF 2021  
IN  
C.A. NO. 1599 OF 2020**

**IN THE MATTER OF:**

**M/S BHASKAR RAJU & BROTHERS & ORS.                      ...PETITIONERS**

**VERSUS**

**M/S DHARMARATNAKARA RAI  
BAHADUR ARCOT NARAINSWAMY MUDALIAR  
CHATTRAM & OTHER CHARITIES & ORS.**

**...RESPONDENTS**

**CERTIFICATE IN VIEW OF SUB-CLAUSE 3 OF RULE 2 ORDER  
XLVIII OF SUPREME COURT RULES, 2013**

Certified that the present Curative Petition is the first Curative Petition in the impugned order and that the Petitioner has not filed any other Curative Petition against the impugned order herein. This certificate is given on the basis of the instructions given by the Curative Petitioner whose affidavit is filed in support of the Curative Petition.



**(DEBESH PANDA)**

**ADVOCATE FOR THE CURATIVE PETITIONERS**

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...RESPONDENTS

AFFIDAVIT

I, S.K. Bhaskar Raju, aged about 60 years, S/o Sh. Narasaraju S.K., R/o. at No. 97, 8<sup>th</sup> Cross, RMV Extension, Sadashivanagar, Bangalore-560080, Karnataka, presently at Bangalore, do hereby solemnly affirm and state as under:

1. That I am the petitioner in the aforesaid Curative Petition and I am, as such, well conversant with the facts of the case and thus competent to swear this affidavit.



For BHASKAR RAJU & BROS  
Managing Partner

2. That the contents of accompanying Curative Petition from paragraphs 1 to 16, page 2 to 17, and the List of Dates from page B to F, are true and correct to my knowledge and belief and nothing material has been concealed therefrom.
3. The annexures annexed with the present Curative Petition are true copies of their respective originals.
4. The grounds set out in this Curative petition have been taken in the Review Petition No. 4375 of 2021, which petition was dismissed by circulation on 20.07.2021, and no new facts and/or grounds have been taken in the present Curative Petition.

For BHASKAR RAJU & BROS  
 Managing Partner

**DEPONENT**

**VERIFICATION:**

Verified at 13 DEC 2022 on this \_\_\_\_ day of December 2022, that the contents of above affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.

**SWORN TO BEFORE ME**

**SIVAKUMARA .M.N.**

ADVOCATE & NOTARY PUBLIC  
 GOVT. OF INDIA

No. 8/B-I,G.F. Akshaya Apts,  
 7th Main, K.H.M. Block, Ganganagar,  
 R.T. Nagar Post, Bengaluru - 560 032  
 M: 9448061543

For BHASKAR RAJU & BROS

Managing Partner

**DEPONENT**

Notary Reg. No. 58

Book 08

Page 13 Date 13 DEC 2022



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M/S DHARMARATNAKARA RAI

BAHADUR ARCOT NARAINSWAMY MUDALIAR

CHATTRAM & OTHER CHARITIES & ORS.

...RESPONDENTS

CERTIFICATE

This is to certify that the Petitioner herein fulfills the requirements of a Curative Petition set out by this Hon'ble Court in *Rupa Ashok Hurra vs. Ashok Hurra & Anr.* reported in (2002) 4 SCC 388. I have gone through the Special Leave Petition paper book including the Review Petition. At the outset I find that this is a case which requires further consideration by this Hon'ble Court in view of the following circumstances: -

- i.* The impugned judgment dated 14.02.2020 relied upon the law laid down in *SMS Tea Estates Private Limited* with regard to

unstamped arbitration agreement, which was subsequently considered to be the incorrect position of law in the judgment of *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. and Others*, 2021 SCC OnLine SC 13 wherein this Hon'ble Court held as under:

*“12. We are of the considered view that the finding in SMS Tea Estates and Garware that the non-payment of stamp duty on the commercial contract would invalidate even the arbitration agreement, and render it non-existent in law, and un-enforceable, is not the correct position in law.*

*In view of the finding in paragraph 92 of the judgment in Vidya Drolia by a co-ordinate bench, which has affirmed the judgment in Garware, the aforesaid issue is required to be authoritatively settled by a Constitution bench of this Court.”*

- ii. Accordingly and in terms of the above judgment, this Hon'ble Court was pleased to appoint a Constitution Bench in *M/s. N.N. Global Mercantile Pvt. Ltd. v. M/s. Indo Unique Flame Ltd. And Ors.* CA No. 3802-03/2020. Since the question of law involved in the present case is *res integra* and



pending adjudication before the Constitution Bench, the present petition deserves to succeed.

I, therefore, certify that the present Curative Petition may be filed and that the grounds taken herein are the same as were taken in the aforesaid Review Petition (C) No. 704 of 2021. The said Review Petition was dismissed by circulation vide order dated 20.07.2021.



**(DINESH CHANDRA SOMANI)**

**SENIOR ADVOCATE**

PLACE: NEW DELHI

DATED: 07.12.2022