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PART - 20 (31ST OCTOBER 2018)

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2018(3) L.S. 133 (Hyd.) (D.B.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
M.Seetharama Murti

Kunapureddi Nookamani
& Ors., ..Petitioners
Vs.
The District Collector,
E.G. District, Kakinada
& Anr., ..Respondents

LAND ACQUISITION ACT, Sec.4(1) - RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT - Writ petition by petitioner - Requesting to issue a writ of mandamus declaring notification issued by 1st respondent/ District Collector consequential proceedings, as illegal and arbitrary.

Held – Settled legal position emphasises importance of enquiry u/ Sec.5-A which is to be conducted by Collector unless such function is delegated by a notification of State Government to RDO – In present case since Collector has not conducted enquiry and as RDO, who conducted the enquiry, is not enjoined with such function by a necessary notification of State Government, it can be said that the enquiry conducted by the RDO has no statutory sanction - Writ Petition stands allowed.

W.P.No.26381/2007 Date: 10-10-2018

Mr..Badana Bhaskara Rao, Advocates For the Petitioners.
Government Pleader for Land Acquisition, Advocates for the Respondents.

J U D G M E N T

1. This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a writ of mandamus declaring the notification, dated 23.05.2006, in Ref.no.G2/2452/2006, issued by the 1st respondent-District Collector and the consequential proceedings, dated 19.11.2006, in the said reference number, as highly illegal, arbitrary, unjust, improper and against the provisions of the Land Acquisition Act, 1894, & the administrative instructions issued under the said Act and consequently set aside the same.

2. I have heard the submissions of *Sri Badana Bhaskara Rao,* learned counsel appearing for the petitioners; and of the learned Government Pleader for Land Acquisition (AP) appearing for the respondents 1 & 2. I have perused the material record.

3. The case of the petitioners is this: ‘They are residents of C.Rayavaram Colony. They are having lands respectively of the extents, viz., Ac.2.00 cents, Ac.1.50 cents and Ac.1.00 cents in Sy.no.51/1 of the said village of Eleswaram Mandal. A notification under Section 4(1) of the Land Acquisition Act, 1894, (‘the Act’, for brevity) was issued

by the 1st respondent for the proposed acquisition of the lands of the petitioners. The said notification was published, on 24.05.2006, in the District Extraordinary Gazette no.257/2006. The 1st respondent, having invoked Section 17-A of the Act dispensed with the enquiry under Section 5-A of the Act, appointed the 2nd respondent/ Revenue Divisional Officer to perform his functions. Later on, an errata/correction *vide* reference no.G2/2452/06, dated 19.11.2006, was issued clarifying the names of the owners and the extents insofar as the land in Sy.no.51/1 and the extent insofar the land in Sy.no.51/2. Though an enquiry under Section 5-A was dispensed with, a notice in Form 3 was issued calling the petitioners to attend an enquiry to be held under Section 5-A of the Act. The petitioners filed their objections, on 18.12.2006, requesting to drop the acquisition proceedings and stating that they are small farmers; they solely depend on the income derived from their lands; there are other alternative lands of rich landlords available for acquisition. Thereafter, the 1st respondent passed orders, dated 21.01.2007, rejecting the objections and stating that the acquisition of the lands is inevitable as there are no other lands available for being provided as house sites to the beneficiaries. There is an adjacent land of an extent of Ac.3.50 cents of Palivela Surya Rao in Sy.no.44/ 1. There are also lands of rich landlords and Government Poramboke lands. The said aspects were not considered. The objections were not considered in true spirit and the above said orders were passed mechanically. No land of a small farmer, who possessed land of an extent less than Ac.2.00 cents and who has no other land for the livelihood of his family shall be acquired. Each of the petitioners is having a small extent of land; and, the petitioners are having large families consisting of unmarried daughters; and, they are solely depending upon cultivation of their respective small extents of lands. If the lands of the petitioners are acquired, they will become destitute. The acquisition of lands of the petitioners by the respondents is an unreasonable exercise of statutory power. Lands of small farmers cannot be acquired as per the instructions in the Government Memo no.1287/C1/74-2, dated 31.05.1974, as the Government instructed the Collectors not to acquire the lands of small farmers. The said instructions, which have force of law, are binding on the 1st respondent. The proceedings which were issued contrary to the Government instructions are liable to be quashed. The adjacent lands of rich landlords remained untouched as they are having political affiliations. The substance of the publication under Section 4(1) of the Act is not published in the locality as envisaged under law. Government having noticed that the lands are being acquired even in cases, where Government land is available for provision as house sites, issued Memo no.1243/C1/77-4, dated 06.04.1977, stating that the acquisition of private lands should be discouraged when Government land, by spending some amount on levelling, can be made available for use as house sites, after making it fit for such use. The Collectors were instructed to first make use of the Government lands before acquisition of private sites for allotment as house sites. As per Government Memo no.7343/C1-76-4, dated 27.12.1976, the Collectors are requested not to acquire lands of Harizans

for the purpose of providing house sites unless, it is inevitable; and, even in such cases, the Collectors are required to seek permission of the Government. The respondents neglected to follow the instructions of the Government, which are binding. No prior permission of the Government was obtained by the respondents. Hence, the impugned proceedings being illegal, arbitrary, unjust, improper & against law are vitiated. Hence, the writ petition is filed.'

4. The case of the respondents, in brief, is this: 'Land of an extent of Ac.4.21 cents in Sy.nos.51/1B and 51/2A of C.Rayavaram village was proposed for acquisition for providing the said land as house sites to eligible beneficiaries under the 'Indiramma Housing First Phase Programme'. Draft notification under Section 4(1) of the Act was approved by the 1st respondent, on 23.05.2006. Enquiry under Section 5-A was conducted, on 16.12.2006. Objections received were enquired into and remarks were sent to the Collector. The Collector, *vide* his proceedings, dated 21.01.2007, rejected the objections filed by the land holders. The order was communicated to the land owners, on 25.01.2007. The draft declaration was published in the District Gazette, on 09.11.2007. Award enquiry was held, on 03.03.2008. The land owners attended for the said enquiry. Draft award was approved, on 12.03.2008. Award *vide* Award no.1/2008, was passed, on 20.06.2008. The amount payable to the owners was kept in revenue deposit *vide* challan no.10514, dated 18.09.2008. The awardees refused to take notice under Section 12(2) of the Act. The notice was alternatively served. The land acquisition process was completed and compensation amount was kept in revenue deposit, on 21.07.2008. In the meanwhile, land owners filed this writ petition. In the first notification, the land of Palivela Vamana Murthy and of the 2nd and 3rd petitioners was proposed for acquisition. The field enquiry revealed that Palivela Vamana Murthy transferred his land to his daughter, Kunpaureddi Nookamani, the 1st writ petitioner. Hence, an errata draft notification, which was approved, on 19.11.2006, was issued including the land of the 1st petitioner and excluding the name of Palivela Vamana Murthy. The errata notification was published at prominent places in the locality on 27.11.2006. The allegation that the 1st petitioner is not aware of the acquisition of the land is not correct as she is the daughter of the said Vamana Murthy and he transferred his land to her. Even though the petitioners are small farmers, their lands can be acquired for public purpose, as per the decisions of this Court. The respondents have ample power under the Act to invoke urgency clause, when needed. Even though the petitioners belong to SC (Madiga) or other caste, yet, there is no bar to acquire their lands. Hence, the writ petition may be dismissed.

5. On 11.12.2007, this Court *vide* orders in W.P.M.P.no.34404 of 2007, granted interim stay of dispossession of the petitioners from their lands.

6. Learned counsel for the petitioners and the learned Government Pleader for the respondents made submissions in line with the pleadings. I have perused the material

record.

7. Admittedly, there is a mistake in the original 4(1) notification published in the Gazette, on 24.05.2006, as regards the mentioning of the name of the 1st petitioner and the extents of the lands in Sy.nos.51/1 and 51/2. In the original notification, the name of Palivela Vamana Murthy was mentioned though he alienated the land to his daughter, the 1st writ petitioner. Further, in the original notification, extents of lands in the two Survey Numbers, that is, Sy. nos.51/1 & 51/2 were wrongly mentioned. According to the respondents, the field enquiry revealed that Palivela Vamana Murthy transferred his land to his daughter, Kunpaureddi Nookamani, the 1st writ petitioner. Hence, an errata draft notification, which was approved, on 19.11.2006, was issued including the name of the 1st petitioner and excluding the name of Palivela Vamana Murthy insofar as the land in Sy.no.51/1; and further, by the errata notification, the extents in two survey numbers 51/1 & 51/2 are corrected respectively from Ac.2.51 cents to Ac.2.74 cents and from Ac.1.71 cents to Ac.1.48 cents. Learned counsel for the petitioners contended that mere issuance of errata notification is not sufficient and that whenever there is a mistake in the original notification, the original notification shall be withdrawn and fresh notification under Section 4(1) of the Act has to be issued and that mere issuance of an errata notification will not cure the defect and that in the case on hand, as a fresh notification under Section 4(1) of the Act was not issued, the acquisition proceedings are vitiated. Per contra, the learned Government Pleader contended that since the errata notification relates back to the date of the original notification, the mere issuance of errata notification to rectify the mistake in the original notification does not affect the acquisition proceedings, and that the errata notification, which clarified the mistakes in the original notification, is sufficient compliance of the provisions of the Act. Though it is possible to accept the contention of the respondents that the errata/corrigendum notification relates back to the date of original notification, mere issuing a corrigendum is enough or not requires examination. Any notification, be it original or corrigendum, in the considered view of this Court, shall be published through a public notice, which may be affixed at convenient places in the locality; and, it shall also be publicised and made known by beat of drums and through the local panchayats and patwaries. Further, the original notification and the corrigendum as well, if any, in a given case, shall be published in two daily newspapers having largest circulation in the locality, and, one of such newspapers shall be one being published in the regional language. According to the respondents, errata/corrigendum was publicised in the locality at prominent places, on 27.11.2006. It is not the case of the respondents that the corrigendum or errata notification was published in the newspapers as required under Section 4(1) of the Act. In the decision in **J and K Housing Board and Another v. Kunwar Sanjay Krishan Kaul and others** [(2011) 10 SCC 714], the Supreme Court, having noted that in that case the corrigendum though was issued on 11.06.2003 for enlarging the area of acquisition, was not

published in any newspapers, held that all requirements under Section 4(1) (a), (b) and (c) are mandatory and that the said requirements have to be strictly adhered to and that the conditions as prescribed under Section 4(1) of the Act have not been fully complied with and that the requirements of the said provision of law are mandatory and that all the terms provided therein are to be complied with very strictly. The Supreme Court also held that as by virtue of the provisions of the Act, the valuable right/ownership of the landowners will be taken away, the provisions of Section 4(1) and 5-A have to be strictly construed. In the light of the admitted facts and the legal position obtaining, it follows that the provision of Section 4(1) of the Act has not been adhered to in the instant case and hence, the notification has to be quashed for non-compliance of Section 4(1), particularly, Section 4(1)(c) of the Act.

8. Dealing now with the next contention of the petitioners, it is to be noted that though it is not specifically urged in the writ petition, it is contended on behalf of the petitioners that the District Collector is alone the competent authority to issue the notification for acquisition of lands under Section 4(1) of the Act and to conduct an enquiry under Section 5-A of the Act, but, in the case on hand, the RDO, who is not enjoined with the said duty and who is not authorised to discharge the functions of the Collector by a duly issued notification of the State Government, conducted the enquiry under Section 5-A of the Act and that, therefore, the said enquiry is vitiated and has no validity in the eye of law. Learned Government Pleader for Land Acquisition submitted that the said contention which is not urged is not available to the petitioners. However, learned counsel for the petitioners submitted that the said contention, which is a pure question of law, based on the admitted facts, can be permitted to be urged.

8.1 It is undisputed that the notice under Form 3 requiring the petitioners to file their objections and attend an enquiry under Section 5-A of the Act was issued by the Revenue Divisional Officer, Peddapuram, and that after enquiry, he submitted his remarks to the Collector for passing orders. It is not the case of the respondents that the Government have issued a Notification and delegated to the said RDO, the functions of the Collector. In this backdrop, it is necessary to refer to the relevant provisions of law.

Section 3(c) of the Act reads as under:

‘the expression “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act.’

Further, Section 3(a) of the Act, as amended by the State of A.P. [Act 22 of 1976], which deals with delegation of functions, reads as under:

‘Delegation of functions: The State Government may, by notification in the Andhra Pradesh Gazette, direct that any power conferred or any duty imposed on them by this Act, shall in such

circumstances and under such conditions, if any, as may be specified in the notification, be exercised or discharged by the District Collector.'

In view of the above provisions of law, it is undisputed that the power of delegation is not with the Collector; that the State Government have to discharge the function of delegation by issuing a notification in the Gazette; and, that on such delegation by a notification, the delegated authority can exercise and discharge the functions, which are to be discharged by the District Collector. In the case on hand, admittedly, there is no notification issued by the Government delegating the powers of the Collector to the RDO. Despite the said fact, the RDO had issued Form 3 Notice under Section 5-A of the Act proposing to conduct the 5-A enquiry and conducted an enquiry by exercising the powers of Collector without any authority conferred upon him by a notification of the State Government. Therefore, the contention of the petitioners that on this ground alone, the acquisition proceedings, which are illegal, are liable to be set aside merits consideration.

9. Further, as per the settled law, 'any person interested in any land, which has been notified under Section 4(1) of the Act can file objections under Section 5-A (1) of the Act and show that the purpose specified in the notification is really not a public purpose or that his land is not suitable for the particular purpose and that other more suitable parcels of land are available and that the said available lands can be utilised for execution of the project or scheme. The specific case of the petitioners is that they have filed detailed objections. In their objections, they stated that they are owners and possessors of small extents of lands and that there are big landlords owning large extents of lands and that the acquisition of small extents of lands of the petitioners is against the object & intendment of the Act and also the administrative instructions in the memos of the Government. In the writ petition, the petitioners have also stated that there are other vast extents of Government lands in the village, which are suited for use as house sites and that therefore, there is no need to acquire their lands. Reverting to the importance of the enquiry under Section 5-A of the Act to be conducted by the Collector, it is pertinent to note that Sub-Section (2) of Section 5A of the Act makes it obligatory on the Collector to give an objector or the land owner an opportunity of being heard and that after the hearing of the objections and making further inquiry, he has to make a report to the appropriate Government containing his recommendations on the objections. The hearing contemplated under the said provision of law is necessary to enable the Collector to effectively deal with the objections raised against the proposed acquisition and to make a report. The enquiry and the report of the Collector are not empty formalities, as the Collector is required, by his report, to notify the appropriate Government his recommendations. It is only upon receipt of the said report that the Government can take a final decision on the objections and make a declaration under Section 6 of the Act. At the hearing before the Collector, the objector can make an effort to convince the Land Acquisition Officer

to make recommendations against the acquisition; and, the objector can produce evidence to show that his land is either not suited or is liable for acquisition and that a suitable piece of Government land is available in the village or in the vicinity and that the same can be utilized for the desired project or scheme. Therefore, the Collector is required to give the notice in Form 3 under Section 5-A of the Act and also an opportunity of hearing to the objectors and objectively consider their pleas against the acquisition of their lands. Only thereafter, the Collector should make necessary recommendations supported by brief reasons as to whether the land proposed should be acquired or not and whether or not the pleas put forward by the objectors merits acceptance or not. Thus, the right to file objections is an important right; and, the hearing contemplated under the provision of law must be effective; and, it is not an empty formality. Any recommendation made by the Collector, without duly providing an opportunity to file objections and without providing an opportunity of effective hearing will denude the decision of the appropriate Government of statutory finality, is the settled legal position. The settled legal position emphasises the importance of the enquiry under Section 5-A which is to be conducted by the Collector unless such function is delegated by a notification of the State Government to the RDO. In the case on hand since the Collector has not conducted the enquiry and as the RDO, who conducted the enquiry, is not enjoined with such function by a necessary notification of the State Government, it can be said that the enquiry conducted by the RDO has no statutory sanction.

10. It is necessary to next deal with the following set of contentions:- Learned counsel for the petitioners first contended that no effective opportunity of hearing was afforded to the petitioners to substantiate their objections. Learned Government Pleader stated that admittedly an opportunity of hearing was provided and, therefore, the contention of the petitioners is not correct. Learned counsel for the petitioners in reply submissions having reiterated that the petitioners are small farmers and that each one of them possessed land of an extent less than Ac.2.00 cents and that they belong to SC community is not in dispute, had stated as follows: ‘In the counter affidavit, it is not specifically denied that the petitioners are owners of small extents of land and that their only sources of livelihoods are their respective small extents of lands, which are proposed for acquisition. The respondents only stated that even though the petitioners belong to SC (Madiga) community and that they are small farmers, yet, their lands can be acquired as it is inevitable to acquire their lands. The State Government had directed in memo no.1287, dated 31.03.1974, as amended by memo no.5814/C1/77-3, dated 29.09.1977, that ‘the lands belonging to poor persons with meagre land holdings (not more than Ac.2.00 – Ac.2.50 cents) should not be acquired unless otherwise inevitable for the purpose of maintaining proximity and vicinity to the main village and contiguity of the lands. Similarly, in Memo no.7342/C1/76-4, dated 27.12.1976, the State Government directed the Collectors to ensure that the lands belonging to Harizans were not acquired for the purpose of providing house sites,

except where it becomes otherwise inevitable. Further, in Memo no.2600/C1-78-1, dated 12.06.1978, the Government directed that the lands belonging to small farmers, marginal farmers, scheduled castes & scheduled tribes should not be acquired unless there are no other suitable lands available for the purpose of house sites and that if, however, the lands of such persons have to be acquired, alternative lands may be given to them in exchange from the lands available at the disposal of the Government. The administrative instructions of the Government in the above memos, though conditional are binding on the Collector & the RDO. In the case on hand, the said administrative instructions are violated, and, therefore, the land acquisition proceedings are vitiated since the said instructions regulate the policy decisions and give rights to the petitioners for whose benefit those instructions are intended.' He placed reliance on the decision in **State of Punjab v. Gurdial Singh** (1980) 2 SCC 471)**,** of the Supreme Court. At paragraph 16 of the cited decision, it was held as follows:

"16. … it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons."

Further, the petitioners categorically stated in their objections that there are large extents of rich landlords and the lands of the Government suited for acquisition and that the same are also adjacent to the lands of the petitioners and that the said lands can be acquired instead of the lands of the petitioners, who are small farmers of weaker sections and that the exercise of power by the respondents in acquiring the petitioners' lands and by omitting to acquire the lands of rich landlords is an arbitrary and illegal exercise of power. However, these objections are not considered and are simply brushed aside by stating that acquisition of the lands of the petitioners is inevitable. No reasons are forthcoming as to why the administrative instructions in the Government Orders are not followed, though the 1st respondent-Collector, who is acting as a delegate under the powers of the Government, is bound to follow the said instructions, which partake the character of *quasi* legislation, which the Government are entitled to issue. The said instructions confer important rights on the petitioners protecting their properties and prohibiting the authorities from acquiring their lands, unless inevitable and the conditions are fulfilled. Therefore, this Court finds that for not following the Government instructions, which are binding, and for not considering the objections of the petitioners in an effective and objective manner by the 1st respondent-Collector, the acquisition proceedings are vitiated.

11. In the decision in **Hindustan Petrolium Corporation Limited v. Darius Shapur Chennai and others (**2005 (7) SCC 297)the main question which fell for its consideration was whether the objections raised by the appellant objecting to the acquisition of land on various grounds have been considered by the Government. The Supreme Court

while emphasising the importance of hearing under section 5 A of the Act held as follows:

It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind as regard consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right.

Even assuming for a moment that the RDO is competent to conduct an enquiry, it is borne out by record that no effective opportunity of hearing was provided to the petitioners to substantiate their objections and the RDO eventually failed to effectively deal with the objections and, therefore, the enquiry held by him is vitiated.

12. Before parting, it is to be noted that a perusal of the counter affidavit shows that certain dates are mentioned in the counter affidavit. However, among the said dates, the date of publication of the notification under Section 4(1) of the Act in the District Gazette, which was mentioned as 09.11.2007, and the other dates of its publication in newspapers, which are mentioned as 18.09.2007 & 16.11.2007 and finally, the date of publication of its substance in the locality, which was mentioned as 24.11.2007, are admittedly not correct. The copies of material documents filed with the counter affidavit show that 4(1) notification was published in the District Gazette on 24.5.2006, and that it was publicised in the locality on 29.06.2006. Further, the copy of the award proceeding, which is filed along with the counter affidavit, does not disclose as to on what dates notification under Section 4(1) was published in the two newspapers including a regional newspaper. The Government are not in a position to furnish the correct dates of publication of Section 4(1) notification in newspapers as required under the statute. Further, under Section 6 of the Act, declaration of intended acquisition of the land covered by Notification under Section 4(1) of the Act shall not be made after the expiry of one year from the date of the publication of the Notification. In the case on hand, the 4(1) notification was published in the Gazette of East Godavari District on 24.05.2006, is not in dispute. The respondents fairly stated that the declaration under Section 6 of the Act was published in the Gazette, on 09.11.2007, and it was published in two newspapers on 18.09.2007 & 16.11.2007 and its substance was publicised in the locality on 05.12.2007. Therefore, the declaration under Section 6 of the Act was not published within the statutory time frame is also borne out by record. Further, the learned counsel for the petitioners submits that the Government are now not continuing with the Indiramma Housing Programme and that new housing schemes for members of weaker sections of society are in place, and that since a long time has elapsed from the date of the notification under section

4 (1) of the Act, the Government are required to re-consider as to whether the property in question is required at present for acquisition or not, and hence, the writ petition may be allowed leaving it open to the Government to initiate fresh proceedings for acquisition, if the Government are still desirous of acquiring the subject land for providing house sites or for any other public purpose. Learned Government for Land Acquisition submitted that as orders of stay of dispossession are granted by this Court, possession of the subject land was not taken from the petitioners and no further steps were taken in the matter and that in the event, this Court grants the reliefs to the writ petitioners, liberty may be reserved to the Government to acquire afresh, the subject lands, if necessary, by following the procedure established by law.

13. On the above analysis and for the reasons afore-stated, this Court finds that the petitioners made out valid and sufficient grounds for granting the reliefs prayed for in the writ petition and that the writ petition deserves to be allowed.

14. In the result, the Writ Petition is allowed. It is needless to state that this order shall not preclude the Government to proceed with the acquisition proceedings in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), if the Government are desirous of acquiring the subject land or any part of the subject land of the petitioners for the desired purpose or any other purpose, in future. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

–X–

2018(3) L.S. 142 (Hyd.) (D.B.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
M.Seetharama Murti

Bollineni Srihari Rao ..Petitioner
Vs.
Manukondu Ramadevi & Ors., ..Respondents

CIVIL PROCEDURE CODE, Sec.151 – Instant revision preferred by Petitioner/1st defendant assailing order passed in I.A. before Trial Court, where in, 4th defendant was allowed to amend plaint schedule.

Held - In a suit for partition, defendant cannot seek amendment of schedule of the plaint and that if defendant so desires, it is for defendant to amend his own pleadings - Trial Court committed a grave error in permitting the 4th defendant to amend plaint schedule – Civil Revision Petition stands allowed.

CRP.No.5554/2018 Date:10.10.2018

Mr.M.R.S. Srinivas, Advocates : For the Petitioner.

J U D G M E N T

1. This revision petition, under Article 227 of the Constitution of India, is filed by the petitioner – 1st defendant assailing the order, dated 14.09.2018, of the learned Principal District Judge, Prakasam District, Ongole, passed in IA.No.1955 of 2018 in OS.No.32 of 2004.

2. I have heard the submissions of Sri M. R. S. Srinivas, learned counsel appearing for the revision petitioner – 1st defendant, and of Sri G. Pedda Babu, learned senior counsel, on caveat, appearing for the 1st respondent – 4th defendant.

2.1 As this Court is inclined to dispose of the revision petition at the stage of admission, no notices are ordered to the 3rd respondent – 2nd plaintiff and other respondents – defendants in the suit.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The sole plaintiff brought the suit against the defendant, who is his son, for partition of the plaint schedule properties, inter alia, alleging that the plaintiff and the defendant are entitled to a half share each in the plaint schedule properties. The defendant filed a written statement and is resisting the suit. On the death of the sole plaintiff, his wife and three daughters were impleaded as 2nd plaintiff and defendants 2, 3 & 4 respectively, as per orders, dated 22.08.2017, of the trial Court passed in IA.No.1181 of 2017. After the impleadment of the parties, the 1st defendant filed an additional written statement. The defendants 3 & 4 filed separate written statements. During the pendency of the suit, the 4th defendant filed the subject Interlocutory Application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, requesting to amend the plaint and the plaint schedule as per the details mentioned in the memo of amendment. The proposed amendments as stated in the said memo apart from the amendments related to valuation of the relief and the Court fee are as follows:

“**Add to para 3 of the plaint as follows:**

An extent of Ac.1.31 cents belonging to late Bolineni Ramaiah covered by S.No.304/ C/2A is the joint family property. 1st defendant fraudulently executed registered sale deed in favour of President of India for the purpose of National High Way in respect of Ac.0.72 cents out of Ac.1.31 cents and received a sum of Rs.1,11,88,000/ - is held by as a trustee to all the sharers. Hence the consideration amount of Rs.1,11,88,000/- is shown as item no.18. Since the 1st defendant executed sale deed showing northern boundary as his remaining land which is an extent of Ac.0.59 cents is liable for partition and shown as item-19.

Amend prayer as follows:

(aa) For partition of items 18 & 19 of the plaint schedule into the respective shares of plaintiff and defendant.

Amend the plaint schedule by adding as follows:

Item No.18

Rs.1,11,88,000/- towards consideration amount of Ac.0.72 cents covered under Registered Sale Deed, dated 13.08.2014 executed by 1st defendant in favour of President of India.

Item No.19

Prakasam District, Ongole District Registration Koppolu Revenue Village merged with Ongole Municipal Corporation in Koppolu Village total extent in Survey No.304/C/2A is Ac.5.70 cents out of it Ac.1.31 cents from out of Ac.1.31 cents in the northern side portion of Ac.0.59 cents – bounded by:

EAST: Survey No.309 Aluri Ramanamma

SOUTH: Ac.0.72 cents covered under sale deed dated 13.8.2014

WEST: Railway land

NORTH: Bolineni Chalamaiah and another'

In the application filed by the 4th defendant for amendment of the plaint as well as the plaint schedule, the 1st defendant alone filed a counter and the plaintiff and other defendants reported no counter. On merits and by the order impugned, the learned District Judge partly allowed the application of the 4th defendant and directed to amend the plaint schedule by adding items 18 & 19 to the schedule of the plaint and rejected the 4th defendant's claim for amendment of pleadings in the plaint. Aggrieved of the said orders, the 1st defendant filed this revision petition.

4. The case of the 4th defendant in support of her request for amendment of the plaint, in brief, is this: The suit is posted to 30.08.2018, for arguments after completion of cross-examination of DW1, who is recalled for the purpose of marking documents, as per the orders passed in an Interlocutory Application. One of the documents filed by DW1 is the certified copy of the order, dated 06.04.2015, in WP.No.2716 of 2014. This defendant filed the said writ petition specifically pleading that without following the procedure contemplated under the Land Acquisition Act, DW1 received Rs.1,11,88,000/- by way of execution of a fraudulent sale deed, dated 13.08.2014, in favour of the President of India in respect of Ac.0.72 cents out of item no.6 of the plaint schedule showing the survey no.304/C/2A instead of S.No.304/1. Due to the dismissal of the said writ petition, this defendant filed another writ petition in WP.No.17990 of 2017 for the same relief and it is pending. This defendant produced certified copy of registered sale deed, dated 13.08.2014; and, it was marked as exhibit B57, after recalling him as per orders, dated 01.08.2018. As cross examination of DW1 was done earlier, that is, on 17.04.2018, the counsel for this defendant had no opportunity to cross-examine DW1 with reference to exhibits B54 to B61, which were marked subsequently. During the course of cross examination, on 24.08.2018, DW1

categorically admitted the recitals in the sale deed that he got Ac.1.31 cents of land in S.No.304/C/2A from his grand father Ramaiah and grand mother Ravamma. It is the specific case of this defendant in her written statement that Rs.1,11,88,000/- received by DW1 is towards acquisition of Ac.0.72 cents out of item no.6 of the plaint schedule land. When the counsel of this defendant cross examined DW1, he stated that item 6 covered by S.No.304/1 has nothing to do with the land of Ac.0.72 cents out of Ac.1.31 cents sold by him under exhibit B57 covered by S.No.304/C/2A. The 1st defendant has taken a hostile stand that the said amount received by him under exhibit B57 is not relating to item 6 of the plaint schedule. He has categorically admitted that the same devolved upon him from grand father, Ramaiah. The amount of Rs.1,11,88,000/- received by him is held by him as a trustee for other sharers including this defendant. It is, therefore, just and necessary that the sum of Rs.1,11,88,000/- received by the 1st defendant must be included as one of the items of the plaint schedule. The 1st defendant is admittedly in possession of balance extent of Ac.0.59 cents in S.No.304/C/2A shown as Northern boundary of the schedule in exhibit B57. The said extent of land is also liable for partition among the sharers. The said extent of land must be included as one of the items of the plaint schedule. For the said purpose, plaint schedule has to be amended. Inspite of due diligence, amendment could not be sought earlier as the 1st defendant has come forward with the plea that the land of Ac.1.31 cents in S.No.304/C/2A has nothing to do with item no.6 of the plaint schedule only during the course of his cross examination done, on 24.08.2018, by categorically admitting that the said land devolved from the grand father, Ramaiah. Hence, inclusion of two items in the plaint schedule is just and essential. The amendment sought for will not create any new cause of action and new case since the said items are also to be partitioned among the sharers after including them as items 18 & 19 in the plaint schedule.

5. The case of the 1st defendant, who is resisting the amendment application of the 4th defendant, in brief, is this: By any stretch of imagination, it cannot be said that the parties can move an application under Order VI Rule 17 of the Code for amendment of the pleadings of the opposite party. The parties are entitled to amend their own pleadings; but, parties cannot pray for permission to amend the pleadings of the opposite party. Such a course is impermissible under law. When specific provision for amendment of pleadings is available, the Courts cannot exercise inherent powers under Section 151 of the Code for allowing such prayers for amendment of the pleadings of the opposite parties. The petition is misconceived. The 4th defendant admitted in her pleadings in her written statement that the 1st defendant received Rs.1,11,88,000/- by way of executing sale deed, on 13.08.2014, in favour of the President of India in respect of Ac.0.72 cents of item 6 of the plaint schedule. Now, by seeking amendment of plaint, she wants to amend the plaint and withdraw the admission made by her in her written statement. The same is not permissible under law. By way of an amendment,

admission cannot be withdrawn and amendment of pleading withdrawing an admission cannot be permitted. Such an amendment takes away the right accrued to this 1st defendant. In the plaint, there is no pleading with regard to land acquisition proceedings. The amendment if permitted changes the nature of the suit and causes prejudice to this defendant. The suit is filed in the year 2004. The trial in the suit is completed. The amendment petition is not maintainable in the absence of the 4th defendant establishing that she could not have sought for amendment earlier, inspite of due diligence. The 4th defendant is having knowledge of the sale deed and the boundaries mentioned therein. She did not take steps for amendment earlier. There is no explanation from her, for not doing so. The 4th defendant wants to introduce a new relief by way of amendment of plaint and the plaint schedule. The relief has to be claimed within 3 years from the date of receipt of the amount of Rs.1,11,88,000/-. The cause of action is different for the said relief. If the plaint is permitted to be amended at the instance of the 4th defendant at this stage, all the witnesses have to be recalled, further examined and crossexamined. Hence, the petition may be dismissed.

6. Learned counsel for the 1st defendant and the learned counsel for the 4th defendant advanced arguments in line with the pleadings of the respective parties, which are referred to supra.

7. Learned counsel for the 1st defendant strongly contended as follows: - 'The 4th defendant, being an opposite party, cannot seek amendment of the plaint. Therefore, the trial Court committed a grave error in permitting the 4th defendant to amend the plaint schedule more particularly when the amendment, if allowed, enables her to withdraw the admission in her written statement. An amendment of pleading for withdrawal of an admission in the pleading cannot be permitted. The amendment, which was permitted by the trial Court, caused prejudice to the 1st defendant. Admittedly, the trial is completed and the suit is at the stage of hearing arguments. Therefore, the amendment is barred in view of the proviso appended to Order VI Rule 17 of the Code, which curtails the power of the Courts in allowing amendments. The 4th defendant failed to establish that despite due diligence she could not have sought for the amendment earlier. The trial Court referred to a decision of the Madras High Court in **Solavaiammal and others v. Ezhumalai Goundar and another (**2011(5) LW 859) and failed to follow the settled legal position laid down in the decision of this Court, which is binding. Therefore, the order impugned is illegal & unsustainable and is liable to be set aside.'

8. Learned counsel appearing for the 4th defendant having drawn the attention of this Court to the factual aspects of the matter in extenso and the fact of the dismissal of a writ petition filed by the 4th defendant and the pendency of another writ petition filed for the same relief before this Court, contended that in a suit for partition, every party is a plaintiff and that in the facts and circumstances of the case stated, in detail, in the affidavit of the 4th defendant, the amendment of the plaint and the plaint

schedule at her instance is permissible and that, therefore, the trial Court is justified in allowing the amendment partly and permitting to add two items of property to the schedule of the plaint as according to the 4th defendant the said two additional items being sought to be added by way of amendment to the schedule of the plaint are also the properties, which are liable for partition among the sharers.

9. Learned counsel for the 1st defendant, in reply, contended as follows: 'If any properties, which are liable for partition are omitted by the plaintiff to be included in the plaint schedule, an efficacious remedy is available to the defendant. The defendant can as well show such omitted items in the schedule that may be annexed to his/her written statement and seek partition of the said items also by making the necessary prayer in the written statement. However, on the ground that a few items liable for partition are omitted to be mentioned in the schedule of the plaint, a defendant cannot seek the amendment of the plaint and/or the plaint schedule. Therefore, if the 4th defendant so desires, it is for the said defendant to file a written statement with schedule, by showing the omitted items of the property, which are liable for partition, in such schedule annexed to the written statement and seek partition of the written statement schedule properties along with the items mentioned in the plaint schedule; but, such a defendant cannot seek amendment of the plaint or the plaint schedule.'

10. In further reply, learned counsel appearing for the 4th defendant contended that in the event this Court comes to the conclusion that at the instance of the 4th defendant, the plaint schedule cannot be permitted to be amended, liberty may be reserved to the 4th defendant to seek amendment of the written statement and annex a schedule to the written statement by including the subject two items of property in the interests of justice.

11. I have given earnest consideration to the facts and submissions.

12. Now the point for determination is – 'whether the order of the trial Court permitting the 4th defendant to amend the plaint schedule by adding items 18 & 19 to the original schedule of the plaint is unsustainable under facts and in law?'

12.1 Admittedly, the sole plaintiff filed the suit against his son, the sole defendant. On his death, his wife was impleaded as second plaintiff; and, his daughters were brought on record as defendants 2,3 & 4. The 1st defendant is contesting the suit by filing the written statement. He also filed additional written statement after the impleadment of the other LRs of the sole plaintiff. The impleaded 4th defendant filed her written statement. After the trial has concluded and when the matter is at the stage of arguments, the 4th defendant filed the instant application seeking permission to amend the plaint and the plaint schedule. Her main contention is that two properties which are shown as items 18 & 19 in the memo of amendment, that is, consideration amount of Rs.1,11,88,000/- and Ac.0.59 cents in the Northern side portion in S.No.304/C/2A are to be included in the

plaint schedule as the said properties are also liable for partition; but, the said properties were omitted from the plaint schedule. Thus, the 4th defendant sought for permission for amendment of the plaint and the plaint schedule as well. However, the trial Court while declining to grant the request of the 4th defendant to amend the plaint, partly allowed her application and granted permission to amend the plaint schedule by including the proposed items 18 & 19 in the schedule of the plaint as items 18 & 19. In the first place it is to be noted that the Court below committed a grave error in permitting the amendment of the schedule of the plaint only, at the instance of the 4th defendant, as mere amendment of the schedule alone without corresponding or supporting pleading as to how the added items of property are also liable for partition would serve no purpose and would be of no avail to the 4th defendant. The law is well settled that any amount of evidence that may be adduced without a foundation in the pleading would be of no avail. Hence, the order of the Court below partly allowing the request of the 4th defendant in so far as the amendment of the schedule of the plaint, would not serve any purpose whatsoever being of no benefit to the 4th defendant as her request for the amendment of the pleading in the plaint was negatived and the said part of the order of the trial Court has become final. On the above analysis, this Court finds that the order of the trial Court is liable to be set aside.

12.2 The principal contention of the 1st defendant is that the 4th defendant being one of the defendants cannot be permitted to amend the plaint or the plaint schedule, which is a part of the pleading of the opposite party. However, the case of the 4th defendant is that in a suit for partition, every defendant is also a plaintiff; and, hence the 4th defendant is entitled to seek the amendment of the plaint and the plaint schedule; and, that the Court below is justified in permitting the 4th defendant to amend the schedule of the plaint.

12.3 It is indisputable that the plaintiff is entitled to design his/her pleadings and make averments in the plaint according to his/her stand and in support of the reliefs claimed in the plaint and that, therefore, at the instance of a defendant, the plaint and/or the schedule of the plaint cannot be permitted to be amended as a defendant is not the author of the plaint and the plaint schedule. It is pertinent to note that second plaintiff, who is the mother of the parties, has not sought amendment of the plaint to include the subject two items of property (items 18 & 19) to the schedule of the plaint. Though in a suit for partition, every party is a plaintiff, on that score one party cannot be permitted to amend the pleadings of the opposite party as such a course would lead to chaotic & complex situations and multifarious consequences. Take a case where one of the defendants in a suit for partition intends to claim that one of the items included in the schedule of the plaint is his separate property and that the said item of property is not liable for partition; in such a case, he cannot seek for deletion of the averments in the plaint related to the said item of property and also the deletion of the said item of property from the schedule of plaint. He can only file a written statement

with necessary averments in support of his claim & defence and pray for the dismissal of the suit insofar as the disputed item of property. Take another case where in a suit for partition, one defendant who wants an item of property to be deleted from the schedule of the plaint seeks amendment of the plaint whereas another defendant wants the said item to be retained in the schedule of the plaint; in such a case there will be a stalemate/impasse as the Court cannot pre-judge the issue with regard to the said item of property; the said issue cannot be resolved, except after the conclusion of trial. Therefore, in all such and other like cases, the only course open to the contesting defendant is to design the pleadings in his/her written statement to suit his/her claim or defence, but such a defendant cannot seek amendment of the plaint and/or the plaint schedule. Such defendant also can, if necessary, seek amendment of his/her written statement. Any such application for amendment of written statement, if necessary and if filed, will, for sure, be decided on its merit. Therefore, the contention that in a suit for partition every defendant is also a plaintiff and hence, any defendant can seek the amendment of the plaint and/or the plaint schedule is a misconceived and untenable contention.

12.4 Even the High Court of the Madras in the above said decision, which was also referred in the impugned order of the trial Court, did not lay down a principle that a plaint can be permitted to be amended at the instance of the defendant. The question referred for a decision of the Division Bench of the Madras High Court was – 'Whether the amendment of plaint in a partition suit can be allowed at the instance of the defendants?' In the operative portion of the judgment, the Madras High Court held as follows:- '**As we have been called upon to answer the question as to whether the application under Order VI, Rule 17 of the Civil Procedure Code seeking for amendment of the schedule to the plaint in a partition suit at the instance of the defendant is maintainable or not, we answer the said issue by holding that while considering such an application, it is for the Court to decide on the facts of each case. The reference is answered accordingly.'** This decision, in the considered view of this Court, has no persuasive value either.

12.5 Further, this Court, in **P. Mahalakshmi and another v. Nagolu Ramanamma and others (**2004(2) L.S. 156) dealing with a request of the defendants 1 & 2 for permission to amend the plaint schedule by adding item no.1 to the plaint 'A schedule' to the plaint in a suit for partition, held as follows:-

'I am thoroughly satisfied that this application itself is a misconceived one since, such application cannot be maintained by the defendants. It is needless to say that especially in the light of the remand order of this Court, the revision petitioners – Defendants 1 and 2 are at liberty to amend their own pleadings, if they are so advised, raising these pleas. Except making this observation, no other relief can be granted in favour of the revision petitioners in the present CRP. In the

light of the same, the other aspects need not be considered.'

12.6 Further**,** in the decision in **Chilakani Venkata Rao vs Ch. Lakshman Rao And Ors (**2006(3) ALD 614), the facts are as under:

'**In a suit for partition filed by the brothers of the revision-petitioner, who is the first defendant, the revision petitioner/ 1st defendant filed a petition to implead one Nataniel as a party to the suit on the ground that his brothers alienated some property to Nataniel and so he is a necessary party to the suit; that petition was allowed; and, that order was confirmed by this Court in a revision. Thereafter, revision-petitioner/ 1st defendant filed a petition seeking amendment of the plaint for inclusion of the properties alienated to Nataniel. The said petition was dismissed on the ground that the defendant in a suit cannot seek amendment of the plaint. Hence, he filed the revision.'**

This Court while dismissing the revision petition held as under:

'**It is well known that in a suit for partition all parties, who have a share in the properties to be partitioned, would be in the position of plaintiffs and can take all the pleas, which a plaintiff can take, and so their written statements also would be in the nature of plaints. So, if the revision-petitioner felt that the property alienated by the plaintiffs to Nataniel also has to be taken into consideration for deciding the question as to what are the properties that are to be partitioned between the parties, he should have mentioned that fact in the written statement. If he had not done so, he should have sought leave of the Court to amend his written statement for inclusion of the property alienated to Nataniel in the properties to be partitioned. As rightly observed by the trial Court, question of a defendant seeking leave to amend the plaint by inclusion of certain properties in the plaint schedule does not arise, as plaint contains the case of plaintiffs but not that of the defendant. So, it is only the plaintiff that can seek amendment of the plaint under Rule 17 of Order VI CPC. Therefore, I find no merits in this revision.'**

The ratio in the above decision squarely applies to the facts of the case as in that decision, this Court categorically held that in a suit for partition, the defendant cannot seek amendment of the schedule of the plaint and that if the defendant so desires, it is for the defendant to amend his own pleadings.

13. In view of the settled legal position and the abhorrent/horrendous consequences which flow if a party is permitted to amend the pleadings of the opposite party even in a suit for partition, this Court finds that the trial Court committed a grave error in permitting the 4th defendant to amend the plaint schedule.

14. On the above analysis, this Court finds that the order impugned brooks interference.

15. In the result, the Civil Revision Petition is allowed; and, the impugned order is set aside. As a sequel, IA.No.1955 of 2018 is dismissed, however, reserving liberty to the 4th defendant to seek amendment of her written statement, if she so desires and is so advised. It is needless to state that in the event the 4th defendant files any application for amendment of her written statement, the said application shall be decided on its merit and in strict accord with the procedure established by law, uninfluenced by the observations, if any, in this order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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2018(3) L.S. 151 (Hyd.) (D.B.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
U. Durga Prasada Rao

Challa Sivakumar & Ors., ..Petitioners
Vs.
Challa Anita & Others ..Respondents

CRIMINAL PROCEDURE CODE, Sec.482 - Petitioners/ respondents 1 to 3 seek to quash proceedings against them in D.V.C before Trial Court.

Held - Subsequent decree of divorce will not interdict respondent from filing the D.V case in respect of the act of domestic violence allegedly caused by the petitioners - Therefore, plea of nonexistence of domestic relationship at present cannot be taken as an exception to entertain the quash petition - Criminal Petition is dismissed with the observation that the petitioners shall appear before Trial Court and vindicate their defence.

Crl.P. No. 13188/2013 Date:24-10-2018

Mr.V. Narayan Reddy, Advocate, Advocates for the Petitioners.
Mr.M. Venkata Narayana, For the Respondents R1 & R2.
Addl.Public Prosecutor (AP), Advocate for the R3,

J U D G M E N T

1. In this petition filed under Section 482 Cr.P.C, the petitioners/ respondents 1 to 3 seek to quash the proceedings against them in D.V.C.No.6 of 2013 on the file of Judicial Magistrate of First Class, Sullurpet, SPSR Nellore District.

2a) Petitioners 2 and 3/respondents 2 and 3 are parents of the 1st petitioner/respondent No.1.

b) Respondent No.1 herein, who is the wife of 1st petitioner, filed DVC No.6 of 2013 alleging that her marriage with 1st petitioner was performed on 02.12.2009 at Sullurpet; during marriage, her parents agreed to give Rs.6 lakhs cash to the 2nd petitioner

towards dowry and Rs.80,000/- to the 1st petitioner for purchase of gold ornaments; some time they lived happily and out of wedlock, they were blessed with a male child on 29.08.2010; after the birth of child, 1st petitioner came to her parental house and beat her unnecessarily; while so, in January, 2011 separate family was put up at Chennai and the expenses were borne by her father; in April 2011, 1st petitioner raised an issue and picked up quarrel with her family members and abused her in filthy language; when her parents came to Chennai for celebrating 1st birthday day function, 1st petitioner abused her and her mother in vulgar and un-parliamentary language and beat her black and blue; on coming to know of the same, her father took her and children to Sullurpet in September, 2011; when the elders intervened and mediated the matter on 21.06.2012; the 1st petitioner agreed to return the dowry amount of Rs.6 lakhs and to pay lump sum amount of Rs.3 lakhs towards maintenance and demanded for dissolution of marriage; contrary to same, he issued lawyer notice dated 04.07.2012 with all false allegations and sought for restitution of conjugal rights which was suitably replied; to avoid paying the agreed amount of Rs.9 lakhs, he filed HMOP No.71/2012 before Senior Civil Judge, Gudur for dissolution of marriage and the same is pending for disposal; she also filed HMOP No.92/2012 for the same relief, wherein the 1st petitioner remained ex parte and the Court after enquiry granted decree of divorce on 18.12.2012; thereafter she filed the present DVC against petitioners/ respondents for various reliefs mentioned in the petition. Hence, the instant quash petition.

3. Heard arguments of Sri V. Narayana Reddy, learned counsel for petitioners; Sri M. Venkata Narayana, learned counsel for respondents 1 & 2 and learned Additional Public Prosecutor for the State (Andhra Pradesh).

4. I heard both the learned counsel about the maintainability of DVC in view of judgment of this Court in **Giduthuri Kesari Kumar and others vs. State of Telangana and others (**2015 (2) ALD (Crl.) 470 (AP), wherein this Court observed thus:

“Para—14. To sum up the findings:

i) Since the remedies under D.V. Act are civil remedies, the Magistrate in view of his powers under Section 28(2) of D.V. Act shall issue notice to the parties for their first appearance and shall not insist for the attendance of the parties for every hearing and in case of non-appearance of the parties despite receiving notices, can conduct enquiry and pass ex parte order with the material available. It is only in the exceptional cases where the Magistrate feels that the circumstances require that he can insist the presence of the parties even by adopting coercive measures.

ii) In view of the remedies which are in civil nature and enquiry is not a trial of criminal case, the quash petitions under Sec. 482 Cr.P.C. on the plea that the petitioners are unnecessarily arrayed as parties are not maintainable. It is only in exceptional cases like without there existing any domestic relationship as laid under Section 2(f) of the D.V. Act between the parties, the petitioner filed D.V. case against them or

a competent Court has already acquitted them of the allegations which are identical to the ones levelled in the Domestic Violence Case, the respondents can seek for quashment of the proceedings since continuation of the proceedings in such instances certainly amounts to abuse of process of Court."

In view of the above ruling, I gave my anxious consideration to know whether there exists any exceptional circumstances to entertain the quash petition.

5. Severely fulminating the averments in DVC petition as false and not maintainable, learned counsel for petitioners mainly contended that the 1st respondent/ complainant always resided with her parents only. Though a separate family was setup at Chennai on 25.01.2011, the 1st respondent left the 1st petitioner in February, 2011 and went away to her parental house. She used to visit Chennai once in a month and stayed for a week and leave to her parents. Finally she left the matrimonial home in February, 2011 and she never came back. Thus she stayed in Chennai hardly for two months in her entire matrimonial life. Therefore, the 1st petitioner got issued legal notice on 04.07.2011 requesting her to come and join his society to lead happy marital life. Instead of joining him, the 1st respondent filed HMOP No.92/2012 on the file of Senior Civil Judge, Gudur and obtained decree of divorce and thereafter she filed the DVC with all false allegations as if the petitioners ill-treated her and necked her and her child out of matrimonial home. The petitioners 2 and 3 are living separately at Vidyanagar, Kota Mandal, SPSR Nellore District, which is faraway from Chennai and therefore, they never lived along with her son and 1st respondent under one roof and hence DVC is not maintainable against them. Sofaras 1st petitioner is concerned, the case is not maintainable against him either because already a divorce decree was granted on 18.12.2012 and thereafter she has been living with her parents and hence no domestic relationship exists between her and petitioners within the ambit of Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (for short "DV Act") as on the date of filing of DVC No.6/2018 i.e, 25.07.2013. Hence the continuation of proceedings in DVC No.6/ 2018 against petitioners would amount to abuse of process of the Court. He placed reliance on the following decisions:

i) **Inderjit Singh Grewal v. State of Punjab and another (**2012(1) ALD (Crl.) 496 (SC)

ii) **Medi Koteswara Prasad v. Medi Manemma and others (**2013(1) ALD (Crl.) 147 (AP)

Learned counsel thus prayed to allow the petition.

6. Per contra, learned counsel for 1st respondent would argue that all the acts of domestic violence were committed by the petitioners during the subsistence of the marriage as the 1st petitioner within one year after the marriage showed abhorrence against the 1st respondent and her child without any plausible reason and left them to the mercy of parents of the 1st petitioner and when the elders tried to

compromise the issue, he curtly stated before them that he wanted a divorce and agreed to pay Rs.9,00,000/- to the 1st respondent and her child. However, without taking his wife and child to his fold or paying the amount as agreed before the elders, surprisingly, issued a lawyer notice dated 04.07.2012 with all false allegations and sought for restitution of conjugal rights, contrary to his declaration before mediators that he wanted only a divorce. Learned counsel further submitted that the 1st respondent gave a suitable reply notice dated 11.07.2012. To avoid payment of the agreed amount of Rs.9,00,000/-, the 1st petitioner filed HMOP No.71/2012 seeking dissolution of marriage. In those circumstances, having no other go, the 1st respondent was also constrained to file HMOP No.92/2012 and the 1st petitioner remained ex parte and the Court after enquiry granted decree of divorce on 18.12.2012. Learned counsel would further argue that the said divorce decree is not an obstacle for the 1st respondent to file petition under Section 12 of DV Act for the domestic violence committed by the petitioners during the subsistence of the marriage. He thus prayed to dismiss the petition.

7. The point for determination is:

"Whether there exist any exceptional circumstances as envisaged in the judgment of this Court in **Giduthuri Kesari Kumar**'s case (1 supra) to entertain the present petition?

8. **POINT**: As extracted supra, in **Giduthuri Kesari Kumar**'s case (1 supra), this Court observed that in view of the remedies enlisted in the D.V Act, which are civil in nature and enquiry is not a trial of criminal case, the quash petitions under Section 482 Cr.P.C are not generally maintainable except in exceptional cases like, without there existing any domestic relationship as laid under Section 2(f) of the D.V Act between the parties, the petitioner filed D.V case against the respondents or a competent Court has already acquitted the respondents of the allegations which are identical to the ones levelled in the Domestic Violence case etc.

a) Now the petitioners seek to project the lack of domestic relationship between the parties as an exceptional ground for seeking quashment of the proceedings. Their case is that the 1st respondent herself obtained decree of divorce against 1st petitioner from the Court of Senior Civil Judge, Gudur, in HMOP No.92/2012 on 18.12.2012 and thereafter she filed the D.V case and therefore, the said case is not maintainable as the domestic relationship is no longer in existence. In **Medi Koteswara Prasad**'s case (3 supra), a learned Single Judge of this Court no doubt held that by virtue of the dissolution of the marriage between the parties, the 1st petitioner cannot be termed as an "aggrieved person" as defined in Section 2(a) of the D.V. Act. Learned Judge further observed that what is significant is that only concerned woman, who is or has been in domestic relationship with the respondent, who is alleged to have been subjected to any act of domestic violence by the respondent can alone be termed as aggrieved person who can file the complaint for relevant releifs under different 9 provisions

of the D.V.Act. Learned Judge ultimately quashed the proceedings against the petitioners therein. In **Inderjit Singh Grewal**'s case (2 supra), Hon'ble Apex Court held that petition under Section 12 of D.V. Act is not maintainable because parties were already divorced. We will presently see that the said decision was rendered in a different context.

b) Basing on the above rulings, the petitioners implored to quash the proceedings. I am afraid, the request of the petitioners cannot be conceded in view of the subsequent decision of Apex Court in **Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and another** (2014) 10 SCC 736)**.** One of the questions engaged in that case was, whether a divorced woman can seek for reliefs against her ex-husband under Sections 18 to 23 of the Domestic Violence Act, 2005. The Sessions Court and High Court of Bombay having considered the fact that the marriage between the parties was dissolved by Khula divorce on 09.05.2008, held the domestic relationship between the parties was severed by the date of filing of DVC on 28.09.2009 and therefore, the said D.V case was not maintainable. However, Hon'ble Apex Court on a threadbare analysis of the different provisions of the D.V.Act, has come to a different conclusion. Elucidating Section 2(a) which defines the term "aggrieved person", Supreme Court observed that apart from the woman, who is in a domestic relationship, any woman, who has been in a domestic relationship with the respondent, if alleges to have been subjected to act of domestic violence by the respondent, comes within the meaning of aggrieved person. Similarly, analyzing Section 2(f), which deals with the term "domestic relationship", the Apex Court held that a person aggrieved (wife herein), who at any point of time has lived together with husband in a shared household is also covered by the meaning of domestic relationship.

c) In the same lines, the Apex Court extrapolated the term "shared household" defined under Section 2(s) and observed that if the aggrieved person, at any stage has lived in a domestic relationship with the respondent in a house, the person aggrieved can claim a shared household. The Apex Court also happened to analyse Section 3, which defines the term "domestic violence". It held that apart from "physical abuse", "sexual abuse" and "verbal and emotional abuse", the "economical abuse" also constitute domestic violence. Ultimately, the Apex Court held thus:

"**Para 30:** An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005."

It should be noted, in the process, the Apex Court also discussed its earlier judgment in **Inderjit Singh Grewal**'s case (2 supra) and observed thus:

"**Para 28**: In Inderjit Singh Grewal [Inderjit

Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] the appellant Inderjit Singh and Respondent 2 of the said case got married on 23-9-1998. The parties to the marriage could not pull on well together and decided to get divorce and, therefore, filed a case for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955. After recording the statement in the said case, the proceedings were adjourned for a period of more than six months to enable them to ponder over the issue. The parties again appeared before the Court on second motion and on the basis of their statement, the District Judge, Ludhiana vide judgment and order dated 20-3-2008 allowed the petition and dissolved their marriage. After dissolution of marriage, the wife filed a complaint before the Senior Superintendent of Police, Ludhiana against Inderjit Singh under the provisions of the Domestic Violence Act alleging that the decree of divorce obtained by them was a sham transaction. It was further alleged that even after getting divorce both of them had been living together as husband and wife. In the said case, the Superintendent of Police, City I conducted the fullfledged inquiry and reported that the parties had been living separately after the dissolution of the marriage. Hence, no case was made out against Inderjit Singh. In this context, this Court held that Section 12 "application to Magistrate" under the Domestic Violence Act challenging the said divorce was not maintainable and in the interest of justice and to stop the abuse of process of court, the petition under Section 482 CrPC was allowed. The law laid down in the said case is not applicable for the purpose of determination of the present case"

In view of the subsequent judgment of the Apex Court categorically holding that domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent and petition under D.V. Act is maintainable, the judgment in **Medi Koteswara Prasad**'s case (3 supra) is no longer a good law and the judgment in **Inderjit Singh Grewal**'s case (2 supra) is also not applicable.

9. The instant case is concerned, it is the categorical plea of the 1st respondent that during the subsistence of the marital tie between herself and 1st petitioner, all the petitioners have subjected her to domestic violence and they necked her and her child out of matrimonial home and therefore, she took shelter in her parental home and the efforts made by the elders did not fructify and though the 1st petitioner wanted divorce on the promise of paying Rs.9,00,000/- but betrayed her and hence she was constrained to file divorce application and obtained decree and later filed D.V case to obtain the reliefs. In view of the judgment in **Juveria Abdul Majid Patni**'s case (4 supra), the subsequent decree of divorce will not interdict her from filing the D.V case in respect of the act of domestic violence allegedly caused by the petitioners. Therefore, the plea of nonexistence of domestic relationship at present cannot be taken as an exception to entertain the quash petition.

10. In the result, this Criminal Petition is dismissed with the observation that the petitioners shall appear before the Trial Court

and vindicate their defence. The Trial Court is directed to decide the case on merits uninfluenced by the observations made in this order. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

–X–

2018(3) L.S. 157 (Hyd.) (D.B.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
S.V. Bhatt

Araveti Sreenivasulu ..Petitioner

Vs.

Makam Suresh Babu
(died) per LRs.
M. Vijayasree & Ors., ..Respondents

SPECIFIC RELIEF ACT, Secs.28 - CIVIL PROCEDURE CODE, Sec.148 - Revision petitioner is LR of 1st defendant – Trial Court allowed I.A. filed by respondents to grant time to deposit the balance sale consideration in terms of decree and judgment between parties – Hence instant revision.

Held - Consideration of discretion cannot and ought not to be accepted in case where the Court has to show maximum latitude in favour of applicant or Court accepts every circumstance stated by the party - Such discretion, if exercised, results in prejudice and hardship to the contesting parties - Court while considering request for extension of time can and also could direct refund of advance money received by defendant if case for extension of time is not favourably considered - With a view to doing justice between the parties, Court can also direct repayment with such terms and conditions as are just and proper - Exercise of discretion for extension of time by trial Court is illegal and untenable – Civil Revision stands allowed.

C.R.P. No.1949/2012 Date: 03-10-2018

Mr.M.V.S. Suresh Kumar, Senior Counsel Advocate for the petitioner
Mr.N. Siva Reddy, Advocate for the Respondents.

J U D G M E N T

Heard Sri M.V.S.Suresh Kumar learned Senior Counsel for petitioner and Sri N.Siva Reddy for respondents.

The legal representatives of sole plaintiff and sole defendant in O.S.No.6 of 2000 on the file of the I-Additional District Judge, Anantapur, are the parties in the instant revision. The revision petitioner is the legal representative of 1st defendant. Respondent Nos.1 to 4 filed I.A.No.58 of 2011 in the Court of Additional Judge, Anantapur to grant time to deposit the balance sale consideration in terms of the decree and the judgment dated 30.09.2005 in O.S.No.6 of 2000, the application was allowed on 04.01.2012. Hence, the Revision Petition at the instance of 2nd defendant/2nd respondent.

The application for enlargement of time was filed under Section 148 of the Civil Procedure Code (CPC). The counsel appearing for the parties have stated that Section 28 of Specific Relief Act, 1963 (for short 'the Act') is correct provision of law for relief of extension of time or similar reliefs. The quoting of wrong provision of law in I.A.No.58 of 2011 is not contested and arguments are advanced on scope, jurisdiction and discretion available under Section 28 of the Act.

The circumstances necessary for disposing of the revision are stated thus:

The parties are referred as plaintiff (s) and the defendant (s).

Makam Suresh Babu filed O.S.No.6 of 2000 for specific performance of the agreement of sale dated 31.10.1994 against Araveti Venkata Lakshmamma. The plaintiff agreed to purchase Ac.0-22_ cents from the defendant at the rate of Rs.32,000/- per cent and the total sale consideration works out to Rs.7,12,000/-. The defendant received Rs.40,000/- as advance from the plaintiff. On 30.09.2005, O.S.No.6 of 2000 was decreed for specific performance of agreement of sale to an extent of Ac.0-19 cents and plaintiff was directed to pay balance sale consideration i.e., Rs.5,68,000/-(32000 x 19= Rs.6,08,000-Rs.40,000=Rs.5,68,000/-) within two months i.e., from 30.09.2015.

The operative portion of the judgment reads thus:

"In the result, the suit is partly decreed holding that the plaintiff is entitled for the extent of Ac.0-19 cents only with the boundaries mentioned therein in the commissioner's report and the plaintiff is granted two months time to deposit the balance amount and on such deposit the defendant is directed to execute the registered sale deed in respect of Ac.0-19 cents of land at the expenses of the plaintiff and if the defendant failed to execute the registered sale deed within the two moths from the date of deposit, the plaintiff is at liberty to get it done through the process of law at the costs of the defendant. Both parties bear their own costs."

(emphasis added)

On the demise of sole plaintiff i.e., respondents 2 to 4 herein have come on record as the legal representatives of plaintiff. On 18.09.2010, the legal representatives of 1st plaintiff filed the instant application for enlargement of time granted in O.S.No.6 of 2000 to deposit the balance sale consideration. The case of the legal representatives of 1st plaintiff is that the judgment and decree dated 30.09.2005 directed deposit of Rs.5,68,000/- on or before 30.11.2005. The plaintiff, on 29.11.2005, applied for lodgment challan to deposit Rs.5,68,000/- as directed by the decree. The plaintiff was prevented from depositing the balance sale consideration in view of stay of all further proceedings in O.S.No.6 of 2000 was granted by this Court in C.R.P.No.3987 of 2005. The lodgment challan dated 29.11.2005 by reference to stay order was returned. One K.Venugopal, S/o Narayana Swamy filed I.A.No.68 of 2005 under Order I Rule 10 of CPC to come on

record in O.S.No.6 of 2000. The said application for impleading K. Venugopal as defendant was dismissed by the trial Court. The said Venugopal filed C.R.P.No.3987 of 2005 against order in I.A.No.68 of 2005 and obtained stay of all further proceedings in O.S.No.6 of 2000. It is matter of record that C.R.P.No.3987 of 2005 was dismissed on 29.03.2006. Therefore, in the above circumstances, it is stated that the plaintiff though was ready to deposit the amount as directed by the Court in O.S.No.6 of 2000, he was prevented from complying with the direction to deposit balance sale consideration within two months from 30.09.2005. It is further alleged that the plaintiff did not contest C.R.P.No.3987 of 2005, therefore, the plaintiff was under the bona fide impression that the stay granted by this Court was continuing. It is averred that on 31.08.2009 the plaintiff was murdered, a case was registered and investigated in Crime No.277 of 2009. In the year 2008, the family of plaintiff was shifted to Hyderabad for education of children of plaintiffs 1 and 2. The 2nd plaintiff, on verification of record, has come to know the dismissal of C.R.P.No.3987 of 2005 and thereafter steps are taken for depositing the balance sale consideration. The Court did not accept the deposit tendered by plaintiff, therefore there is no default on the part of plaintiff and the subsequent delay is on account of two circumstances namely that the 1st plaintiff did not contest the revision, therefore, was unware of the dismissal of C.R.P., and secondly, the 1st plaintiff was murdered on 31.08.2009 without knowing the outcome of CRP. As legal representatives, it is stated that plaintiffs 2 to 4 are ready to deposit the balance sale consideration as per decree dated 30.09.2005. Hence, I.A.No.58 of 2011 was filed for enlargement of time for depositing the balance sale consideration.

The 2nd defendant/Revision Petitioner filed counter affidavit in I.A.No.58 of 2011 opposing the prayer for extension of time for deposit into Court on all fours.

The case of the 2nd defendant is that the decree for specific performance is a conditional decree. The balance sale consideration, if is not deposited within the time granted by the Court, the plaintiff loses all the rights under the decree and the decree cannot be enforced. The plaintiff is mandated by the decree in O.S.No.6 of 2000 to deposit the balance sale consideration on or before 30.11.2005 and admittedly, the balance sale consideration is not deposited within the time granted by the trial Court. Thus, the decree in O.S.No.6 of 2000 is unenforceable. The 2nd defendant denies the allegation viz ignorance of dismissal of C.R.P.No.3987 of 2005 pleaded by the 1st plaintiff. The stay granted in C.R.P.No.3987 of 2005, if is considered as the reason for not depositing the amount on or before 30.11.2005, it is contended that the balance sale consideration should have been deposited within reasonable time after the disposal of C.R.P.No.3987 of 2005 on 29.03.2006. It is further contended that the plaintiff was alive up to 31.08.2009 i.e., beyond three years from the date of decree and judgment in O.S.No.6 of 2000. The plaintiff did not choose to deposit the balance sale consideration for the reasons known to plaintiff. Therefore, the question that the 2nd plaintiff expressing readiness

and willingness to deposit the balance sale consideration is besides the point. Therefore, it is contended that there are no grounds for granting enlargement of time for depositing the balance sale consideration. The application, hence, is not tenable in law and no grounds are made out for accepting the prayer for extension of time granted in the decree in O.S.No.6 of 2000. The 2nd defendant prayed for dismissing the application.

The trial Court framed the following point for consideration.

Whether the petitioners can be granted time to deposit the amount at this stage?

After referring to the circumstances already noticed in this order, the learned trial Judge has taken note of the attempt of 1st plaintiff to deposit the amount on 29.11.2005 and held that the 1st plaintiff in fact made sincere efforts within the time stipulated by the Decree and the Judgment to deposit the balance sale consideration, but could not deposit on account of stay granted in C.R.P.No.3987 of 2005, and the lodgment challan was returned by the trial Court. Thus, the plaintiff was prevented by stay order from depositing the amount on or before 30.11.2005. The plaintiff, since did not contest the CRP, might not be unaware of the result in C.R.P. It is, however, observed that the party to a lis is expected to know the stage or the outcome of pending proceedings. The murder of plaintiff is evidenced by FIR and the circumstances stated for not depositing the balance sale consideration within time or thereafter are considered sympathetically by trial Court. The trial Court referred to the decisions reported in 2002 (3) LS, 229 and 2010 (3) ALD 730 and through the order under revision has substantially condoned the delay of 2928 days in depositing the balance sale consideration. Finally it ordered for depositing the balance sale consideration immediately. Hence, the instant revision.

Mr.M.V.S.Suresh Kumar contends that the order under Revision suffers from patent illegality; the trial Court exercised the discretion arbitrarily and is reflected from the conclusion that the case for extending time is required to be considered sympathetically in the peculiar circumstances of the case. Therefore, the very approach of trial Court is vitiated and this Court in the exercise of revisional jurisdiction ought to correct these illegalities patent in the order under revision. He contends that Section 28 of the Act provides for rescission in certain circumstances of contracts executed for the sale or lease of immovable property and specific performance of such contract has been granted by a decree. Section 28(1) of the Act confers jurisdiction on Court to enlarge time for further period as the Court may allow for performance of obligation viz deposit of purchase money, therefore, the Court exercises equitable jurisdiction by keeping in view the totality of circumstances but not arbitrarily. Adverting to the facts of the instant case, he contends that the agreement of sale deals with sale of purchase of immovable property in Anantapur town. The trial Court ought to have taken note of escalating prices of immovable property at all the places and for no fault of vendor, the performance of obligation as

directed under the decree if is accepted, the same amounts exercising without proper guidance and for no fault, the defendant/ vendor would suffer great prejudice and loss. The trial Court, after taking note of the defence set up by defendant/vendor, while disposing of O.S.No.6 of 2000 granted two months time from the date of judgment to deposit the balance sale consideration. According to him, the 1st plaintiff was prevented by the stay granted by this Court in C.R.P.No.3987 of 2005 in depositing the balance sale consideration, but the 1st plaintiff for all purposes was not prevented by any circumstance from 29.03.2006 i.e., when C.R.P. was dismissed, to 31.08.2009. According to him, the 1st plaintiff was alive for nearly three (3) years five (5) months, and during this period the 1st plaintiff chose not to deposit the amount. The murder of 1st plaintiff on 31.08.2009 does not grant excuse for coming with the instant prayer after lapse of several years. According to him, the Court while exercising the discretion is guided by all the relevant circumstances including the changed circumstances, escalation of prices etc., vis-_-vis the subject matter of litigation. The discretion must and should be exercised by taking note of applicable law, limitation and the laxity in filing application by the plaintiff. According to him, the trial Court does not exercise absolute discretion and jurisdiction to extend time for deposit particularly by referring to sympathetic circumstances. The jurisdiction to extend the time under Section 28 of the Act is unavailable and the power available under Section 28 of the Act to extend the time for complying with the condition imposed in the decree, this power is exercised within the four corners of law. According to him, in situations like this the Court exercises jurisdiction in equity and, therefore, the equitable jurisdiction is exercised without subjecting the contesting party to hardship, loss or prejudice. He prays for setting aside the order dated 04.01.2012 and also allow the revision. He relies on decisions reported in **ABDUL SHAKER SAHIB v. ABDUL RAHIMAN SAHIB AND ANOTHER (**1987 (2) ALT 229), **V.S.PARANICHAMY CHETTIAR FIRM v. C.ALAGAPPAN AND ANOTHER** (1999) 4 SCC 702), **BHUPINDER KUMAR v. ANGREJ SINGH** (2009) 8 SCC 766), **ALI JAFFAR v. V.VENKAT REDDY (**2012 (3) ALT 202)and **V.S.PARANICHAMY CHETTIAR FIRM v. C.ALAGAPPAN AND ANOTHER** (2017) 11 SCC 57)for the proposition that the power under Section 28 is examined on sound legal principles, without room for assuming the discretion in favour of one party and the detriment of another party.

Mr.Suresh Kumar finally contends that the point formulated for decision by the trial Court is incorrect and assumes the plaintiff's entitlement for enlargement.

According to him, the point for consideration ought to be whether the application for extension of time at this length of time is maintainable in law and whether the plaintiff is entitled for enlargement of time or not? According to him, in matters of commercial importance, the Court ought not to have based its conclusions on sympathy in extending time lines, which are otherwise very material for timely compliance by a party.

Per contra, Mr.N.Siva Reddy contends that the facts and circumstances of the case are singular and the power to enlarge time is exercised by keeping in view the peculiar circumstances of the case, therefore the contentions otherwise made are untenable. According to him, the 1st plaintiff by applying for lodgment challan on 29.11.2005 has obeyed the time limit stipulated by the trial Court in the decree and judgment dated 30.09.2005. Therefore, the readiness and willingness to pay balance sale consideration of Rs.5,68,000/- is substantially established in the case on hand. The stay granted in C.R.P.No.3987 of 2005 practically prevented the 1st plaintiff from depositing the balance sale consideration. Therefore, according to him, firstly there is no default on the plaintiff and secondly, the default in depositing the amount is due to circumstances beyond plaintiff's understanding. It is further contended that the 1st plaintiff, since has not contested C.R.P.No.3987 of 2005, the plaintiff was not aware of dismissal of C.R.P on 29.03.2006. He concedes that the plaintiff died after 3 years 5 months from the date of disposal of C.R.P. The inaction in moving the matter, if any, will have to be treated as bona fide but not indifference on the part of plaintiff or his legal representatives to pay the balance sale consideration. Therefore, though the trial Court used the expression 'sympathetically', still the discretion for enlargement of time is exercised by referring to hard and undisputed circumstances of the case on hand. Therefore, he contends that this Court, in its discretion under Section 115 of CPC, ought not to re-examine and interdict the order of the trial Court, in the absence of patent infirmity or illegality pointed, which goes to the root of jurisdiction of the trial Court. He next contends that the defendants if are of the view that the plaintiff committed default, the defendant ought to have applied for rescission of the contract under Section 28 of the Act. The defendant since did not apply for rescission, the obligations created through the decree and judgment dated 30.09.2005 would subsist. According to him, the contention of defendant that the decree for specific performance has become inexecutable with the default in depositing the balance sale consideration, is against well established precedents that a decree for specific performance is in the nature of a preliminary decree and till the reciprocal promises are completed, the Court has jurisdiction. According to him, the decree crystallized rights and obligations of the parties and the prayer in I.A.No.58 of 2011 is to grant time for discharging the obligation fastened by the decree. He contends that in the absence of an application for rescission by the defendants, the discretion exercised by the trial Court is within its jurisdiction and no exception can be taken. According to him, the word 'may' under Section 28 of the Act will have to be read as 'shall'. For the proposition, the defendant must ask for rescission of the contract, he places strong reliance on the decisions reported in **ABDUL SHAKER SAHIB v. ABDUL RAHIMAN SAHIB AND ANOTHER (**AIR 1923 Madras 284); **METTA RAMA BHATLU V. METTA ANNAYYA BHATLU AND OTHERS (**AIR 1956 Madras 144)and for the proposition the word 'may' to be read as 'shall' in **SMT. VATSALA SHANKAR BANSOLE v. SHRI SAMBHAJI NANASAHEB KHANDARE AND ANOTHER (**AIR 2003 Bombay 57).

I have perused the record and noted the submissions of learned counsel appearing for the parties.

The point for consideration is whether the prayer in I.A.No.58 of 2011 is maintainable; whether the plaintiffs have made out case for granting the extension of time for depositing the amount as directed in O.S.No.6 of 2000 and whether the Court in exercise of power under Section 28 of the Act can direct refund of consideration received under the suit agreement.

Section 28 of the Act reads thus:

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this

section shall be in the discretion of the court".

A few binding precedents on Section 28 of the Act are adverted to before answering the point for consideration.

In **ABDUL SHAKER SAHIB** case (1 supra) the Division Bench while considering the effect of non-compliance with the condition stipulated by the Court and also the nature of decree for specific performance held as follows:

"Where plaintiff was given a decree for specific performance of a contract to sell on condition of his paying a certain amount to defendant within a specified time.

Held, the decree is in the nature of a preliminary decree, the Original Court keeping control over the action and having full power to make any just and necessary orders therein, including in appropriate cases the extension of the time. The vendor may either file a fresh suit for rescission of the contract or may, in the same suit, apply to the Court to rescind the contract. The contract is not determined by mere failure of the plaintiff to pay the amount within the specified time. Though certain persons entitled to the benefit of the contract refused to join the plaintiffs in the suit and have joined by them as defendants, the decree for specific performance can be granted.

Persons who desire the assistance of the Court in obtaining equitable relief must come quickly. In each case is it a question to be decided on the facts whether the delay on the part of the plaintiff is such that the Court ought not to exercise its powers".

(emphasis added)

In **METTA RAMA BHATLU** case (7 supra), Phillips, J was determining whether the Court can enlarge the time stipulated in the decree and if so the manner in which the discretion could be exercised held as follows:

"As an order for specific performance of a contract for transfer of immoveable property is in the nature of a preliminary decree and as the Court does retain power to make any stipulation it thinks fit with reference to the performance that power extend time vests in the Court which actually passes the order for specific performance although it is an appellate Court.

In considering whether time should be granted it has to be remembered that the delay need not be explained so minutely in a case of this sort as in a case, for instance, under the Limitation Act, where it is sought to excuse a bar of limitation. Delay in such a case should be looked at more leniently than in a case of limitation".

To the same effect is the decision of Bombay High Court in **SMT. VATSALA SHANKAR BANSOLE** case (8 supra) and held as under:

In Ramankutty Gupta v. Ayara , the Apex Court has in no uncertain terms held that after passing the decree for specific performance, the Court does not cease to have jurisdiction in the suit but retains the control over the decree even after the decree has been passed. It is further held that it

is open to the Court to exercise the powers under Section 28(1) of the Specific Relief Act either for extension of time or for rescinding of contract. In the said case, the plaintiff had deposited the amount after expiry of the period fixed by the Court under the decree for specific performance of agreement. The Apex Court while holding that the application for extension of time for payment of balance amount of consideration can be filed in the Court of the first instance as well as in the appellate Court, has observed that, "It is to be seen that the procedure is hand maid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice. Therefore, technicalities would not stand in the way to subserve substantive justice."

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...... Undoubtedly, in terms of Order 20, Rule 12A of C.P.C. while passing such a decree, the Court has to specify the period for payment of consideration amount under the agreement. At the same time, as observed by the Allahabad High Court in the matter referred to above, the Section 35 of the Specific Relief Act, 1877, which was in force then, indicated that in event of a party to a decree for specific performance being in default, another party could either file a suit for recession of the contract on which specific performance was granted or he could apply to the Court which would then rescind the decree. Section 28 of the Specific Relief Act, 1963 provides for certain steps to be taken by the Judgment debtor in a decree for specific performance of the agreement pursuant to the failure on the part of the decree holder to perform his obligation under the decree. Considering these provisions of law, Nagpur High Court as well as Madras High Court have clearly ruled that the decree for specific performance of a contract for sale, has to be in the nature of a preliminary decree, and therefore, the Court does not become functus officio after passing such a decree as is fully empowered to extend the period fixed under the decree for deposit of the money by the decree holder. This view is confirmed by the Apex Court in K. Kalpana Saraswathi's case (supra). Considering the said decision of the Apex Court along with the provisions of Order 20, Rule 12A of C.P.C. and other decisions particularly in the matter of Ramankutty as well as Hungerford Investment Trust it is to be held that decree in a suit for the specific performance has to be in the nature of preliminary decree.

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Undisputedly, in the case in hand, the time granted to the decree holder/petitioner to deposit the balance amount was of one month from the date of the decree. The application filed for extension of the time apparently discloses that the petitioner was ill for about 15 days prior to the filing of the application and, therefore, she prayed for extension of one month's time to pay the balance amount. The time was apparently granted under the decree to facilitate the petitioner to make payment of the balance amount, and in terms of Order 20, Rule 12A, it is necessary for the Court to grant the time to pay the balance

amount while decreeing the suit for specific performance. It should be always remembered that the final end of law is justice, and so the means to it too should be informed by equity as has even ruled by the Apex Court in K. Kalpana's case (supra). Being so, merely because there was failure to pay the said amount within one month and the extension was asked for only for one month, it was not a case of the petitioner being a persistent defaulter. Besides the time having been granted for the benefit of petitioner to enable her to deposit the balance amount, she could not have been denied the fruits of the decree in her favour merely on account of few days delay in making payment of balance amount.

18. Before parting with the matter it is necessary to take note of the decision of the learned single Judge in Bhujangrao Ganpati v. Sheshrao Rajaram reported, in , though both the parties have made no reference to the said decision. The said decision was passed following an un-reported decision of the Division Bench of this Court in Civil Appeal No. 3964/1958 dated 19-8-1959 and referring to that of the Apex Court in Mahanth Ram Das v. Ganga Das, . The Apex Court in the said case has ruled that Section 148 of C.P.C. empowers the Court to deal with the events those might arise subsequent to an order for the purpose of enlarging the time for payment even though it had been peremptorily fixed, but also observed that such procedural orders, though peremptory (conditional decrees apparent) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estope the Court from taking note of events and the circumstances which happen within the time fixed. Considering the said ruling of the Apex Court, the learned single Judge held that "it is, therefore, quite clear that whilst laying down, in effect, that Section 148 must be liberally constructed, the Supreme Court has excluded from its ambit conditional decrees like the one in the present case." It is to be noted that in the case before the learned single Judge, the time specified for payment of amount in the decree for specific performance had already expired and a request for extension of the said time was rejected by the lower appellate Court. In view of provisions of law contained in Order 20, Rule 12-A of CPC, and the decision of the Apex Court in K. Kalpana Sarawathi (supra) and Ramankutty Guptan's (supra), which were delivered subsequent to the decision in Mahant Ram Das's case, it is apparent that the law as regards the nature of decrees in suit for specific performance is well settled and it is to be held that the settled law now is that mere specification of time to pay the amount and observation therein that in case of failure to pay amount within the specified time, the suit would stand dismissed, that would not render such a decree either to be conditional or final decree and, therefore, the decision of the learned single Judge in Bhujangrao Ganpati's case is no more a good law and is not binding upon this Court in view of the above referred Supreme Court decisions which have been delivered subsequent to the said decision in Bhujangrao Ganpati's case (supra), and the same being on the point in issue.

A Division Bench of this Court in

CHERUKURI VENKATA RAO v. **BRAHMOJOSYULA BALA GANGADHARA SHARMA AND OTHERS (**1987(2) ALT 229)' considered the ambit of sub-section (3) of Section 28 of the Act and also the reasonable extension for performance could be considered and held as follows:

"We may point out at the outset that the filing of an execution petition by the plaintiff for directing defendants 1 & 2 to execute a sale deed was really unnecessary. No execution petition as such is necessary for the said purpose after the coming into force of the Specific Relief Act, 1963, sub-section (3) of Section 28 empowers the Court to direct not only the execution of sale deed in pursuance of a decree for specific performance, but also to direct delivery of possession, and to pass all other necessary and ancillary orders in the same suit".

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Treating the petitioner's application as E.P. too does not mean automatically that since it is filed within twelve years, it ought to be ordered automatically. Can it be said that inasmuch as the decree did not prescribe the time for depositing the balance consideration, it is open to the purchaser to deposit at any time within twelve years? Cannot the concept of 'reasonable period' imported in such a context? This is the question that we have to answer. On this question it is well to remember that the relief of specific performance is an equitable remedy. Indeed, the Specific Relief Act itself is based upon equity, fair play and good conscience. It has been held by the Supreme Court in H.I. Trust vs. Haridas Mundra (AIR 1972) SC 1826) that the contract between the parties is not extinguished by the passing of a decree for specific performance, and that the contract subsists notwithstanding the passing of the decree. The purchaser cannot, and should not be allowed to take unfair advantage of the situation. He must act with reasonable diligence. The application for execution of the sale deed and/or for delivery of possession, whether by way of an E.P. or an application under Section 28(3) must therefore be made within a reasonable time. What is 'reasonable time' is a question of fact to be decided in the facts and circumstances of a given case. No hard and fast rule can be enunciated in that behalf. However, it may be borne in mind that the period of limitation prescribed by the Limitation Act for enforcing an agreement of sale is three years from the date fixed for the purpose, or, if no such date is fixed, when the plaintiff has notice that performance is refused; (Art.54). The said period must be treated as the outer limit, generally speaking. Indeed, it should be much sooner".

The Apex Court in **BHUPINDER KUMAR** case (3 supra) examined the nature of decree for specific performance and the power of court under Section 28 of the Act and held as follows:

"The following questions arose for consideration before this Court:

(i) Whether the Court has power to extend the time in favour of a decree holder to pay the balance amount/perform conditions as

mentioned in the decree for specific performance?

(ii) Whether the appellant had shown sufficient and reasonable ground for extension of time?

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In K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar : (1980) 1 SCC 630, this Court has held that the court has power under Section 28 of the Act to extend time for making deposit. The following conclusion in para 4 is relevant:

"It is perfectly open to the court in control of a suit for specific performance to extend the time for deposit, and this Court may do so even now to enable the plaintiff to get the advantage of the agreement to sell in her favour. The disentitling circumstances relied upon by the defendantrespondent are offset by the false pleas raised in the course of the suit by him and rightly negatived. Nor are we convinced that the application for consideration and extension of time cannot be read, as in substance it is, a petition for more time to deposit. Even so, specific performance is an equitable relief and he who seeks equity can be put on terms to ensure that equity is done to the opposite party even while granting the relief. The final end of law is justice, and so the means to it too should be informed by equity. That is why he who seeks equity shall do equity. Here, the assignment of the mortgage is not a guileless discharge of the vendor's debt as implied in the agreement to sell but a disingenuous disguise to arm herself with a mortgage decree to swallow up the property in case the specific performance litigation misfires. To sterilise this decree is necessary equity to which the appellant must submit herself before she can enjoy the. fruits of specific performance".

It is clear that the decree is in the nature of preliminary decree and the suit would continue and be under the control of the Court till either party moves for passing final decree. It is also clear that though the court has power to extend time and it is the duty of the court to apply the principle of equity to both parties.

In Kumar Dhirendra Mullick and Ors. v. Tivoli Park Apartments (P) Ltd. : (2005) 9 SCC 262, this Court, after analyzing earlier decisions, has concluded that:

"when the court passes the decree for specific performance, the contract between the parties is not extinguished. The court does not lose its jurisdiction after the grant of the decree for specific performance nor does it become functus officio. The decree for specific performance is in the nature of a preliminary decree, and the suit is deemed to be pending even after the grant of such decree. Hence, the Court retains control over the entire matter even after the decree. Section 28 gives power to grant order of rescission of the agreement which itself indicates that till the sale deed is executed, the Trial Court retains its power and jurisdiction to deal with the decree of specific performance. Therefore, the court has the power to enlarge the time in favour of the

decree-holder to pay the amount or to perform the conditions mentioned in the decree for specific performance.

It is clear that Section 28 gives power to the court either to extend the time for compliance of the decree or grant order of rescission of the agreement. These powers are available to the Trial Court which passes decree of specific performance. In other words, when the court passes the decree for specific performance, the contract between the parties is not extinguished. To put it clear that the decree for specific performance is in the nature of preliminary decree and the suit is deemed to be pending even after the decree. Sub-section 1 of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. On the other hand, Section 28 gives power to the Court to grant order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/ decree. In deciding application under Section 28(1) of the Act, the Court has to see all attending circumstances including the conduct of the parties.

As discussed earlier, though the Court has power and discretion to extend the time for fulfillment of the contract, in the case on hand, there is neither any material to show that the appellant was having the required money nor had he tendered or deposited the same as per the terms of the decree. Both the Executing Court and the High Court found that there was no just and reasonable cause to extend the time for depositing the balance consideration.

In the circumstances and the materials placed, we are satisfied that due to bereft of any acceptable material for extension of time, the Executing Court rightly declined to extend the time, consequently rescinded the contract as requested by the respondent judgment-debtor. The High Court, after analyzing all these aspects and finding that the decision arrived at by the Executing Court is just and equitable, dismissed the revision. We are in entire agreement with the said conclusion. Consequently, the appeal fails and the same is dismissed".

In **PREM JEEVAN V. K.S.VENKATA RAMAN AND ANOTHER** (2017)11 SCC 57), the Supreme Court was considering failure of judgement debtor to apply for rescission and the effect of such failure on the validity of the decree. This binding precedent answers the two decisions relied on by Mr.Siva Reddy, viz., Abdul SHAKER SAHIB'S & **METLA RAMA BHATLU** case. I find it useful to advert the very question that was decided and also the ratio on the point.

"The short question that arises for consideration in these appeals is: whether failure of the decree-holder in a suit for specific performance to make the requisite deposit within the specified time, will permit the decree-holder to execute the decree in the absence of extension of time?

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There is no doubt that the above provision permits the judgment-debtor to seek rescission of a contract and also permits extension of time by the court but merely because rescission of contract is not sought by the judgment-debtor, does not automatically result in extension of time"

In **V.S.PARANICHAMY CHETTIAR FIRM** case (2 supra), the Hon'ble Apex Court held thus:

"The agreement of sale was entered into as far back on February 16, 1980, about 19 years ago. No explanation is forthcoming as to why the balance amount of consideration could not be deposited within time granted by the court and why no application was made under Section 28 of the Act seeking extension of time of this period. Under Article 54 of the Limitation Act, 3 years period is prescribed for filing the suit for specific performance of contract of sale from the date of the agreement or when the cause of action arises. Merely because a suit is filed within the prescribed period of limitation does not absolve the vendee-plaintiff from showing as to whether he was ready and willing to perform his part of agreement and if there was non-performance was that on account of any obstacle put by the vendor or otherwise. Provisions to grant specific performance of an agreement are quite stringent. Equitable considerations come into play. Court has to see all the attendant circumstances including if the vendee has conducted himself in a reasonable manner under the contract of sale. That being the position of law for filing the suit for specific performance, can the court as a matter of course allow extension of time for making payment of balance amount of consideration in terms of a decree after 5 years of passing of the decree by the trial court and 3 years of its confirmation by the appellate court? It is not the case of the respondent- decree holder that on account of any fault on the part of the vendor- judgment-debtor, the amount could not be deposited as per the decree. That being the position, if now time is granted, that would be going beyond the period of limitation prescribed for filing of the suit for specific performance of the agreement though this provision may not be strictly applicable. It is nevertheless an important circumstance to be considered by the Court. That apart, no explanation whatsoever is coming from the decree-holder-respondents as to why they did not pay the balance amount of consideration as per the decree except what the High Court itself thought fit to comment which is certainly not borne out from the record. Equity demands that discretion be not exercised in favour of the decree holder-respondents and no extension of time be granted to them to comply with the decree.

The decision of the Apex Court in **RAJENDER KUMAR V. KULDEEP SINGH AND OTHERS** (2014) 15 SCC 529)case is directly on the facts-in-issue in the case on hand as well and illustrated the manner of exercise of equity, jurisdiction or discretion by the Court, which reads as follows:

"Held, as in the case of determining whether a decree for specific performance is to be granted in the first place where equity weights with the court, so is the situation

in considering an application under S.28 SRA for rescinding the contract – If the purchaser is entitled to claim compensation for deterioration, a fortiori it must be held that the vendor should also be entitled to compensation for accretion in value of the subject-matter of the agreement for specific performance, in case the execution thereof is unduly delayed by the purchaser – S.28 provides that the court has to pass an order as justice of the case requires – Court did not advert to one of the main contentions regarding the escalation in land value by which the vendors has to incur liability of around four times the balance consideration by way of payment of unearned increase to the L&DO so as to complete their obligation which arose only on account of the delayed execution of the decree – In the facts and circumstances of the case, it is very difficult to balance the equity and rights of both the parties in the background of their conduct as both plaintiff purchaser and defendant vendors were equally at fault - However, balancing equities purchaser directed to pay vendors the land value as per prevailing notified circle fate – Purchaser also held liable to meet the unearned increase to be paid to the L&DO – Equity.

Having regard to the facts and circumstances the High Court has not made an attempt to balance equity. As in the case of determining whether a decree for specific performance is to be granted in the first place where equity weighs with the court, so is the situation in considering an application under Section 28 of the Specific Relief Act, 1963 for rescinding the contract. Under Section 28 of the Specific Relief Act, 1963, a vendor is free to apply to the court which made decree to have the contract rescinded in case the purchaser has not paid the purchase money or other sum which the court has ordered him to pay within the period allowed by the decree or such other period as the court may allow. On such an application, the court may, by order, rescind the contract "as the justice of the case may require". It is now settled law that a suit for specific performance does not come to an end on passing of a decree and the Court which passed the decree retains control over the decree even after the decree has been passed and the decree is sometimes described as the preliminary decree. A decree for specific performance is a decree in favour of both the plaintiff and the defendant in the suit. Hence, the decree can be executed either by the plaintiff or the defendant. The plaintiff or the defendant is also free to approach the court for appropriate clarification/ directions in the event of any ambiguity or supervening factors making the execution of the decree unexecutable.

In the instant case, converse is the position. If the purchaser is entitled to claim compensation for deterioration, a fortiori it must be held that the vendor should also be entitled to compensation for accretion in value of the subject matter of the agreement for specific performance, in case the execution thereof is unduly delayed by the purchaser. Section 28 of the Specific Relief Act provides that the court has to pass an order as the justice of the case may require. The parties on approaching the court must get the feeling that justice has been done in the facts and circumstances of the case, particularly in

specific performance related cases, in terms of equity, equality and fairness. In the facts and circumstances of the case, it is very difficult to balance the equity and balance the rights of both the parties in the background of their conduct. No doubt there was no time fixed in the agreement for payment of the purchase money. That was also contingent on a series of obligations to be performed by the vendor and the duty of the purchaser to pay the purchase money was only thereafter. But closely analysing the pleadings and submissions, the purchaser had made an attempt, though belatedly, for getting the obligations performed even at his expense.

The trial court should have passed an equitable order while considering the application for rescission. Having regard to the fact that the decree was passed in 1984, it would be unjust and unfair to relegate the parties to the trial court at this distance of time. For doing complete justice to the parties, it is a case where the purchaser should be directed to pay the land value to the vendors as per the circles rate prevailing during 16-11-2011 to 5-1-2012."

The meaning of the words 'Equity Jurisdiction' and 'Equity Jurisprudence', in **P. Ramanatha Aiyar's Advanced Law Lexicon** reads thus:

Equity jurisdiction: A broad and flexible jurisdiction to grant remedial relief where justice and good conscience demands it, but without purporting to create rights, being limited to determining what rights the parties have and whether or in what manner it is just and proper to enforce them. A jurisdiction in two categories, the one dependent upon the substantive character of the right sought to be enforced, the other dependent upon the inadequacy of the legal remedy.

"The term equity jurisdiction does not refer to jurisdiction in the sense of the power conferred by the sovereign on the Court over specified subject-matters or to jurisdiction over the res or the persons of the parties in a particular proceeding but refers rather to the merits. The want of equity jurisdiction does not mean that the Court has no power to act but that it should not act, as on the ground, for example, that there is an adequate remedy at law.

"**Equity jurisprudence"** that portion of remedial justice which is exclusively administered by a Court of equity as contradistinguished from that portion of remedial justice which is exclusively administered by a Court of Common Law."

Maxims of Equity. Pervading the administration of equity in all its branches there appears a recognition of certain broad principles, so generally accepted and of such fundamental character, that they have become known as maxims. "They are not the practical and final doctrines of rules which determine the equitable rights and duties of individual persons, and which are constantly cited by the Courts in their decisions or judicial controversies. They are rather the fruitful germs from which these doctrines and rules have grown by a process of natural evolution." Having not anywhere been authoritatively declared as a code of rules, they have not been expressed precisely in the same form by different

6. The physical arrangements for any televising or recording of proceedings shall be determined by the registrar after such consultation with the applicant and otherwise as the registrar considers appropriate."

Available on the official website of the New Zealand Ministry of Justice at:

https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/appendices/appendix-e/])†which supplement the 'In-Court Media Coverage Guidelines' applicable to the various other courts of New Zealand.

2.†Lower Courts:†Broadcasting of proceedings is allowed in the lower courts, with several guidelines issued in that regard.

a. Judges have a broad discretion as to the procedures in courtrooms over which they preside, subject to certain specific provisions such as the various rules of court, and statutory requirements.

b. Broadcast of court proceedings is allowed before the Court of Appeal, High Court, Employment Court, District Court and any other Tribunal which chooses to adopt the same, subject to the discretion of the presiding judge. These broadcasts are guided by the In-Court Media Coverage Guidelines, 2016†(Available on the official website of the New Zealand Ministry of Justice at:

https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/appendices/appendix-c/]).

c. Members of the media make an application to the Registrar of the concerned court atleast 10 days in advance, setting out which aspect of the court process they wish to film. A copy of the application is sent to the other parties, and after submissions have been received, the judge determines whether to approve or decline the application. Whether to grant permission is a matter of discretion for the judge, and the judge also has the power to remove media at his/her discretion.

d. These guidelines do not have legislative force nor do they create any rights in that regard and merely ensure that applications for media coverage are dealt with expeditiously and fairly.

e. They also set out that recordings must not be broadcast until at least 10 minutes have elapsed, although there are certain exceptions made for this rule as well.

f. In addition, there is a separate protocol for application of the said guidelines to the District Court summary jurisdiction†(Available on the official website of the New Zealand Ministry of Justice at:

https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/appendices/appendix-d/]). There are also separate Environment Court Media Coverage Guidelines†(Available on the official website of the New Zealand Ministry of Justice at:

https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/appendices/appendix-f/]).

XIV. Scotland:

1.†Supreme Court: The United Kingdom Supreme Court has jurisdiction over Scotland and accordingly, hearings of the Court are live streamed on the Court's website.

2.†Lower Courts: Broadcast of court proceedings is permissible by law and both civil and criminal cases have been broadcast over the years.

a. There was no statutory ban on broadcasting of court proceedings in Scotland, since the Criminal Justice Act is not applicable to Scotland. However until 1992, the courts adopted a strict position banning electronic media from access to courts.

b. In 1992, the "Television in Courts" directions were issued†(See Appendix III to the Cameras and live text-based communication in the Scottish courts: a consultation issued by the Judicial Office for Scotland available on the official website of the Scottish judiciary at:

http://www.scotland-judiciary.org.uk/Upload/Documents/Consultation Document . pdf]) † (later quoted in the†**X v. British Broadcasting Corporation and Lion Television Limited**†judgment†([2005] CSOH 80])) which provided that filming could be permitted on the basis of "whether the presence of television cameras in the court would be without risk to the administration of justice." These directions provided that the televising of proceedings was not permitted in criminal cases at first instance and that filming could only be done with consent of all parties involved in the proceedings and subject to approval by the presiding judge of the final product before it was televised. The conditions for such filming were varied for a trial period in 2012†(See Appendix IV to the Cameras and live text-based communication in the Scottish courts: a consultation link at footnote 68]).

c. As long as all key parties agree and conditions are met, full trials can, atleast in theory, be filmed for educational purposes and the juries" verdict or sentencing can be filmed for other purposes such as news broadcast. Both civil and criminal trials can be broadcast.

d. Cases of special public interest, like the trial of accused in the Lockerbie Bombings, have also been allowed to be broadcast, with guidelines for the same issued by the presiding judge in the matter.†(See Para 5.5 onwards of the Cameras and live text-based communication in the Scottish courts: a consultation link referred to at footnote 68])

e. Scotland is currently in the process of reforming its court-broadcasting process as per the suggestions of a Review Committee†(See: Report of the Review of Policy on Recording and Broadcasting of Proceedings in Court, and Use of Live Text-Based Communications available on the official website of the Scottish judiciary at: http://www.scotland-judiciary.org.uk/25/1369/Report-of-the-Review-of-Policy-on-Recording-and-Broadcasting-of-Proceedings-in-Court—and-Use-of-Live-Text-Based-Communications]).

XV. South Africa:

1.†**Supreme Court of Appeal:**†The Supreme Court has allowed for the media to broadcast court proceedings in criminal matters, as an extension of the Constitutionally-guaranteed right to freedom of expression.

a. In its landmark judgment of The†**NDPP v. Media 24 Limited & others**†and†**HC Van Breda v. Media 24 Limited & others [2017] ZASCA 97 (21st June 2017)**, the Supreme Court allowed for broadcast of proceedings in criminal trials, holding that courts should not restrict the nature and scope of broadcast of court proceedings unless prejudice was demonstrable and there was a risk that such prejudice would occur.

b. While refraining from laying down rigid rules on broadcast of such court proceedings, the Court set out general guidelines to assist in determining whether proceedings should be broadcast:

i. The trial court would exercise its discretion to allow broadcast of proceedings on a case-to-case basis, after balancing the degree of risk involved in allowing the cameras into the court room against the degree of risk that a fair trial might not ensue;

ii. The trial court could always direct that some or all of the proceedings before it could not be broadcast or could only be broadcast in certain forms, like audio recording;

iii. A judge could terminate coverage at any time upon a finding that the rules imposed by the judge had been violated or the substantial rights of individual participants or the rights to a fair trial would be prejudiced by such coverage if it was allowed to continue;

iv. An accused person in a criminal trial could object to the presence of cameras in the courtroom. If the court determined that the objection raised by the accused was valid, it could exclude cameras from recording;

v. Witnesses could also raise objections to being filmed. If the judge determined that a witness had a valid objection, alternatives to regular photographic or television coverage could be explored, like introducing special lighting techniques and electronic voice alteration, or merely by shielding the witness from the camera. Broadcast of testimony of an objecting witness could be delayed until after the trial is over;

vi. Cameras would be permitted to film or televise all non-objecting witnesses.

vii. There would be no coverage of:

* Communications between counsel and client or co-counsel;

* Bench discussions;

* In-camera hearings.

2.†Lower Courts:†In light of the Supreme Court decision in Breda, lower court criminal proceedings are also allowed to be broadcast

subject to conditions laid down by the presiding judge.

XVI. United States of America

1.†**Supreme Court:**†The Supreme Court does not permit broadcasting of its proceedings for a variety of reasons†(See Senate hearings on ‘A Bill To Permit The Televising Of Supreme Court Proceedings’ on the official website of the US Congress available at:

https://www.congress.gov/110/crpt/srpt448/CRPT-110srpt448.pdf])†including that it could adversely affect the character and quality of the dialogue between attorneys and Justices†(See Letter by Counselor to the Chief Justice, rejecting live broadcast of oral arguments, available at:

https://arstechnica.com/wp-content/uploads/2017/10/scotusletter.pdf]).

a. The Supreme Court has, over the years, consistently rejected pleas to broadcast oral arguments.†(See: Above Politics: Congress and the Supreme Court in 2017 by Jason Mazzone at Pg. 404, Footnote 208, 93 Chi.-Kent L. Rev. 373 (2018) available at:

https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=4207&context=cklawreview])†It does not allow photography of proceedings or video recordings.

b. The Court has, however, allowed audio recording of oral arguments since 1955. Presently, the Court releases same-day audio transcripts of oral arguments†(Official website of the Supreme Court at:

https://www.supremecourt.gov/oral_arguments/argument_transcript])†and audio recordings of all oral arguments at the end of each week that arguments are heard†(Official website of the Supreme Court:

https://www.supremecourt.gov/oral_arguments/argument_audio]).

2.†**Federal Appellate Courts:**†Certain Federal Courts allow for broadcast of court proceedings subject to guidelines laid down in that regard.

a. Filming and broadcast of criminal proceedings in US Federal Courts were prohibited by Rule 53 of the Federal Rule of Criminal Procedure†(**“Rule 53. Courtroom Photographing and Broadcasting Prohibited**

Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom.’

Available on the official website of the House of Representatives, Judiciary Committee at: https://judiciary.house.gov/wp-content/uploads/2013/07/Criminal2016.pdf])†since 1946.

b. After various pilot runs involving limited number of courts, the Judicial Conference in 2010 authorised a pilot for three years, involving 150 first-instance civil courts. Cameras were to be operated by the court

itself, no filming of jurors was to take place and the consent of parties was required. Proceedings could be recorded only with the approval of the presiding judge, and parties had to consent to the recording of each proceeding in a case. Unless the presiding judge decided not to make the recordings publicly available, they would subsequently be posted on the federal courts website, as well as on local participating court websites at the court's discretion. Judges would have a switch or be able to direct cessation of recording if deemed necessary†(See: History of Cameras in Courts on the website of the United States Courts at: http://www.uscourts.gov/about-federal-courts/cameras-courts/history-cameras-courts]).

c. The Judicial Conference in 2016 decided not to alter the guidelines set out in the 2010 conference. Three districts that participated in the 2010 pilot programme were authorised to continue filming proceedings under the same terms and conditions as in 2010.

d. Federal Courts of Appeals have the option of providing audio or video recordings of appellate hearings, and rules are available on each circuit's website. The Ninth Circuit Court for example, live-streams oral arguments†(See the official website for the United States Court for the Ninth Circuit at: https://www.ca9.uscourts.gov/media/index_video.php]).

3.†**Lower Courts/District Courts:**†Courts in all states have framed rules for broadcast of court proceedings, each varying in the degree and extent to which broadcasts are allowed.

a. In†**Estes v. Texas 381 U.S. 532 (1965)**, the US Supreme Court held that camera coverage of a trial inspite of the defendant's objection to the same violated the defendant's constitutional right, although the question of whether courtroom broadcasting was inherently prejudicial to a fair trial, remained open. This question was answered in†**Chandler v. Florida 449 U.S. 560 (1981)**†where the Court was of the opinion that the restriction on camera coverage imposed in Estes was not an absolute, universal ban and left it to the states to frame rules for permitting televised recordings, since televising a criminal trial did not automatically make the trial unfair to the defendant.

b. In the aftermath of the decision in Chandler, all 50 US states have allowed for some form of televised broadcast of court proceedings and framed rules for the same†(A complete list of rules enacted in different courts regulating broadcast of proceedings is available on the website for the 'National Center for State Courts' at: https: // www. ncsc. org/ Topics /Media / Media -Relations/ State- Links. aspx? cat = Camer as %20 in %20the%20Courtroom]), with the applicability and extent of such broadcast varying from state to state. Some states permit visual and audio coverage in all types of court proceedings that are public, including civil and criminal trials of the first instance, at the discretion of the presiding judge, while other states allow such coverage only in appellate courts.

11. We may now advert to the comprehensive guidelines for live streaming of Court proceedings in Supreme Court, as suggested by the learned Attorney General for India, which read as follows:

"**Comprehensive Guidelines for Live streaming of Court proceedings in Supreme Court**

Brief Background

1. That the Petitioner in the present Writ Petition seeks a declaration for permitting live streaming of Supreme Court case proceedings of constitutional and national importance having an impact on the public at large and a direction to make available the necessary infrastructure for live streaming and to frame guidelines for the determination of such cases which are of constitutional and national importance.

2. That, in this regard, it is submitted that Courts in India are open to all members of the public who wish to attend the court proceedings. However, in practice, many interested persons are unable to witness the hearings on account of constraints of time, resources, or the ability to travel long distances to attend hearing on every single date. This is especially true in the case of litigants who have to travel long distances from far off States such as Kerala and States in the North-East and therefore run the risk of being excluded from attending court hearings involving cases filed by them.

3. Furthermore, on miscellaneous days of hearing, the Apex Courts is highly congested, with practically no space available in the Courtrooms and in the public gallery to accommodate litigants, lawyers and law students and interns.

4. On account of such shortcomings, it may be advantageous to build an appropriate infrastructure for live-streaming or audio/ video recording of court proceedings to enable the court proceedings to be viewed without the constraints of time or place. It would be ideal if a separate space is allocated by building a hall in the Court for lawyers, clients and interns to watch the live proceedings, so that, the crowds in the Court will be decongested. This will obviate the need for clients coming from far away distances and reduce their inconvenience in witnessing their case. This may also be one of the relevant factors for the Court to consider. Such a system would also enable the lawyers, law students and anyone interested in the workings of the highest court in the country to supplement their learning with practical study of cases of national importance, while ensuring that litigants have a true account of how decisions were made in their respective case. Such a system is in aid of the well accepted and respected tradition of 'Open justice' i.e. justice should be administered in an open court.

Recommendations:

This Hon'ble court may lay down the following guidelines to administer live streaming of Court proceedings:

5. At the outset, it is submitted that Live Streaming of Court proceedings should be introduced as a pilot project in Court No.1

and only in Constitution bench references. The success of this project will determine whether or not live streaming should be introduced in all courts in the Supreme Court and in Courts pan India.

6. To ensure that all persons including litigants, journalists, interns, visitors and lawyers are able to view the live streaming of the proceedings, a media room should be designated in the premises of the court with necessary infrastructural facilities. This will also ensure that courts are decongested. Provisions may also be made available for the benefit of differently abled persons.

7. Apart from live streaming, the Supreme Court may, in the future, also provide for transcribing facilities and archive the audio-visual record of the proceedings to make the webcast accessible to litigants and other interested persons who are unable to witness the hearings on account of constraints of time, resources, or the ability to travel long distances to attend hearing on every single date. Such webcasts will also allow students of law to supplement their academic knowledge and gain practical insights into cases of national importance.

8. It is pertinent that this Hon'ble Court lay down guidelines to safeguard and limit the broadcasting and recording of its proceedings to ensure better access to justice. Some of the recommendations are:

a. The Court must have the power to limit, temporarily suspend or disallow filming or broadcasting, if in its opinion, such measures are likely to interfere with the rights of the parties to a fair trial or otherwise interfere with the proper administration of justice.

b. The Court may law down guidelines/ criterion to determine what cases constitute proceedings of constitutional and national importance to seek permission for broadcasting.

c. As held famously in the case of†**Scott v. Scott, (1913) AC 417**, "While the broad principle is that the Courts must administer justice in public, the chief object of Courts of justice must be to secure that justice is done", broadcasting must not be permitted in the cases involving:

i. Matrimonial matters,

ii. Matters involving interests of juveniles or the protection and safety of the private life of the young offenders,

iii. Matters of National security,

iv. To ensure that victims, witnesses or defendants can depose truthfully and without any fear. Special protection must be given to vulnerable or intimidated witnesses. It may provide for face distortion of the witness if she/he consents to the broadcast anonymously,

v. To protect confidential or sensitive information, including all matters relating to sexual assault and rape, and

vi. Matters where publicity would be antithetical to the administration of justice.

vii. Cases which may provoke sentiments

and arouse passion and provoke enmity among communities.

d. Use of the footage would be restricted for the purpose of news, current affairs and educational purposes and should not be used for commercial, promotion, light entertainment, satirical programs or advertising.

e. Without prior written authorization of the Supreme Court of India, live streaming or the webcast of the proceedings from the Supreme Court should not be reproduced, transmitted, uploaded, posted, modified, published or republished to the public.

f. Any unauthorized usage of the live streaming and/or webcasts will be punishable as an offence under the Indian Copyright Act, 1957 and the Information Technology Act, 2000 and any other provisions of the law in force. The law of contempt should apply to such proceedings. Prohibitions, fines and penalties may be provided for.

g. The Courts may also lay down rules of coverage to provide for the manner in which the filming may be done and the equipment that will be allowed in court.

h. Case management techniques should be introduced to ensure that matters are decided in a speedy manner and lawyers abide by time limits fixed prior to the hearing. A skeleton of arguments/Written submissions should be prepared and submitted to the Court by the lawyers prior to their arguments.

i. The Court of Appeal in England, in November 2013, introduced streaming its proceedings on YouTube. The telecast is deferred by 70 seconds with the Judge having the power to mute something said in the proceedings if he feels they are inappropriate for public consumption.

j. Like the Court of Appeal in England, the Supreme Court should also lay guidelines for having only two camera angles, one facing the judge and the other- the lawyer. The camera should not focus on the papers of the lawyer."

12. As aforesaid, Courts in India are ordinarily open to all members of public, who are interested in witnessing the court proceedings. However, due to logistical issues and infrastructural restrictions in courts, they may be denied the opportunity to witness live Court proceedings in propria persona. To consummate their aspirations, use of technology to relay or publicize the live court proceedings can be a way forward. By providing "virtual" access of live court proceedings to one and all, it will effectuate the right of access to justice or right to open justice and public trial, right to know the developments of law and including the right of justice at the doorstep of the litigants. Open justice, after all, can be more than just a physical access to the courtroom rather, it is doable even "virtually" in the form of live streaming of court proceedings and have the same effect.

13. Publication of court proceedings of the Supreme Court is a facet of the status of this Court as a Court of Record by virtue of Article 129 of the Constitution, whose

acts and proceedings are enrolled for perpetual memory and testimony. Further, live streaming of court proceedings in the prescribed digital format would be an affirmation of the constitutional rights bestowed upon the public and the litigants in particular. While doing so, regard must be had to the fact that just as the dignity and majesty of the Court is inviolable, the issues regarding privacy rights of the litigants or witnesses whose cases are set down for hearing, as also other exceptional category of cases of which live streaming of proceedings may not be desirable as it may affect the cause of administration of justice itself, are matters which need to be identified and a proper regulatory framework must be provided in that regard by formulating rules in exercise of the power under Article 145 of the Constitution. It must be kept in mind that in case of conflict between competing Constitutional rights, a sincere effort must be made to harmonise such conflict in order to give maximum expression to each right while minimizing the encroachment on the other rights. We are conscious of the fact that in terms of Section 327 of CrPC and Section 153-B of CPC, only court-directed matters can be heard in camera and the general public can be denied access to or to remain in the court building used by the Court. Until such direction is issued by the Court, the hearing of the case is deemed to be an open court to which the public generally may have access. The access to the hearing by the general public, however, would be limited to the size and capacity of the court room. By virtue of live streaming of court proceedings, it would go public beyond the four walls of the court room to which, in a given case, the party or a witness to the proceedings may have genuine reservations and may claim right of privacy and dignity. Such a claim will have to be examined by the concerned Court and for which reason, a just regulatory framework must be provided for, including obtaining prior consent of the parties to the proceedings to be live streamed.

14. We generally agree with the comprehensive guidelines for live streaming of Court proceedings in the Supreme Court suggested by the learned Attorney General for India Shri K.K. Venugopal. The project of live streaming of the court proceedings of the Supreme Court on the "internet" and/or on radio and TV through live audio-visual broadcasting/telecasting universally by an official agency, such as Doordarshan, having exclusive telecasting rights and/or official website/mobile application of the Court, must be implemented in a progressive, structured and phased manner, with certain safeguards to ensure that the purpose of live streaming of proceedings is achieved holistically and that it does not interfere with the administration of justice or the dignity and majesty of the Court hearing the matter and/or impinge upon any rights of the litigants or witnesses. The entire project will have to be executed in phases, with certain phases containing sub-phases or stages. Needless to observe that before the commencement of first phase of the project, formal rules will have to be framed by this Court to incorporate the recommendations made by the learned Attorney General for India as noted in paragraph 11 above, while keeping in mind the basic issues, such as:-

(i) To begin with, only a specified category of cases or cases of constitutional and national importance being argued for final hearing before the Constitution Bench be live streamed as a pilot project. For that, permission of the concerned Court will have to be sought in writing, in advance, in conformity with the prescribed procedure.

(ii) Prior consent of all the parties to the concerned proceedings must be insisted upon and if there is no unanimity between them, the concerned Court can take the appropriate decision in the matter for live streaming of the court proceedings of that case, after having due regard to the relevancy of the objections raised by the concerned party. The discretion exercised by the Court shall be treated as final. It must be non-justiciable and non-appealable.
(iii) The concerned court would retain its power to revoke the permission at any stage of the proceedings suo motu or on an application filed by any party to the proceeding or otherwise, in that regard, if the situation so warrants, keeping in mind that the cause of administration of justice should not suffer in any manner.

(iv) The discretion of the Court to grant or refuse to grant such permission will be, inter alia, guided by the following considerations:

(a) unanimous consent of the parties involved,

(b) even after the parties give unanimous consent the Court will consider the sensitivity of the subject matter before granting such permission, but not limited to case which may arouse passion or social unrest amongst section of the public,

(c) any other reason considered necessary or appropriate in the larger interest of administration of justice, including as to whether such broadcast will affect the dignity of the court itself or interfere with/ prejudice the rights of the parties to a fair trial,

(v) There must be a reasonable time-delay (say ten minutes) between the live court proceedings and the broadcast, in order to ensure that any information which ought not to be shown, as directed by the Court, can be edited from being broadcast.

15. Until a full-fledged module and mechanism for live streaming of the court proceedings of the Supreme Court over the "internet" is evolved, it would be open to explore the possibility of implementation of Phase-I of live streaming in designated areas within the confines of this Court via "intranet" by use of allocated passwords, as a pilot project. The designated areas may include:

(a) dedicated media room which could be accessible to the litigants, advocates, clerks and interns. Special provisions must be made to accommodate differently abled people;

(b) the Supreme Court Bar Association room/lounge;

(c) the Supreme Court Advocates-on-Record Association room/lounge;

(d) the official chambers of the Attorney General, Solicitor General and Additional

Solicitor Generals in the Supreme Court premises;

(e) Advocates" Chambers blocks.

(f) Press Reporters room.

16. It may be desirable to keep in mind other measures to be taken for efficient management of the entire project such as:

(i) Appoint a technical committee comprising the Registrar (IT), video recording expert(s) and any other members as may be required, to develop technical guidelines for video recording and broadcasting court proceedings, including the specific procedure to be followed and the equipment to be used in that regard.

(ii) Specialist video operator(s) be appointed to handle the live broadcast, who will work under the directions of the concerned Court. The coverage itself will be coordinated and supervised by a Court-appointed officer.

(iii) The focus of the cameras in the courtroom will be directed only towards two sets of people:

a. The Justices/Bench hearing the matter and at such an angle so as to only show the anterior-facing side of the Justices, without revealing anything from behind the elevated platform/level on which the Justices sit or any of the Justices" papers, notes, reference material and/or books;

b. The arguing advocate(s) in the matter and at such an angle so as to not to reveal in any way the contents of notes or reference material being relied upon by the arguing advocate(s). This will also apply to parties-in-person arguing their own matter.

c. There shall be no broadcast of any interaction between the advocate and the client even during arguments.

(iv) Subject to any alteration of camera angles for the purpose of avoiding broadcast of any of the aforestated papers, notes, reference materials, books and/or discussions, the camera angles will remain fixed over the course of the broadcast.

(v) This Court shall introduce a case management system to ensure inter alia that advocates are allotted and adhere to a fixed time limit while arguing their matter to be live streamed.

(vi) This Court must retain copyright over the broadcasted material and have the final say in respect of use of the coverage material.

(vii) Reproduction, re-broadcasting, transmission, publication, re-publication, copying, storage and/or modification of any part(s) of the original broadcast of Court proceedings, in any form, physical, digital or otherwise, must be prohibited. Any person engaging in such act(s) can be proceeded under, but not limited to, the Indian Copyright Act, 1957, the Indian Penal Code, 1860, the Information Technology Act, 2000 and the Contempt of Courts Act, 1971.

17. We reiterate that the Supreme Court Rules, 2013 will have to be suitably amended to provide for the regulatory framework as per the contours delineated hereinabove.

We may hasten to add that it would be open to frame such regulatory measures as may be found necessary for holistic live streaming of the court proceedings, without impinging upon the cause of administration of justice in any manner.

18. In conclusion, we hold that the cause brought before this Court by the protagonists in larger public interest, deserves acceptance so as to uphold the constitutional rights of public and the litigants, in particular. In recognizing that court proceedings ought to be live streamed, this Court is mindful of and has strived to balance the various interests regarding administration of justice, including open justice, dignity and privacy of the participants to the proceedings and the majesty and decorum of the Courts.

19. As a result, we allow these writ petitions and interventionists" applications with the aforementioned observations and hope that the relevant rules will be formulated expeditiously and the first phase project executed in right earnest by all concerned. Ordered accordingly.

20. While parting, we must place on record our sincere appreciation for the able assistance and constructive suggestions given by the learned counsel and the parties in-person appearing in this case.

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Dr Dhananjaya Y Chandrachud, J.

A. Open Justice

The issue in this batch of cases is whether there should be live dissemination of proceedings before this Court with the aid of Information and Communications Technology (ICT). The basis of the petitions is that this would enable litigants and society to have wide access to judicial proceedings. It is urged that cases of constitutional and national importance have a significant impact on the social fabric. Citizens have a right to know about and to follow court proceedings. It has been submitted that live or online transmission

of court proceedings with the aid of ICT enabled tools will subserve the cause of access to justice.

22. Our legal system subscribes to the principle of open justice. The prayer for live-streaming of courtroom proceedings has its genesis in this principle. Live-streaming will allow real time access to courtroom proceedings to litigants and to every member of the society.

23. Open justice is a long-established principle of common law systems. It rests on a high pedestal in a liberal democracy as ‘a sound and very sacred part of the Constitution of the country and the administration of justice...’†(House of Lords in†**Scott v. Scott, [1913] A.C. 417 at 473)**

Jeremy Bentham propounded the idea of open justice in the late eighteenth century while designing principles for establishments in which persons are to be kept under inspection:

“...the doors of all public establishments ought to be, thrown wide open to the body of the curious at large- the great open committee of the tribunal of the world.”†(Jeremy Bentham, The Works of Jeremy Bentham, published under the Superintendence of his Executor, John Bowring (Edinburgh: William Tait, 1838-1843). 11 volumes, volume 4, at page 46.)

24. Although Bentham wrote these words in the larger context of public institutions, they apply on equal terms to the theory of open justice. Bentham in his “Draught of Code for the Organization of the Judicial Establishment” codified the principle of open justice as:

“Article XVIII- Judicial proceedings, from the first step to the last inclusive, shall, in all cases but the secret ones herein specified, be carried out with the utmost degree of publicity possible.”†(Ibid at page 288)

According to Bentham, secret (or in-camera) proceedings were to be carried out in the judge’s chamber. (Ibid at page 303)†He also prescribed open justice for trials by the National Assembly Courts, (which, in his Code, were courts constituted to hear complaints against any metropolitan judge):

“Article III- Such trial shall be conducted from beginning to end, with open doors and with the utmost possible degree of publicity.”†(Ibid at page 300)

The principle underlying open justice was formulated by Lord Chief Justice Hewart:

“Justice should not only be done, but should manifestly and undoubtedly be seen to be done.”†(King’s Bench, Division Court in†**R v. Sussex [1923], All ER Rep 233)**

In†**R (Binyam Mohamed) v. Secretary of State for Foreign and Commonwealth Affairs,**†Lord Judge CJ draws a link between open justice and democratic values:

“...the principle of open justice represents an element of democratic accountability, and the vigorous manifestation of the principle of freedom of expression. Ultimately it supports the rule of law itself.”†(Court of Appeal, England and Wales in†**R (Binyam**

Mohamed) v. Secretary of State for Foreign and Commonwealth Affairs, [2010] 3 WLR 554.])

25. Legal scholars indicate that the principle of open justice encompasses several aspects that are central to the fair administration of justice and the rule of law.†(**Cunliffe Emma, "Open Justice: Concepts and Judicial Approaches", (2012) 40 Fed Rs. Rev 385)**†It has both procedural and substantive dimensions, which are equally important. Open justice comprises of several precepts:

(i) The entitlement of an interested person to attend court as a spectator;

(ii) The promotion of full, fair and accurate reporting of court proceedings;
(iii) The duty of judges to give reasoned decisions; and

(iv) Public access to judgments of courts.†(Ibid)

The principle of an open court is a significant procedural dimension of the broader concept of open justice. Open courts allow the public to view courtroom proceedings. Black's Law Dictionary defines an "open court" as follows:

"... a court to which the public have a right to be admitted... This term may mean either a court which has been formally convened and declared open for the transaction of its proper judicial business, or a court which is freely open to spectators..."†(Black's Law Dictionary, 6th Edition, 1990, page 1091. The Black's Law Dictionary, 10th Edition, 2014, page 1263 defines an "open court" thus: "1. A court that is in session, presided over by a judge, attended by the parties and their attorneys, and engaged in judicial business... The term is distinguished from a court that is hearing evidence in camera or from judge that is exercising merely magisterial powers. 2. A court session that the public is free to attend...")

The idea of open courts is crucial to maintaining public confidence in the administration of justice:

"The public must be able to enter any court to see that justice is being done in that court, by a tribunal conscientiously doing its best to do justice according to law."†(Supra note 7)

Open courts ensure a check on the process of adjudication in judicial proceedings. Bentham regarded publicity about courtroom proceedings as a mechanism to prevent improbity of judges:

"Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial. ... It is through publicity alone that justice becomes the mother of security. By publicity, the temple of justice is converted into a school of the first order..."†(Supra note 2 at page 316-317)

26. Lord Diplock, speaking for the House of Lords in†**AG v. Leveller Magazine**, remarked that open courts are a safeguard against judicial arbitrariness or idiosyncrasy.†(House of Lords, as per Lord Diplock in†**AG v. Leveller Magazine,**

[1979] AC 440, at page 450)†Open courts, in his view, help build public confidence in the administration of justice.†(Ibid)†The public's trust in the judicial system depends on their perception of how courts function. Open courts make it possible for the public to develop reasonable perceptions about the judiciary, by enabling them to directly observe judicial behaviour, and the processes and outcomes of a case.

In the decision of the High Court of Australia, in†**Grollo v. Palmer**, Gummow J dwelt on the idea of open courts:

"An essential attribute of the judicial power of the Commonwealth is the resolution of such controversies ... so as to provide final results which are delivered in public after a public hearing, and, where a judge is the tribunal of fact as well as law, are preceded by grounds for decision which are animated by reasoning. An objective of the exercise of the judicial power in each particular case is the satisfaction of the parties to the dispute and the general public that, by these procedures, justice has both been done and been seen to be done."†(High Court of Australia, as per Gummow J in†**Grollo v. Palmer, [1995] HCA 2.)**

The Ministry of Justice in the UK, in its proposal to permit broadcasting of court proceedings, has succinctly articulated the need for open courts:

"Few people have direct experience of court proceedings, and overall public understanding of the criminal justice system is limited. Most court sittings take place when many people are at work. Many people, therefore, currently base their views on how the system is portrayed on television, or in films. These dramatised accounts rarely portray what happens in court accurately. With the range of technology now available, it should be easier for people to access better information on court proceedings."†(Ministry of Justice, UK, Proposals to allow the broadcasting, filming, and recording of selected court proceedings, making recommendations, 2012. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217307/broadcasting-filming-recording-courts.pdf])

In the decision of the US Supreme Court in†**Richmond Newspapers, Inc. v. Virginia**, Burger CJ observed:

"The early history of open trials in part reflects the widespread acknowledgment, long before there were behavioural scientists, that public trials had significant community therapeutic value...

... People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing."†(Supreme Court of United States in†**Richmond Newspapers, Inc. v. Virginia, 448 US 555 (1980)**

27. Public confidence in the judiciary and in the process of judicial decision making is crucial for preserving the rule of law and to maintain the stability of the social fabric. Peoples' access to the court signifies that

the public is willing to have disputes resolved in court and to obey and accept judicial orders. Open courts effectively foster public confidence by allowing litigants and members of the public to view courtroom proceedings and ensure that the judges apply the law in a fair and impartial manner.

B. Indian Jurisprudence

28. The concept of open courts is not alien to the Indian legal system. The Constitution adopts the concept in Article 145(4), which states that the Supreme Court shall be an open court:

"(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under Article 143 save in accordance with an opinion also delivered in open Court."

The Code of Civil Procedure, 1908 ("CPC") and the Code of Criminal Procedure, 1973 ("CrPC") extend the principle of open courts to all civil and criminal courts in India. Section 153-B of the CPC provides that every civil court which tries a suit shall be deemed to be an open court:

"Section 153-B. Place of trial to be deemed to be open court.-

The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them:

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court."

Similarly, Section 327 of the CrPC also mandates criminal courts to be open:

"Section 327. - Court to be open.-

"[(1)] The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court."

Hence, all courts in India are open to the public and function as open courts, except when the administration of justice requires public access to the court to be restricted. The principle of open courts in India recognises exceptions which are in the interest of fair administration of justice.

29. Various judgments of this Court have reinforced the importance of open courts. The earliest and most significant judgment on this aspect is the decision of a nine-judge Bench in†**Naresh Shridhar Mirajkar v. State of Maharashtra (1966) 3 SCR 744.**†("Mirajkar"). While upholding an oral

order of the High Court prohibiting the media to publish the evidence of a witness in a defamation suit, the majority emphasised the importance of open courts. Chief Justice Gajendragadkar, speaking for the majority observed:

"20... It is well settled that in general, all cases brought before the courts, whether civil, criminal, or others, must be heard in open court. Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial tribunals, courts must generally hear causes in open and must permit the public admission to the court-room."

Justice Gajendragadkar then quoted from Bentham (as noted in†**Scott v. Scott Supra note 1.**):

"20... In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity."

Even in his dissenting opinion, Justice Hidayatullah (as the learned judge then was) agreed with the majority on the importance of an open court system:

"90. ...As we have fortunately inherited the English tradition of holding trials (with a few exceptions to which I shall refer later) in public, I shall begin with the English practice. It has always been the glory of the English system as opposed to the Continental, that all trials are held ostiis apertis, that is, with open doors. This principle is old... it is a direct guarantee of civil liberty and it moved Bentham to say that it was the soul of Justice and that in proportion as publicity had place, the checks on judicial injustice could be found...."

Justice J C Shah elaborated on open justice but also recognised the need to restrict access to protect the administration of justice, in cases where it becomes necessary:

"129...Hearing in open court of causes is of the utmost importance for maintaining confidence of the public in the impartial administration of justice: it operates as a wholesome check upon judicial behaviour as well as upon the conduct of the contending parties and their witnesses. But hearing of a cause in public which is only to secure administration of justice untainted must yield to the paramount object of administration of justice. If excessive publicity itself operates as an instrument of injustice, the court may

not be slow, if it is satisfied that it is necessary so to do to put such restraint upon publicity as is necessary to secure the court's primary object..."

Quoting Hegel in "Philosophy of Right," Justice Bachawat added that:

"140 ... A court of justice is a public forum. It is through publicity that the citizens are convinced that the court renders even-handed justice, and it is, therefore, necessary that the trial should be open to the public and there should be no restraint on the publication of the report of the court proceedings. The publicity generates public confidence in the administration of justice. In rare and exceptional cases only, the court may hold the trial behind closed doors, or may forbid the publication of the report of its proceedings during the pendency of the litigation.

141. ...Hegel in his Philosophy of Right maintained that judicial proceedings must be public, since the aim of the Court is justice, which is a universal belonging to all."

Key takeaways emerge from the opinions in Mirajkar:

(i) Open courts serve as an instrument of inspiring public confidence in the administration of justice;

(ii) Open courts act as a check on the judiciary;

(iii) Publicity of the judicial process is the soul of justice;

(iv) Open justice must yield to the paramount object of the administration of justice, in case it becomes necessary to restrict access in the facts of a particular case; and

(v) Open courts are essential for the objective and fair administration of justice.

30. Almost two decades later, in†**Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545)** a Constitution Bench of this Court held that eviction of slum-dwellers violated their right to earn a livelihood. Chief Justice Y V Chandrachud reiterated the value of a hearing, in emphasising the principle that justice must also be seen to be done:

"47...justice must not only be done but must manifestly be seen to be done... The appearance of injustice is the denial of justice. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done...

...Whatever its outcome, such a hearing represents a valued human interaction in which the affected person experiences at least the satisfaction of participating in the decision that vitally concerns her, and perhaps the separate satisfaction of receiving an explanation of why the decision is being made in a certain way. Both the right to be heard from, and the right to be told why, are analytically distinct from the right to secure a different outcome; these rights to interchange express the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is done with one. Justice Frankfurter captured

part of this sense of procedural justice when he wrote that the “validity and moral authority of a conclusion largely depend on the mode by which it was reached...No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done.”

These observations have been made in the context of analysing the importance of the right to be heard. But Olga Tellis emphasised that not only the ends, but also the means of justice are important. The purpose behind an open court system is to grant the affected party and the public an opportunity to observe justice being dispensed. The process by which justice is rendered has an important bearing on the confidence which it inculcates in society. Knowledge of the process is a confidence builder.

31. In†**Life Insurance Corporation of India v. Prof. Manubhai D. Shah, (1992) 3 SCC 637)**†this Court examined the right claimed by a citizen to contribute to an in-house magazine published by an instrumentality of the State. Writing for the two-judge Bench, Justice A.M. Ahmadi (as the learned Chief Justice then was) dwelt on the significance of disseminating information in a democracy:

“8. ...The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy...

...It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set-up, more so in a democratic set-up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution...”

32. More recently, in†**Mohd. Shahabuddin v. State of Bihar, (2010) 4 SCC 653)**†a two-judge Bench of this Court was examining a challenge to a notification by the Patna High Court declaring the premises for conducting a trial. Justice M K Sharma, in his concurring opinion, described open courts:

“215... In my considered view an “open court” is a court to which general public has a right to be admitted and access to the court is granted to all the persons desirous of entering the court to observe the conduct of the judicial proceedings...”

Through these judicial decisions, this Court has recognised the importance of open courtrooms as a means of allowing the public to view the process of rendering of justice. First-hand access to court hearings enables the public and litigants to witness the dialogue between the judges and the advocates and to form an informed opinion about the judicial process.

33. The impact of open courts in our country

is diminished by the fact that a large segment of the society rarely has an opportunity to attend court proceedings. This is due to constraints like poverty, illiteracy, distance, cost and lack of awareness about court proceedings. Litigants depend on information provided by lawyers about what has transpired during the course of hearings. Others, who may not be personally involved in a litigation, depend on the information provided about judicial decisions in newspapers and in the electronic media. When the description of cases is accurate and comprehensive, it serves the cause of open justice. However, if a report on a judicial hearing is inaccurate, it impedes the public's right to know. Courts, though open in law and in fact, become far removed from the lives of individual citizens. This is anomalous because courts exist primarily to provide justice to them.

C. Technology and Open Court

34. In the present age of technology, it is no longer sufficient to rely solely on the media to deliver information about the hearings of cases and their outcomes. Technology has become an inevitable facet of all aspects of life. Internet penetration and increase in the use of smart phones has revolutionised how we communicate. As on 31 March 2018, India had a total of 1,206.22 million telecom subscribers and 493.96 million internet users.†(Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January-March, 2018. Available at: https://trai.gov.in/sites/default/files/PIReport27062018_0.pdf])†Technology can enhance public access, ensure transparency and pave the way for active citizen involvement in the functioning of state institutions. Courts must also take the aid of technology to enhance the principle of open courts by moving beyond physical accessibility to virtual accessibility.

35. The importance of making justice accessible to the common citizen in its truest sense was explained by Lord Neuberger in his Judicial Studies Board speech (2011):

"...if justice is seen to be done it must be understandable. Judgments must be open not only in the sense of being available to the public, but, so far as possible given the technical and complex nature of much of our law; they must also be clear and easily interpretable by lawyers. And also to non-lawyers. In an age when it seems more likely than ever that citizens will have to represent themselves, this is becoming increasingly important."†(Neuberger, Lord of Abbotbury (Master of Rolls) 2011, 'Open justice unbound"', Judicial Studies Board Annual Lecture, 16 March 2011. Available at: http://netk.net.au/judges/neuberger2.pdf])

36. This Court and the High Courts in India have pro-actively adopted technology to make the judicial process more accessible, organised, transparent, and simple. For instance, many courts in the country, including this Court, now have display boards in the court premises and on their official websites which enable legal practitioners and the public to view the progress of the cause list. This Court and the High Courts maintain websites where they upload cause

lists, daily orders, and judgments. They also maintain an archive of previous judgments, allowing users to search for a specific judgment using various inputs.

37. Recent judgments of this Court also indicate the willingness of this Court to adapt to modern technology for the advancement of justice. In†**Krishna Veni Nagam v. Harish Nagam, (2017) 4 SCC 150.**†this Court had taken into consideration technological developments to regulate the use of video conferencing for certain categories of cases. Justice A.K. Goel on behalf of himself and Justice Lalit directed:

"16. The advancement of technology ought to be utilised also for service on parties or receiving communication from the parties. Every District Court must have at least one e-mail ID. Administrative instructions for directions can be issued to permit the litigants to access the court, especially when litigant is located outside the local jurisdiction of the Court. A designated officer/ manager of a District Court may suitably respond to such e-mail in the manner permitted as per the administrative instructions. Similarly, a manager/ information officer in every District Court may be accessible on a notified telephone during notified hours as per the instructions. These steps may, to some extent, take care of the problems of the litigants."

In†**Santhini v. Vijaya Venketesh, (2018) 1 SCC 1)**†where this Court was re-considering the issue of permitting video-conferencing for matrimonial disputes, one of us (D Y Chandrachud, J.) in his dissenting opinion, discussed the importance of using technology to enhance the delivery of justice:

"89. Technology must also be seen as a way of bringing services into remote areas to deal with problems associated with the justice delivery system. With the increasing cost of travelling and other expenses, videoconferencing can provide a cost-effective and efficient alternative. Solutions based on modern technology allow the court to enhance the quality and effectiveness of the administration of justice. The use of technology can maximise efficiency and develop innovative methods for delivering legal services. Technology-based solutions must be adopted to facilitate access to justice... Repeated adjournments break the back of the litigant. We must embrace technology and not retard its application, to make the administration of justice efficient."

C.1 ICT in Indian courts†(The websites of Department of Justice, Government of India (doj.gov.in/) and E-courts services (ecourts.gov.in/) contains fair amount of information on the ongoing e-Courts Project.])

Technology has made modernity possible. The interplay between technology and law has allowed dissemination of legal information with a veritable click of a button. We have designed processes and systems to suit the unique requirements of our judicial system. The Indian judiciary has incorporated Information and Communication Technology (ICT) under the aegis of the e-Courts Integrated Mission Mode Project (e-Courts Project). This has been a part of the National e-Governance

Plan (NeGP) which has been implemented in all High Courts and the District Courts of India. It was based on the 'National Policy and Action Plan for Implementation of Information and Communication Technology' prepared by the e-Committee of the Supreme Court of India in 2005. The 2005 e-Committee Report proposed three phases for implementation of the e-Courts Project.

The e-Committee of the Supreme Court of India and the Department of Justice, Government of India, through a proper management of the e-Courts Project have ensured efficiency in the judicial process across 21,000 courts in the district judiciary in India. Phase-I of the e-Courts Project was approved in 2010 and enabled computerisation of 14,249 courts in the district judiciary by 2015. The objective of the ongoing Phase-II of this project is to enhance judicial service delivery for litigants and lawyers by improving infrastructure and providing technology-enabled judicial processes. It involves improved ICT infrastructure, videoconferencing, improved access across seven platforms including a web portal, app, judicial service centers and kiosks. The e-Courts Project also includes capacity building of officers, ICT provisioning of District Legal Service Authorities, Taluka Legal Service Committees, State Judicial Academies and judicial process re-engineering. Currently, the e-Courts project caters to more than 21,000 courts and has been implemented in more than 600 districts, 3,000 court complexes and 6,400 establishments.

C.2 Technology and Implementation

One of the objectives of the e-Courts Project is to make the ICT infrastructure comprising of computer hardware, Local Area Network (LAN), Wide Area Network (WAN), information kiosks, UPS, renewable energy-based power backup and other peripherals available in the district judiciary.

The e-Courts Project is developed on Open Source Technology by the National Informatics Centre (NIC), a Central Government department under the Union Ministry of Electronics and Information Technology. A single unified Case Information System (CIS) Software has been developed and made available to the entire district judiciary in India, for catering to the diversified requirements of the country in terms of local procedures, practices and languages. CIS Version 3.0 has been made available in all the district and taluka courts. 15 High Courts are already equipped with CIS Version 1.0.

The e-Committee carried out extensive capacity building exercises to train judicial officers and administrative staff. The project is manned and managed by the court staff and the staff is trained in the use of computers. Some of them are also selected to be trained as system administrators.

C.3 Platforms created for service delivery

(i) e-Courts Portal: Online mechanisms†(Online services are available at -(i) ecourts.gov.in, (ii) services.ecourts.gov.in and (iii) districts.ecourts.gov.in])†(websites) are available for stakeholders such as litigants, advocates, government agencies, and the

police to track case status, view cause lists, judgments and daily orders. The services.ecourts.gov.in portal is a one stop access point where a person can locate a case from any court across the country by using different search criteria available on the website. Data is available on the portal for disposed of and pending civil and criminal cases across the country. The portal also contains judgments and orders of the district judiciary.

(ii) Mobile App: e-Courts Services mobile app available on Android and iOS provides facility for all stakeholders including advocates and parties, to create a portfolio of cases in which they are associated and track them for future alerts. A facility to search the case by a QR Code is also provided and the App has been downloaded multiple times.

(iii) SMS Push: Litigants and advocates get an SMS alert on their cell phones, in case of any adjournment, scrutiny, registration, transfer of case, disposal, uploading of orders, etc.

(iv) SMS Pull: This facility allows advocates and litigants to send the CNR number (which is a unique number tagged for every single case in the country) and receive a response with the current status of the case.

(v) Automated e-Mails: Litigants, advocates and police stations receive information on regular e-mails in relation to the cause lists, transfer of cases, disposal, copies of orders and judgments.

(vi) Touch Screen Kiosks and Service Centre: Dissemination of case status has been made simple with the installation of touch screen kiosks in various court complexes across the country. This allows litigants and advocates to view their case status at the touch of a button. The same information can also be obtained from Judicial Service Centres established in court complexes.

(vii) E-Payment: In order to facilitate ease of payments, online payment of court fees, fines, penalties and judicial deposits through the epay.ecourts.gov.in has been facilitated. Citizens can make payments online without the use of cheques, cash or stamps, with the help of this portal.

(viii) E-Filing: For convenience, facility for online filing of cases and case papers with the court registry has been provided. This facility is integrated with standard application software across all the districts and subordinate courts.

C.4 National Judicial Data Grid

The NJDG is a public portal that provides a database of pending and disposed of cases in various High Courts and District Courts across India. The NJDG portal njdg.ecourts.gov.in provides transparency in the judicial system to all citizens by allowing them to view statistics of cases pending before various courts. The World Bank has also acknowledged NJDG as a significant innovation. It serves as a national judicial data warehouse that may be used to shape legislative policy.

C.5 Other facilities created to speed up justice delivery

(i)†**NSTEP:**†National Software and Tracking of Electronic Process, is a mechanism that consists of a centralised service tracking application and a mobile app for court bailiffs. NSTEP has been created for speedy delivery of process and to reduce inordinate delays in judicial procedures. The mobile app, equipped with GPS location tracking assists the bailiffs in real-time and transparent tracking of services. The mobile app also has the facility to record the photo and signature of the receiver. In case of non-service of notice or communication, the mobile application instantly communicates it to the central NSTEP server.

(ii)†**Video Conferencing:**†In an effort to speed up the judicial process, video-conferencing facilities connecting courts and jails have been established in 488 courts and 342 jails across India.

C.6 Concept of Video-Streaming/Web-Cast

Advancement in technology and increased internet penetration has facilitated transmission of live or pre-recorded video feed to devices like computers, tabs and mobiles. Live-webcast or streaming of court proceedings in real time can be implemented through available technological solutions. Live-webcast or streaming is the fastest method for communicating and is most suited for connecting geographically dispersed audiences.

C.7 Virtual reality as an extension of the open court

The time has come for this Court to take a step further in adopting technology and to enable live-streaming of its proceedings. Live-streaming of courtroom proceedings is an extension of the principle of open courts. Live-streaming will have the ability to reach a wide number of audiences with the touch of a button. It will enable litigants and members of the public to have a virtual experience of courtroom proceedings even outside the courtroom premises.

38. There are multiple reasons why live-streaming will be beneficial to the judicial system:

a. The technology of live-streaming injects radical immediacy into courtroom proceedings. Each hearing is made public within seconds of its occurrence. It enables viewers to have virtual access to courtroom proceedings as they unfold;

b. Introduction of live-streaming will effectuate the public's right to know about court proceedings. It will enable those affected by the decisions of the Court to observe the manner in which judicial decisions are made. It will help bring the work of the judiciary to the lives of citizens;

c. Live-streaming of courtroom proceedings will reduce the public's reliance on second-hand narratives to obtain information about important judgments of the Court and the course of judicial hearings. Society will be able to view court proceedings first hand and form reasoned and educated opinions about the functioning of courts. This will help reduce misinformation and misunderstanding about the judicial process;

d. Viewing court proceedings will also serve an educational purpose. Law students will be able to observe and learn from the

interactions between the Bar and the Bench. The archives will constitute a rich source for aspiring advocates and academicians to study legal advocacy procedures, interpretation of the law, and oratory skills, among other things. It will further promote research into the institutional functioning of the courts. Live-streaming and broadcasting will also increase the reach of the courts as it can penetrate to every part of the country;

e. Live-streaming will enhance the rule of law and promote better understanding of legal governance as part of the functioning of democracy;

f. Live-streaming will remove physical barriers to viewing court proceedings by enabling the public to view proceedings from outside courtroom premises. This will also reduce the congestion which is currently plaguing courtrooms. It will reduce the need for litigants to travel to the courts to observe the proceedings of their cases;

g. Live-streaming is a significant instrument of enhancing the accountability of judicial institutions and of all those who participate in the judicial process. Delay in the dispensation of justice is a matter of serious concern. Live-streaming of court proceedings will enable members of the public to know of the causes of adjournments and the reasons why hearings are delayed; and

h. Above all, sunlight is the best disinfectant. Live-streaming as an extension of the principle of open courts will ensure that the interface between a court hearing with virtual reality will result in the dissemination of information in the widest possible sense, imparting transparency and accountability to the judicial process.

Major common law jurisdictions across the globe have already embraced the concept of live-streaming and broadcasting courtroom proceedings. It may be useful to look at the evolution of the concept in a few jurisdictions, and the practices followed by them.

D Comparative Law

39. This section takes a measured look at the development of the principle of open justice in common law and other jurisdictions. It examines how courts in other countries have addressed concerns of privacy, confidentiality and sensitivity of litigants, witnesses and cases.

(i) United Kingdom

The Supreme Court of UK permits broadcasting of its courtroom proceedings.†(The live-streaming proceedings of Supreme Court of United Kingdom. Available at: https://www.supremecourt.uk/live/court-01.html])†The Eighth Practice Direction of the Supreme Court permits "video footage of proceedings before the Court to be broadcast where this does not affect the administration of justice."†(The Supreme Court of United Kingdom, Practice Direction 8, para 8.17.1. Available at https://www.supremecourt.uk/docs/practice-direction-08.pdf])†Three national broadcasters- BBC, ITN, and Sky News†(Supra note 16.)†are permitted to film and broadcast the Supreme Court proceedings, "in accordance with the protocol which has been agreed with."†(Supra note 30)†The protocol prohibits recording of certain types of proceedings like private discussions between litigants

and their counsel.†(Ibid)†The footage is only allowed to be used for informational purposes in programs like news, current affairs, education, and legal training.†(Supra note 16)†However, any broadcasting which may detract from the seriousness or integrity of the proceedings, like entertainment programmes, satirical programmes, political party broadcasts, and advertising or promotion, is not permitted.†(Ibid)†Further, any still images are always required to be used "in a way that has regard to the dignity of the Court and its functions as a working body."†(Ibid)

Sky News airs live broadcasts of the UK Supreme Court's hearings.†(Ibid)†By the end of 2011, the UK Supreme Court permitted journalists to use live text-based communications, including social media platform Twitter, during court hearings.†(Ibid)†The presiding judge, however, retains full discretion to prohibit such communications in the interest of justice.†(Ibid)†The UK Supreme Court has its own Twitter handle (@UKSupremeCourt) which it uses to update the public about its judgments.†(The official Twitter handle of UK Supreme Court. Available at: https://twitter.com/uksupremecourt])†It also has a YouTube channel where it showcases short summaries of judgments read out by the judges.†(The official YouTube handle of UK Supreme Court. Available at:

https://www.youtube.com/user/UKSupremeCourt])

In 2013, the UK permitted audio-visual coverage of the Court of Appeals (Civil and Criminal). (Ravid, Itay, Tweeting #Justice: Audio-Visual Coverage of Court Proceedings in a World of Shifting Technology (March 9, 2017). 35(1) Cardozo Arts and Entertainment Law Journal 41 (2017).]) The broadcast is subject to certain limitations - (a) only the judgments and lawyers' arguments are permitted to be filmed. Victims and witnesses are not recorded; and (b) live broadcasts are delivered with a seventy seconds delay.†(Ibid)†According to British legal commentator, Joshua Rozenberg, the seventy seconds delay is favourable and necessary because:

"That gives everyone involved just over a minute to work out that something should not be heard or seen in public before the recording leaves the courtroom. The problem could be mild profanity...Somebody might quote information that is protected by a court order or is unreportable for some other reason. Perhaps the cameras might catch a glimpse of someone whose face must not be included in court broadcasts, such as the appellant or a witness."†(Joshua Rozenberg, Televising the Courts: The Time Has Come, The Guardian, 23 October 2013. Available at https://www.theguardian.com/law/2013/oct/23/televising-courts-live-broadcasting-joshua-rozenberg])

The court retains control over the live broadcast. A single video-journalist is authorised to record and regulate the live proceedings†(Ibid)†and is bound by the court's orders.†(Ibid)†Only the appointed journalist or his substitute is permitted to take pictures in court.†(Ibid)†The appointed journalist is jointly employed by the four media groups which are funding the project- Sky News, ITN, BBC and the Press Association news agency.†(Ibid)†Only the appointed journalist or his substitute is permitted to take pictures in court.†(Ibid)†Although the appointed

journalist has the permission to film any of the fifteen courtrooms in which the Court of Appeals may sit, practically, the media organisations pick only one court at a time for live broadcast. (Ibid)

The Court of Appeals was opened for broadcasting upon the recommendations of the Ministry of Justice, in its 2012 Report.†(Supra note 16)†Making a case for extending technological change to the remaining courts in the UK, the Ministry of Justice had reasoned that:]

“In principle the majority of our courts are open to all members of the public who wish to attend, but in practice very few people have the time or opportunity to see what happens in our courts in person. In addition, the extent of press coverage of court cases, particularly in local courts has declined in recent years. In cases of particular interest to the public, there may not be sufficient space in the public gallery for all those who wish to attend.”†(Ibid)

The Ministry had recommended broadcasting the Court of Appeals’ proceedings as they do not involve victims or witnesses:

“Cases in the Court of Appeal normally deal with complex issues of law or evidence, and victims and witnesses rarely appear in order to provide new evidence. Given the complexity of legal issues in Court of Appeal cases, we believe that allowing advocates’ arguments to be filmed in addition to judgments would be more likely to improve public understanding than judgments alone. We are therefore proposing to allow judgments and legal arguments from cases before the Court of Appeal to be broadcast.”†(Ibid)

Live-streaming of the Court of Appeals’ hearings opened the doors to other courts in the UK for broadcasting. The UK Parliament enacted the Crime and Courts Act, 2013, which, inter alia, enables recording of court proceedings with the approval of the Lord Chancellor and the Lord Chief Justice. This was enacted as a primary legislation to empower the Lord Chancellor, with the Lord Chief Justice, “to set out in secondary legislation the specific circumstances in which the prohibition on cameras in courts...will be disapplied.”†(Ibid)

In 2016, the Ministry of Justice launched a three-month pilot program to experiment with broadcasting the proceedings of eight England and Welsh Crown Courts.†(Supra note 42)†This was limited to judges’ sentencing remarks and the footage was not made available to the public.†(Ibid)†The question of broadcasting the Crown Court’s hearings is currently pending consideration before the Ministry of Justice, as it involves larger issues of safeguarding witnesses and victims.†(The Telegraph, Crown Court sentencing being recorded for pilot projects that could bring judges’ comments to TV, 27 July 2016. Available at https://www.telegraph.co.uk/news/2016/07/27/crown-court-sentencing-being-recorded-for-pilot-project-that-cou/])

(ii) South Africa

In South Africa, the presence of cameras in the courtroom is a recent development and is at a relatively nascent stage. In 2017, the Supreme Court of Appeal (which is the highest court of appeal in South

Africa) set a precedent permitting broadcasting of proceedings in all courts of South Africa.†(The†**NDPP v. Media 24 Limited & others**†and†**HC Van Breda v. Media 24 Limited & others (425/2017) [2017] ZASCA 97.)**†Now, the media is permitted to live broadcast the proceedings of all South African courts. While permitting the media to live broadcast the court proceedings, Ponna JA made an interesting observation that it was time for courts to 'yield to a new reality:'

"It is thus important to emphasise that giving effect to the principle of open justice and its underlying aims now means more than merely keeping the courtroom doors open. It means that court proceedings must where possible be meaningfully accessible to any member of the public who wishes to be timeously and accurately apprised of such proceedings. Broadcasting of court proceedings enables this to occur."†(Ibid at para 46)

Witnesses are granted the freedom to object to broadcasting their testimony, subject to the court's final discretion. This discretion, Ponna JA (speaking for the bench) emphasised, must be exercised by the courts on a case-by-case basis, by conducting an individualised enquiry.†(Ibid at para 72)†Where the judge finds that the objections of the witness are valid, the court considers alternatives to regular photographic or television coverage.†(Ibid at para 73)

(iii) Canada

The Canadian Supreme Court is considered a pioneer for adapting itself to technology and permitting audio-visual broadcasting of its proceedings.†(Kyu Ho Youm, Cameras in the Courtroom in the Twenty-First Century: e U.S. Supreme Court Learning From Abroad", 2012 BYU L. Rev. 1989 (2012).])†In 1993, the Canadian Supreme Court conducted a successful pilot project, live televising the hearings of three high profile cases. The broadcasts were governed by the following guidelines:

"(a) The case to be filmed will be selected by the Chief Justice.

(b) The Chief Justice or presiding Justice may limit or terminate media coverage to protect the rights of the parties; the dignity of the court; to assure the orderly conduct of the proceedings; or for any other reason considered necessary or appropriate.

(c) No direct public expense is to be incurred for wiring, or personnel needed to provide media coverage."†(Ibid)

The Canadian Supreme Court permits the Canadian Parliamentary Press Gallery to live broadcast all appeals before it.†(Supreme Court of Canada, Access to the Court. Available at https://www.scc-csc.ca/media/acc-eng.aspx])†The Canadian Parliamentary Affairs Channel (CPAC) is also allowed to televise the appeal hearings of the Court, but at a later date.†(Daniel Stepniak, 'Audio Visual Coverage of Courts, A Comparative Analysis,' Cambridge University Press (2008).])†The broadcasts are subject to guidelines which ensure that the Court retains control over the filming process.†(Ibid)†Although the CPAC decides which cases to broadcast, the Supreme Court has the discretion to prohibit the filming of specific appeals.†(Supra note 62)†The CPAC is permitted to share the broadcast feed with other television networks, for use

as snippets in news programs.†(Ibid)

At present, four cameras are installed in the Supreme Court.†(Ibid)†The appeal hearings have been broadcast since 2009 and are archived on the Court's website. (Ibid) The cameras are installed by the Court and are operated by the Court's employees. Outside cameras are not permitted except for special events.†(Ibid)†The copyright over the proceedings is retained by the Court.†(Supra note 65)†Before any case can be filmed, the Supreme Court requires parties to consent to the recording and televising of the proceedings.†(Ibid)†Any party seeking to exclude their case from the broadcast must convey the same to the Registrar at least two weeks prior to the hearing date. (Ibid)

(iv) Australia

Australia follows an open court system, with courts in all Australian jurisdictions admitting television cameras into courtrooms.†(See supra note 65)†Since 2013, audio-visual recordings of the High Court of Australia have been made available to the public.†(High Court of Australia, Press Release, 01 October 2013. Available at: http://www.hcourt.gov.au/assets/news/MR-audio-visual-recordings-Oct13.pdf.])†The entire process of filming and broadcasting is carried out by the Court staff.†(High Court of Australia, Photography and Recording Guidelines. Available at: http://www.hcourt.gov.au/about/photography-and-recording])†Transcripts of the hearings are made available within a day or two of most hearings.†(Ibid)†The High Court has stated that initially the recordings will be available after a few business days, however, the Court will endeavour to reduce the number of days.†(Ibid)

Apart from the High Court, most Australian courts do not maintain a consistent policy on admitting television cameras into the courtroom.†(Supra note 65 at page 210-211)†Filming is permitted on an ad hoc basis and is usually restricted to the recording of file and overlay footage or ceremonial sittings.†(Ibid)

(v) New Zealand

New Zealand allows wide access to the media in courts and has one of the most progressive live broadcast policies among common law countries.†(See supra note 65)†Traditionally, members of the media were only permitted to make hand-written notes of court proceedings, without the use of any electronic device.†(New Zealand, Report to Chief Justice on In-Court Media Coverage (2015), at para 7. Available at https : //www . courts of nz. govt. nz/ In - Court - Media - Review / In- Court - Media Review/Reportto Chief Justice on court media coverage F 6_ 7_ 15 _ 2015 0720 .pdf])† From 1996 to 1998, New Zealand conducted a three year pilot project which covered more than twenty cases.†(Ibid, at para 15)†All courts in New Zealand were covered under the pilot, contingent on two main rules:

"1. Material obtained from expanded media coverage which is broadcast shall be presented in a way which gives an accurate, impartial and balanced coverage of the proceedings and of the parties involved. Any such broadcast is to be without editorial comment and to be of at least two minutes duration per news item.

2. There shall be no use of material obtained

from expanded media coverage otherwise than for normal news programmes or articles unless prior approval for that use has been given by the trial judge or, where that judge is unavailable, another judge of the relevant court."†(Ibid, at para 14)

New Zealand permits media houses to broadcast court proceedings with the approval of the court.†(New Zealand, In-Court Media Coverage Guidelines (2016). Available at: https://www.courtsofnz.govt.nz/going-to-court/media/rules-and -resources / IN COURT MEDIA COVERAGE GUIDELINES 2016 T.pdf])† The broadcast is governed by a set of guidelines which balance the principle of open justice with the need for a fair trial. They impose upon the media the responsibility to provide "an accurate, fair and balanced report of the hearing" without publishing anything out of context.†(Ibid)†They also provide for a ten minute delay in broadcasting audio and video recordings.†(Ibid, at para 2.1.)†Under the guidelines, any media outlet wishing to film and broadcast court proceedings is required to seek prior written permission from the court for each case.†(Ibid, at para 5.5.)†The discretion of the court to grant permission is guided by the following considerations:

"a. the need for a fair trial;
b. the desirability of open justice;

c. the principle that the media have an important role in the reporting of trials as the eyes and ears of the public;

d. court obligations to the victims of offences; and

e. the interests and reasonable concerns and perceptions of the parties, victims and witnesses."†(Ibid at para 2.3.)

The Supreme Court permits recording of its proceedings in majority of the cases, unless specifically objected to by the parties.†(Supra note 65, at page 347.)†The Supreme Court's media guidelines, published upon its establishment in 2004, indicate that audio-visual covering is to be considered as the norm, rather than the exception:

[91*]

"Subject to paragraph (5), all applications to televise or otherwise record proceedings of the Supreme Court will be deemed to be approved unless a party indicates, within 3 days of being advised by the registrar of the application, that the party objects to it."†(New Zealand Ministry of Justice, Supreme Court Media Guidelines (2004). Available at: https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/appendices/appendix-e/])

(vi) United States

The US Supreme Court does not permit video recording or photography of its proceedings. It releases audio transcripts of the oral arguments on the same day. Audio recordings of each week's oral arguments are released on the court's website†(The official website of the Supreme Court of the United States. Available at:

https://www.supremecourt.gov/oral_arguments/argument_audio/2017])†at the end of the week.

Each Federal Court of Appeals has the discretion to provide audio or video recordings of its proceedings, subject to guidelines framed by the court. Since 2014, the US Court of Appeals for the Ninth Circuit has approved video broadcasting of all cases before it, except those prohibited by law through guidelines.†(The United States Court of Appeals for Ninth Circuit, Guidelines for Broadcasting, Recording, and Still Photography in the Courtroom. Available at: https://cdn.ca9.uscourts.gov/datastore/uploads/news_media/camera.guidelines.pdf])†The media needs to take prior approval of the court to record the proceedings.†(Ibid)†The presiding judge is granted absolute discretion to limit or terminate media coverage, or direct the removal of camera coverage personnel when necessary, in order to protect the rights of the parties or aid the conduct of proceedings.†(Ibid)†The video and audio recordings of the federal judiciary are hosted on YouTube and are also available on the court's official website.†(The official YouTube handle of US Courts. Available at: https://www.youtube.com/user/uscourts])†The district and lower courts in each state permit some form of audio or video broadcasting and recording of its proceedings, subject to guidelines and rules.†(As held by the Supreme Court of the United States in†**Chandler v. Florida, 449 U.S. 560 (1981).)**

(vii) Brazil

In 2002, the President of Brazil sanctioned a law enabling the creation of a public television channel dedicated to the judiciary and to the Supreme Court.†(Meet the Justice TV. Available at official website: http://www.tvjustica.jus.br/index/conheca)†The court sessions of the Supreme Court (Supremo Tribunal Federal) are broadcast online†(Supra note 62)†on either 'TV Justica'†(TV Justica. Available at official website: http://www.tvjustica.jus.br/])†or 'Radio Justica'†(Radio Justica. Available at official website: www.radiojustica.jus.br/])†and operated by the Supreme Court. Aside from being aired on television and radio, the proceedings can also be streamed online as the Court maintains a Twitter account†(The official Twitter handle of Supreme Court of Brazil. Available at: https://twitter.com/stf_oficial])†and a YouTube channel.†(The official YouTube handle of Supreme Court of Brazil. Available at: https://www.youtube.com/user/stf])†The unique feature of the Brazilian Supreme Court is that cameras are permitted into the conferences where the judges deliberate.†(Supra note 62)

(viii) International Courts

International courts have also embraced the idea of broadcasting their court proceedings. The International Criminal Court (ICC) permits televising of its cases, although with a thirty minute delay.†(Official website of International Criminal Court. Available at: https://www.icc-cpi.int/])†The ICC has a YouTube channel where it broadcasts case proceedings, press conferences, and informative videos in different languages. (Official YouTube Channel of International Criminal Court. Available at:

https://www.youtube.com/user/IntlCriminalCourt/videos])† In the European Court on Human Rights (ECHR), all hearings are permitted to be made public, unless specifically disallowed by the Court.†(Rule 63, Rules of Court, ECHR, 01 Aug 2018.

Available at:

https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf])†The broadcast is available on the Court's website on the same day. Broadcast of morning sessions is put up by the afternoon, and the afternoon sessions by evening. The ECHR states that all hearings are filmed and broadcast of the court's website on the day itself, from 14:30 (local time) onwards.†(ECHR, Webcast of hearings. Available at: https://www.echr.coe.int/Pages/home.aspx"p=hearings&c=])

40. On examining the practices followed by the jurisdictions discussed above, it appears that broadcasting of courtroom proceedings emerged in several countries through judicial decisions. Further, most jurisdictions follow certain common practices such as (i) a minimal delay in live broadcast; (ii) retention of the copyright with the court; (iii) conducting a pilot project before introducing broadcasting for all cases; (iv) excluding certain categories of cases where the interests of justice warrant that the hearings should not be webcast or streamed; and (v) conferment of power on the presiding judge to regulate the live transmission. Every jurisdiction has a set of limitations to which the broadcast is subject. Broadcast is usually not permitted when it impedes the administration of justice.

41. Live-streaming of court proceedings is manifestly in public interest. It is important to re-emphasise the significance of live-streaming as an extension of the principle of open justice and open courts. However, the process of live- streaming should be subjected to carefully structured guidelines. Initially, a pilot project may be conducted for about three months, by live-streaming only cases of national and constitutional importance in the Chief Justice's Court. Progressively, as and when the infrastructure is ready, this Court can expand the ambit of live-streaming to cover all cases (except for the ones which are excluded).

42. The need for live-streaming of proceedings applies with equal and, in some respects, greater force to proceedings of cases in the district judiciary and the High Courts. The pattern of litigation in our country resembles a pyramid. The courts within the district judiciary represent the large base of the pyramid where citizens have the greatest interface. It is to the Courts comprised in the district judiciary that citizens turn as a point of first access for remedying injustice. At the tip of the pyramid is the jurisdiction of this Court. In terms of volume, the largest amount of litigation emanates in the district judiciary, followed by the High Courts. The engagement of the district judiciary in resolving injustices faced by citizens requires that every citizen should have full access to and knowledge about the proceedings before those courts. Equally, the principle of an open court which has been espoused in this judgment would merit that proceedings before the High Courts should also be live-streamed.

43. Live-streaming of proceedings is crucial to the dissemination of knowledge about judicial proceedings and granting full access to justice to the litigant. Access to justice can never be complete without the litigant being able to see, hear and understand the course of proceedings first hand. Apart from this, live-streaming is an important facet of a responsive judiciary which accepts and acknowledges that it is accountable to the

concerns of those who seek justice. Live-streaming is a significant instrument of establishing the accountability of other stake-holders in the justicing process, including the Bar. Moreover, the government as the largest litigant has to shoulder the responsibility for the efficiency of the judicial process. Full dissemination of knowledge and information about court proceedings through live-streaming thus subserves diverse interests of stake holders and of society in the proper administration of justice.

44. For lawyers and judges familiar with the cocoon of a physical court room, live-streaming would require attitudinal changes. They include the maintenance of order and sequencing of oral arguments. Judges in charge of their courts would have to devote attention to case management. But these demands are necessary incidents of the challenges of our time. Slow as we have been to adapt to the complexities of our age, it is nonetheless necessary for the judiciary to move apace with technology. By embracing technology, we would only promote a greater degree of confidence in the judicial process. Hence, the Chief Justices of the High Courts should be commended to consider the adoption of live-streaming both in the High Courts and in the district judiciaries in phases, commensurate with available resources and technical support. The High Courts would have to determine the modalities for doing so by framing appropriate rules.

45. Comprehensive guidelines for live-streaming of Court proceedings have been submitted by Mr K K Venugopal, learned Attorney General of India, Ms Indira Jaising, learned Senior Counsel, Mr Virag Gupta, learned Counsel and Mr Mathews J Nedumpara, learned Counsel. These have been duly considered in framing the model guidelines below. The model guidelines are based on the following broad principles:

a. Article 145 (1) of the Constitution provides:

“Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court...”

Determining the modalities for live-streaming of the proceedings of this Court can appropriately be dealt with under the Rules which should be framed in pursuance of Article 145(1). Regulating, generally, the practice and procedure of the Court would extend to formulating Rules for live-streaming.

b. Not all cases may be live-streamed. Certain sensitive cases like matrimonial or sexual assault cases should be excluded from the process of livestreaming;

c. Live-streaming will be carried out with a minimal delay to allow time for screening sensitive information or any exchange which should not be streamed;

d. The final authority to regulate suspension or prohibition of live-streaming in a particular case where the administration of justice so requires, must be with the presiding judge of each court;

e. Live-streaming will be carried out only by persons or any agency authorized under the directions of the Chief Justice of India,

or as contemplated in the Rules. The streaming and broadcasting will be hosted by this Court on its website with the assistance of the National Informatics Centre and the Ministry of Electronics and Information Technology;

f. The copyright over all the material recorded and broadcast in this Court shall vest with this Court only; and

g. The recordings and broadcast may not be used by anyone for commercial purposes.

h. Archives shall be maintained of all live-streaming, to be hosted on the web-site of the Court.

46. The model guidelines are of a suggested nature and will not detract from the authority of the Court to frame Rules under Article 145(1) in order to determine all the modalities, including (i) the phases in which live-streaming shall be introduced; (ii) the types of cases for which live-streaming of cases will be provided; (iii) authorising the use of appropriate technology; (iv) the agencies through which live-streaming will be implemented; (v) other facets for implementation; and (vi) laying down norms for the use of the feed.

E Model guidelines for broadcasting of the proceedings and other judicial events of the Supreme Court of India

A. Kind of matters to be live-streamed

1. Proceedings involving the hearing of cases before the Supreme Court shall be live-streamed in the manner provided below:

a) Cases falling under the following categories shall be excluded as a class from live-streaming:

(i) Matrimonial matters, including transfer petitions;

(ii) Cases involving sensitive issues as in the nature of sexual assault; and

(iii) Matters where children and juveniles are involved, like POCSO cases.

b) Apart from the general prohibition on streaming cases falling in the above categories, the presiding judge of each courtroom shall have the discretion to disallow live-streaming for specific cases where, in his/her opinion, publicity would prejudice the interests of justice. This may be intimated by the presiding judge in advance or live-streaming may be suspended as and when a matter is being heard; and

c) Where objections are filed by a litigant against live-streaming of a case on grounds of privacy, confidentiality, or the administration of justice, the final authority on live-streaming the case shall lie with the presiding judge.

2. In addition to live-streaming of courtroom proceedings, the following events may also be live-streamed in future subject to the provisions of the Rules:

(a) Oath ceremonies of the Judges of the Supreme Court and speeches delivered by retiring judges and other judges in the farewell ceremony of the respective Supreme Court Judges; and

(b) Addresses delivered in judicial conferences or Full Court References or any event organized by the Supreme Court or by advocate associations affiliated to the Supreme Court or any other events.

B. Manner of live-streaming

1. Live-streamed and archived videos of the broadcast shall be made available on the official website of the Supreme Court. The recorded broadcast of each day shall be made available as archives on the official website of the Supreme Court by the end of the day;

2. Live-streaming shall commence as soon as the judges arrive in the courtroom and shall continue till the Bench rises;

3. The presiding judge of the courtroom shall be provided with an appropriate device for directing the technical team to stop live-streaming, if the Bench deems it necessary in the interest of administration of justice;

4. Live-streaming of the proceedings should be carried out with a delay of two minutes;

5. Proceedings shall only be live-streamed during working hours of the court;

6. Courtroom proceedings will continue to be live-streamed unless the presiding judge orders the recording to be paused or suspended;

7. To give full effect to the process of live-streaming, advocates addressing the Bench, and judges addressing the Bar, must use microphones, while addressing the Court;

8. Recording of courtroom proceedings shall be done by the Registry with the technical support of National Informatics Centre or any other public/ private agency authorised by the Supreme Court or the Ministry of Information and Technology; and

9. The portions of proceedings which are not broadcast online, on the direction of the presiding judge of the Bench shall not be made part of the official records and shall be placed separately as 'confidential records'.

C. Technical specifications for live-streaming

1. Live-streaming shall be conducted by the Supreme Court with its own camera-persons or by an authorized agency. No person who is not authorized by the Supreme Court will be permitted to record any proceeding;

2. Cameras should be focused only on the judges and advocates pleading before the Bench in the matter being live-streamed;

3. Cameras shall not film the media and visitor's galleries;

4. Cameras may zoom in on the Bench when any judge is dictating an order or judgment or making any observation or enquiry to the advocate; and

5. The following communications shall not be filmed:

a) Discussions among the judges on the Bench;

b) Any judge giving instructions to the administrative staff of the courtroom;

c) Any staff member communicating any

message to the judge or circulating any document to the judge;

d) Notes taken down by the judge during the court proceedings; and

e) Notes made by an advocate either on paper or in electronic form for assistance while making submissions to the court.

D. Archiving

1. The audio-visual recording of each day's proceedings shall be preserved in the Audio-Visual Unit of the Supreme Court Registry;

2. Archives of all broadcasts of courtroom proceedings which have been live-streamed should be made available on the website of the Supreme Court; and

3. Hard copies of the video footage of past proceedings may be made available according to terms and conditions to be notified by the Supreme Court Registry. The video footage shall be made available for the sole purpose of fair and accurate reporting of the judicial proceedings of the Supreme Court.

E. Broadcast Room

1. The Registry will make one or more rooms or a hall available within the premises of the Supreme Court for the purpose of broadcasting the proceedings. Multiple screens along with the other necessary infrastructural facilities shall be installed, for enabling litigants, journalists, interns, visitors and lawyers to view the courtroom proceedings in the broadcast room(s). Special arrangements will be made for the differently abled.

F. Miscellaneous

1. The Supreme Court shall hold exclusive copyright over videos streamed online and archived with the Registry; and

2. Re-use, capture, re-editing or redistribution, or creating derivative works or compiling of the broadcast or video footage, in any form, shall not be permitted except as may be notified in the terms and conditions of use and without the written permission of the Registry.

I would like to acknowledge and appreciate the efforts and assistance rendered by Mr K K Venugopal, the learned Attorney General for India, Ms Indira Jaising, learned Senior Counsel, Mr Mathews Nedumpara, learned Counsel and by the law student, Mr Swapnil Tripathi, who also moved a petition under Article 32.

LAW SUMMARY

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